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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
against:

LEON BERNARDI

Key Employee License No. GEKE-001408

OAH No. 2014060129

BGC Case No. BGC-HQ2013-00003AC

CGCC Case No. 2013-0426-1

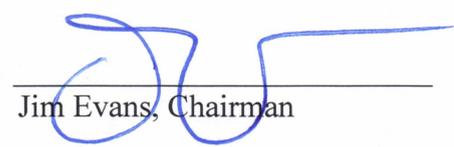
**DECISION AND ORDER OF
NONADOPTION AND REFERRAL FOR
FURTHER EVIDENCE**

DECISION

The attached April 27, 2018 Proposed Decision and Order of Administrative Law Judge Coren D. Wong is hereby rejected pursuant to Government Code Section 11517(c)(2)(D) by the State of California, California Gambling Control Commission. The Commission hereby refers this matter back to Administrative Law Judge Coren D. Wong, if reasonably available, or another Administrative Law Judge with the Office of Administrative Hearings, to take evidence on the first, second, third, and sixth causes for denial contained in the Statement of Issues and issue a proposed decision on all the causes of action.

This Decision is effective immediately.

Dated: 8/23/18

Signature: 

Jim Evans, Chairman

Dated: 8/23/18

Signature: 

Paula LaBrie, Commissioner

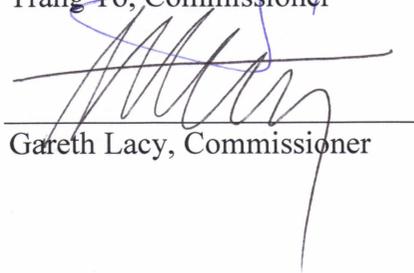
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Dated: 8/23/18

Signature: 
Trang To, Commissioner

Dated: 8/23/18

Signature: 
Gareth Lacy, Commissioner

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

In the Matter of the First Amended Statement
of Issues Against:

LEON BERNARDI,

Key Employee License No. GEKE-001408

Respondent.

Case No. BGC-HQ2013-00003AC

OAH No. 2016030545

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on January 2 through 5 and 8, 2018, in Sacramento, California.¹

William P. Torngren and Neil D. Houston, Deputies Attorney General, represented complainant Wayne J. Quint, Jr., Director of the California Department of Justice, Bureau of Gambling Control (Bureau), State of California.²

Attorney Joseph A. Davis of the law firm Davis & Winston represented respondent Leon Bernardi, who was present throughout the hearing.

¹ This matter was consolidated for hearing with the matters involving Louis Sarantos, Jr., (HQ2015-00003AC), Joseph Frederick Capps (BGC-HQ2015-00024SL), Edward Glen Mason (BGC-HQ2015-00022SL), and Jon Strecker (BGC-HQ2015-00023SL). Messrs. Sarantos, Mason, and Strecker entered into settlement agreements with complainant prior to hearing, and only Messrs. Bernardi's and Capps's matters proceeded to hearing. A separate Proposed Decision pertaining to Mr. Capps will be prepared pursuant to complainant's request and California Code of Regulations, title 1, section 1016, subdivision (d).

² Mr. Quint was the Bureau's Director when the First Amended Statement of Issues was filed. After the hearing concluded, Stephanie Shimazu was appointed as the Bureau's Director.

Evidence was received, and the record was left open to allow Messrs. Torngren and Houston to submit cost declarations, Mr. Bernardi to respond to those declarations, and complainant to submit written closing and reply briefs.³ Messrs. Torngren's and Houston's declarations are marked collectively as Exhibit 38, and complainant's closing and reply briefs are marked as Exhibits 39 and 40, respectively. Mr. Bernardi's opposition to imposition of costs is marked as Exhibit 41. The record was closed, and the matter was submitted for decision on April 9, 2018.

SUMMARY

The Bureau seeks the denial of respondent's application to renew Key Employee License No. GEKE-001408 on the grounds that he: 1) refused to submit to an interview by Bureau Special Agent Alfredo Cardwood on May 7, 2015, and 2) did not disclose to the Bureau or the California Gambling Control Commission (Commission) his financial interest in the Clovis 500 Club Casino (500 Club), the terms of a joint venture he entered into, and the terms of a construction loan he partially funded. While respondent did not submit to an interview by Special Agent Cardwood on May 7, 2015, the persuasive evidence established: 1) he believed he had a legitimate reason for not submitting to the interview, 2) there was no reason why he had to be interviewed by Special Agent Cardwood or on May 7, 2015, 3) he was willing to submit to an interview that day by another Bureau representative or on a different day by Special Agent Cardwood, and 4) he was never contacted by anyone from the Bureau to reschedule his interview.

And while respondent did not disclose to the Bureau or the Commission his financial interest in the 500 Club, the terms of the joint venture, or the terms of the construction loan, the persuasive evidence established the Commission does not consider having a financial interest in a business that conducts lawful gambling *in California* material to one's suitability for licensure. The persuasive evidence further established he was not required to disclose his financial interest in the 500 Club, the terms of the joint venture, or the terms of the construction loan in response to a question from the Bureau or the Commission in order for his answer to be truthful and complete. Therefore, no cause exists to deny respondent's renewal application, the application should be granted, and Key Employee License No. GEKE-001408 should be renewed.

FACTUAL FINDINGS

Jurisdictional Background

1. On November 25, 2008, the Commission issued Key Employee License No. GEKE-001408 to respondent as a key employee at the Club One Casino (Club One).

³ Mr. Bernardi elected to have his attorney make his closing argument orally on the last day of hearing, and he waived his right to submit written argument.

Respondent was continuously licensed as a key employee at the Club One until December 3, 2011.

2. Respondent began employment at the 500 Club on May 23, 2012. On August 20, 2012, respondent filed with the Commission an Application for Gambling Establishment Key Employee License to renew his key employee license as a Shift Supervisor at the 500 Club.

3. The Commission extended respondent's license renewal until January 31, 2013, at its November 15, 2012 meeting. His license renewal was subsequently extended until April 30, 2013.⁴ On April 26, 2013, the Commission referred the renewal of respondent's key employee license to an evidentiary hearing. The Commission's Executive Director subsequently elected to have the matter heard at an evidentiary hearing before the Commission.

4. An evidentiary hearing was held, but not completed, before the Commission on April 27 and 28, 2015. On October 8, 2015, the Commission referred respondent's license renewal to an Administrative Procedures Act hearing before an Administrative Law Judge sitting on behalf of the Commission.

5. On June 29, 2017, complainant, acting solely in his official capacity, signed the First Amended Statement of Issues. Complainant alleged that cause exists to deny respondent's renewal application because he refused to submit to an interview by a Bureau Special Agent on May 7, 2015, regarding the existence of, and his participation in, the joint venture discussed further below. Complainant further alleged respondent failed to disclose to the Bureau and the Commission the existence and the terms of the joint venture and the construction loan made to Louis Sarantos discussed further below.⁵

Factual Background

HISTORY OF THE 500 CLUB

6. Louis and George Sarantos purchased the 500 Club, a four-table card room, restaurant, and bar on N. Clovis Avenue in Clovis, California, from their parents in 1974. The two brothers were equal partners in the 500 Club, and they operated it jointly until George Sarantos entered into a new business venture by opening the Club One in Fresno,

⁴ There was no evidence of any further extensions, but it was undisputed respondent has been continuously licensed as a key employee for the 500 Club since May 23, 2012.

⁵ The First Amended Statement of Issues alleges a total of six causes for denial, but the hearing on the fourth and fifth causes was bifurcated from the hearing on the first through third and sixth causes. This Proposed Decision addresses only the fourth and fifth causes for denial, and a Trial Setting Conference to discuss setting a hearing for the remaining causes is scheduled for August 31, 2018.

California. While George Sarantos maintained his ownership interest in the 500 Club, he left its day-to-day operations to his brother.

7. In 2010, Louis Sarantos acquired his brother's interest in the 500 Club, and continued to operate the business as a sole proprietorship. Sometime thereafter, he began exploring the possibility of relocating the 500 Club from its original location on Clovis Avenue to a new location on West Shaw Avenue. At his brother's recommendation, Louis Sarantos retained attorney John Cardot to assist with obtaining financing for the desired expansion and relocation.

THE JOINT VENTURE

8. On November 10, 2011, Mr. Cardot formed a joint venture with respondent, Joseph Frederick Capps, Lodi Franesconi, Don Nicholson, Edward Mason, and Jon Strecker for the sole purpose of financing the tenant improvements to the new location for the 500 Club. The business at the new location would consist of an 18-table card room, a bar, and a restaurant.

9. The joint venture agreed to make a \$1.5 million construction loan to Louis Sarantos to pay for tenant improvements to the 500 Club's new location. The loan would be payable over four years through monthly payments of \$15,990.83 and a final balloon payment of \$1,257,811.60. The loan would accrue interest at the rate of 10 percent per annum, one-half of which was to be included in each monthly payment and the other half in the final balloon payment. The loan was to be funded by contributions from each joint venturer in an amount specified in the joint venture agreement.

10. Pursuant to the joint venture agreement, each joint venturer gave Mr. Cardot "a limited irrevocable power of attorney ('POA') to take any and all actions reasonably required to make the Construction Loan to Louis, including, but not limited to negotiating, finalizing, executing, performing, amending, and enforcing appropriate loan documents with Louis, collecting, holding, and advancing the joint venture contributions from the Parties as John reasonably determines is necessary to perform the Construction Loan, and disbursing monies collected from Louis to the Parties."

11. The joint venture agreement required Mr. Cardot to acquire from Louis Sarantos an option to purchase an interest in the 500 Club's card room as consideration for making the loan. Specifically, the agreement provided:

In consideration for the Parties making the Construction Loan to Louis, John shall obtain the irrevocable right, but not the obligation, from Louis on behalf of the Parties to purchase a 50% interest in the Card Room in such percentages of the Card Room as shown below the respective names of the Parties in the row entitled "Net Interests" on the left side of the Right to Purchase Interests in Card Room Schedule attached hereto as

Exhibit D and incorporated by this reference (the "Interests Schedule"). No party may acquire any ownership interest in the Card Room without the prior approval and consent of the California Gambling Control Commission (the "Commission") and the Clovis City Council ("Clovis"). The purchase price for purchasing 50.00% of the Card Room business and assets, subject to all liabilities associated with the Card Room, from Louis is [as] follows (collectively, the "Purchase Price"): (i) \$300,000 in cash upon closing; (ii) foregoing and waving the deferred interest of 5% due on the Construction Loan; and (iii) allowing Dusten to acquire 2.5% of the 50% interest in the Card Room (subject to its liabilities) being acquired by the Parties. If any party exercised [*sic*] their [*sic*] right to purchase, each such party shall be obligated to pay such portion of the Purchase Price as their [*sic*] respective interests [*sic*] bear [*sic*] to the total interests being acquired by the Parties.

THE CONSTRUCTION LOAN

12. Louis Sarantos knew the lender for the construction loan would be a group of lenders which included Mr. Cardot.⁶ He also knew Mr. Cardot would act as the joint venture's authorized agent in extending the loan. On November 15, 2011, Mr. Cardot and Louis Sarantos entered into a Business Plan Agreement, which provided, in part:

I. Louis has secured "lease" financing from TEQ Leasing in the amount of \$500,000 to purchase personal property for the project and several persons have informed Louis that they are willing to make him loan[s] in amounts less than the remaining \$1,500,000 needed by Louis to finance the project if John would participate with the group making the loan and structure, draft documents, and perform the loan transactions on behalf of the group;

J. Louis has also requested John to participate in the group of lenders, to contribute an additional amount sufficient to make a construction loan in an amount not to exceed \$1,500,000, and to structure and draft loan documents for the group to make the

⁶ A joint venture is "a special combination of two or more persons, where in some specific venture a profit is jointly sought without any actual partnership or corporate designation, or as an association of persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill, and knowledge." (*Epstein v. Stahl* (1959) 176 Cal.App.2d 53, 57; quoting *Sime v. Malouf* (1949) 95 Cal.App.2d 82, 95.)

construction loan, and to perform the construction loan on behalf of the group;

K. John has agreed to participate as requested by the group subject to the conditions that the group agrees for John to act as the agent for the group in order to make the construction loan to Louis and that Louis agree to different but slightly better loan terms than Louis offered to the last prospective lender who declined to make the loan;

13. Additionally, Mr. Cardot and Louis Sarantos entered into a Loan Agreement whereby the former agreed, on behalf of the joint venture, to loan the latter an amount not to exceed \$1.5 million for the purpose of making tenant improvements to the 500 Club's new location. Louis Sarantos signed a Secured Promissory Note agreeing to repay the total amount ultimately loaned, and a security agreement granting the joint venture a security interest in:

[A]ny and all of the personal property, inventory, equipment, trade fixtures and any accessions⁷ thereto of DEBTOR, located at the Premises⁸ or used in connection with the card room, bar, or restaurant business conducted on the Premises (excluding only the Card Room Gambling License and the ABC License), including, but not limited to, those assets specifically set forth on Exhibit A attached hereto and incorporated by this reference, any other contract rights or rights to the payment of money, insurance claims and proceeds, and all general intangibles of DEBTOR including, without limitation, all payment intangibles, trademarks, trademark applications, trade names, copyrights, copyright applications, software, engineering or architectural drawings, service marks, customer lists, goodwill, and all permits, agreements of any kind or nature pursuant to which DEBTOR possesses, uses or has authority to possess or use property (whether tangible or intangible) of others or others possess, use or have authority to possess or use property (whether tangible or intangible) of DEBTOR, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics of DEBTOR. To the extent

⁷ “‘Accession’ means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.” (Cal. U. Com. Code, § 9102, subd. (a)(1).)

⁸ “Premises” was defined in the agreement as “500 N. Clovis Avenue, Clovis, California 93612.”

applicable, terms contained in this section are given the meanings defined in Article 9 of the Uniform Commercial Code and adopted in the State of **CALIFORNIA** and is intended to include all personal property of DEBTOR used to operate the business of the Clovis 500 Club at the Premises, whether owned now or acquired later, and all proceeds and products thereof.

(Capitalization and bold original.)

14. Finally, Mr. Cardot, acting on behalf of the joint venture, and Louis Sarantos entered into a Right to Purchase Interest in Card Room Agreement. The agreement provided:

Louis hereby irrevocably grants to John the exclusive right to purchase up to a 50% interest in the Card Room, subject to all liabilities associated with the Card Room (the "RTP") during the term (as defined below) of this Agreement. John acknowledges and understands that the liabilities associated with the Card Room will include the following: (i) that certain Secured Promissory Note dated December 10, 2010, made payable and issued to George Sarantos (\$4M); (ii) a construction loan (\$1.5M); (iii) a personal property lease (\$500k); (iv) a Commercial Lease for the New Location; and (v) the accounts payable of the Card Room.

15. The duration of the purchase option was from the date the agreement was executed "until the date which is 120 days after the opening of the Card Room at the New Location." The purchase price was \$300,000 and the waiver of the deferred interest due and owing on the construction loan.

16. Between November 16, 2011, and June 15, 2012, Mr. Cardot, on behalf of the joint venture, disbursed a total of \$1.2 million to Louis Sarantos pursuant to the agreements discussed above. On June 15, 2012, Louis Sarantos executed a revised Secured Promissory Note reflecting the total amount of the construction loan from the joint venture as being \$1.2 million. Respondent contributed \$192,000 towards the loan. The revised note specified that monthly payments in the amount of \$12,727.86 were due "commencing on July 15, 2012, and continuing on the same day of each month thereafter until June 15, 2016 (the "Maturity Date" sixth), upon which date the entire Indebtedness, including all principal and interest (including the deferred interest of 5%), then owed under this Note shall be paid in full." The parties also executed a revised Security Agreement and Right to Purchase Interest in Card Room Agreement reflecting the actual amount of the construction loan, but otherwise containing the same language as the originals.

Nondisclosure of Joint Venture or Construction Loan on Renewal Application

17. The only renewal application introduced at hearing was one respondent submitted to the Bureau on March 20, 2017. The only questions on the application were the following:

1. Have you been a party to any civil litigation since you last filed an application for a Key Employee License?
2. Have you acquired or increased a financial interest in a business that conducts lawful gambling outside the state since last filing a Key Employee License application?
3. Have you been named in any administrative action affecting any license certification since you last filed an application for a Key Employee License?
4. Have you been convicted of any crime (misdemeanor or felony) since you last filed an application for a Key Employee License?

18. Respondent answered “no” to each question, except the first. He explained his answer to the first question by including a statement disclosing his involvement in a lawsuit filed by Kyle Kirkland and one he filed against John Cardot.

19. Respondent explained at hearing that every renewal application he submitted to the Bureau contained the same four questions as the one he submitted on March 20, 2017. He further explained he answered those four questions on each application completely and truthfully. He never disclosed the existence or the terms of the joint venture or the construction loan in connection with any renewal application. No one from the Bureau or the Commission ever asked him a question that would have required him to disclose such information in order for his answer to be complete and truthful.

The Bureau’s Investigation of the Construction Loan

20. Alfredo Cardwood is a Special Agent Supervisor with the California Department of Justice assigned to the Bureau. He was a Special Agent assigned to the Bureau on January 6, 2015, when he was asked to investigate allegations that the manner in which Louis Sarantos funded the tenant improvements to the 500 Club’s new location violated the Gambling Control Act (Bus. & Prof. Code, div. 8, ch. 5, § 19800 et seq.) and regulations adopted pursuant thereto.

21. On February 11, 2015, Special Agent Cardwood interviewed Kyle Kirkland, the person who brought the above allegations to the Bureau’s attention. Based on information obtained during the interview, Special Agent Cardwood decided to interview

respondent, Ed Mason, Jon Strecker, Dusten Perry, and Louis Sarantos, and he contacted Mr. Perry (the General Manager of the 500 Club) and Lori Worjdan (the Director of Compliance for the 500 Club) to arrange the interviews. The interviews were scheduled for May 7, 2015, at the 500 Club.

22. Special Agent Cardwood interviewed Messrs Mason, Strecker, Perry, and Sarantos in the 500 Club's conference room on May 7, 2015. He did not interview respondent. In fact, he never spoke to or saw respondent that day.

23. According to Special Agent Cardwood's hearing testimony, Mr. Perry stated during his interview that he contacted respondent to schedule his interview with Special Agent Cardwood, but respondent said he would not come for an interview and did not want to speak with Special Agent Cardwood. Special Agent Cardwood explained that Mr. Perry provided no further explanation for respondent not appearing for his interview, and no one else told him respondent would not talk to him. He further explained the issue of interviewing respondent never arose after May 7, 2015, and he made no further attempt to interview respondent. He never told anyone May 7, 2015, was the only day on which he would interview respondent.

24. Respondent explained at hearing that he received a text message notifying him that a representative from the Bureau wanted to interview him at the 500 Club on May 7, 2015, at 9:00 a.m. He could not recall who sent the text or the date on which he received it, other than it was after the Commission's April 28, 2015 evidentiary hearing. The text did not identify who would conduct the interview, or that respondent had to be interviewed on May 7, 2015.

25. Respondent testified that he arrived at the 500 Club between 8:45 and 9:00 a.m. on May 7, 2015, fully intending to be interviewed by a Bureau representative. When he entered the 500 Club, he saw Special Agent Cardwood in the distance near Mr. Perry's office. He believed Special Agent Cardwood provided untruthful testimony at the Commission's April 28, 2015 evidentiary hearing, and felt uncomfortable being interviewed by him so soon after the hearing.

26. Respondent explained he went to the restroom after he saw Special Agent Cardwood. After leaving the restroom, he walked to the conference room where Special Agent Cardwood was conducting his interviews, and saw Ms. Worjdan, Mr. Betts (the 500 Club's attorney), and Mr. Mason inside. He could not recall if he saw Special Agent Cardwood in the room. He opened the door to the conference room, either took a step into the room or stuck his head inside, and stated to those in the room that he would not be interviewing with Special Agent Cardwood "today." He then left the 500 Club.

27. Respondent did not know Special Agent Cardwood was the person who was going to interview him on May 7, 2015, until he arrived at the 500 Club that morning. No one ever told respondent that May 7, 2015, was the only day on which Special Agent

Cardwood could interview him. Neither respondent nor anyone from the Bureau made any attempt to reschedule the interview before or after May 7, 2015.

Discussion

28. The relevant facts underlying this matter were largely undisputed. Respondent was part of a joint venture that was formed for the sole purpose of loaning Louis Sarantos money to fund tenant improvements to the 500 Club's new location. Mr. Cardot acted as the agent of the joint venture in loaning \$1.2 million to Louis Sarantos, and Louis Sarantos knew Mr. Cardot was acting in such capacity. The loan was funded by contributions from the joint venturers, including \$192,000 contributed by respondent. The loan was secured by the 500 Club's assets at the old location. As consideration for the loan, the joint venturers acquired an exclusive right to purchase a 50 percent interest in the 500 Club's card room.⁹

29. It was also undisputed that the renewal application respondent submitted on March 20, 2017, asked him to disclose any financial interest he had "in a business that conducts lawful gambling *outside the state*" (italics added), and he did. The application did not ask him to disclose any financial interest he had in a business that conducts lawful gambling *in California*. Respondent's testimony that every other renewal application he submitted to the Bureau asked him to disclose the former information but not the latter was credible and uncontested. The evidence raised a strong inference that the Commission draws a distinction between businesses that conduct lawful gambling outside of California and those that conduct lawful gambling inside California, and considers only information about financial interests in the former material to an applicant's suitability for licensure. Complainant failed to rebut the presumption. Complainant did not allege in the First Amended Statement of Issues any statute or regulation that required respondent to voluntarily disclose his financial interest in the 500 Club to the Bureau or the Commission.

30. Respondent never disclosed to the Bureau or the Commission that he: 1) was a member of a joint venture that ultimately loaned Louis Sarantos \$1.2 million to fund tenant improvements to the 500 Club's new location, 2) contributed \$192,000 towards that loan, and 3) acquired the exclusive right to purchase a 50 percent interest in the 500 Club's card room along with his other joint venturers as consideration for the construction loan. His testimony that no one from the Bureau or the Commission asked him any questions that would have required him to reveal such information in order for his answers to be complete and truthful was credible and uncontested. Complainant did not allege in the First Amended Statement of Issues any statute or regulation that required respondent to voluntarily disclose the terms of the joint venture or the construction loan.

31. Finally, it was undisputed that Special Agent Cardwood did not interview respondent on May 7, 2015. Respondent's testimony that he: 1) arrived at the 500 Club that

⁹ The validity of the purchase option is the subject of separate litigation, and no finding is made as to that issue. For purposes of this Proposed Decision, the option is presumed to be valid.

morning intending to be interviewed by a Bureau representative, 2) did not learn Special Agent Cardwood would be the person interviewing him until he saw Special Agent Cardwood near Mr. Perry's office, and 3) felt uncomfortable being interviewed by Special Agent Cardwood so soon after the Commission's April 28, 2015 hearing¹⁰ was credible.

While Mr. Perry testified "I believe -- I think I was told by [respondent's] attorney, Joe Davis, that he would not be appearing for that," he also explained "I don't remember the details of the conversation other than Leon would not be appearing for the interview." Special Agent Cardwood said the only explanation Mr. Perry gave him for respondent's nonappearance on May 7, 2015, was that respondent said he would not be appearing and did not want to speak with Special Agent Cardwood. Respondent's testimony, as bolstered by Special Agent Cardwood's, was more persuasive than Mr. Perry's. Furthermore, respondent's testimony raised an inference that he was willing to be interviewed on May 7, 2015, by someone other than Special Agent Cardwood, or on a different day by Special Agent Cardwood. Complainant did not rebut that inference. Nor did complainant allege any statute or regulation in the First Amended Statement of Issues that required respondent to be interviewed by Special Agent Cardwood or on May 7, 2015.

Summary

32. Respondent obtained a financial interest in the 500 Club by virtue of the security interest he was given in the business's assets at the old location as security for repayment of the \$192,000 he contributed to the construction loan. He did not, however, obtain an ownership interest in the business by virtue of the purchase option.

33. The evidence established that the 500 Club conducts lawful gambling *solely* within California, and respondent was not required to disclose his financial interest in the business in connection with any of his renewal applications. The evidence further established no one from the Bureau or the Commission asked him any questions which would have required him to disclose his financial interest in the 500 Club, the terms of the joint venture, or the terms of the construction loan in order for his answers to be complete and truthful.

34. Respondent declined to submit to an interview by Special Agent Cardwood on May 7, 2015. But the evidence established respondent believed he had a legitimate reason for doing so. The evidence further established: 1) there was no requirement that he be interviewed on May 7, 2015, or by Special Agent Cardwood, and 2) he was willing to be interviewed on May 7, 2015, by a representative of the Bureau, other than Special Agent Cardwood, or on a different date by Special Agent Cardwood. Neither Special Agent Cardwood nor anyone else from the Bureau attempted to reschedule respondent's interview.

¹⁰ It is respondent's purported belief that Special Agent Cardwood provided untruthful testimony that was relevant, not whether the testimony was in fact untruthful. No finding is made about the truthfulness of Special Agent Cardwood's April 28, 2015 testimony.

Costs of Prosecution

35. Complainant seeks to recover \$38,483.75 as the reasonable cost of prosecuting this matter pursuant to Business and Professions Code section 19930, subdivision (d). The Declaration of Neil D. Houston Re Costs and the Declaration of William P. Torngren Re Costs were submitted in support of the request. Attached to Mr. Houston's declaration is a document entitled "Matter Time Activity By Professional Type," which shows the Office of the Attorney General incurred costs in the total sum of \$23,545 for work performed in this matter by a Senior Assistant Attorney General and six Deputies Attorney General, including himself but excluding Mr. Torngren, for which the Bureau has been billed. The document itemizes the costs by attorney, date, task, number of hours worked, hourly rate, and total amount. A similar document attached to Mr. Torngren's declaration shows he spent 87.88 hours working on this matter, and the Bureau was billed \$14,938.75 for his time.

For the reasons explained in Legal Conclusions 21, 22, and 24 below, no legal basis exists for awarding complainant any costs, and none are awarded.¹¹

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant filed a First Amended Statement of Issues seeking to deny respondent's application to renew his key employee license. Government Code section 11504 says the following about statements of issues:

A hearing to determine whether a . . . license . . . should be . . . renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought. . . .

///

¹¹ Additionally, neither Mr. Houston nor Mr. Torngren provided any explanation for the need to have eight different attorneys working on this matter, or why it was necessary for both of them to appear at all five days of hearing. The written transcript of the proceedings showed Mr. Houston played little part in presenting argument and evidence at hearing. Therefore, neither declaration establishes the reasonableness of the costs incurred by the Office of the Attorney General and billed to the Bureau.

2. Complainant alleged in the First Amended Statement of Issues:

13. . . . Respondent's key employee license application is subject to mandatory denial pursuant to Business and Professions [C]ode section 19854 and section 19859, subdivision (b), in that on or about May 7, 2015, Respondent refused to submit to an interview by Bureau Special Agent Alfredo Cardwood concerning the existence of, and Respondent's participation in, the joint venture described above.

[¶] . . . [¶]

14. Respondent's key employee license application is subject to denial pursuant to Business and Professions [C]ode section 19854 and Business and Professions Code section 19857, subdivisions (a) and (b), in that on or about November 10, 2011, and continuing at all times thereafter, Respondent failed to disclose to the Bureau and to the Commission Respondent's provision of the loan to licensee Louis Sarantos in the amount of approximately \$192,000.00, made as part of the joint venture described in paragraph 13, above. Respondent also failed to disclose to the Bureau and Commission the other loans made by, and purchase options received by, the other participants in the joint venture described in paragraph 13, above, despite having knowledge thereof. Respondent knew, or reasonably should have known, that the acquisition of such financial and ownership interests in a gambling establishment by Respondent and others must be reported to the Bureau and the Commission.

3. Respondent has the burden of proving he did not violate: 1) Business and Professions Code sections 19854 and 19859, subdivision (b), by refusing to submit to an interview by Special Agent Cardwood on May 7, 2015; and 2) Business and Professions Code sections 19854 and 19857, subdivisions (a) and (b), by failing to disclose his financial interest in the 500 Club, the terms of the joint venture, and the terms of the construction loan. (*Coffin v. Alcoholic Beverage Control Appeals Board* (2006) 139 Cal.App.4th 471, 476 [annulling decision of Alcoholic Beverage Control Appeals Board granting liquor license and remanding matter back to Department of Alcoholic Beverage Control because administrative law judge improperly placed burden on parties protesting issuance of license to prove applicant was not qualified for licensure, rather than on applicant to prove he was].) He must meet his burden by a preponderance of the evidence. (Evid. Code, § 115 ["Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence"].) This evidentiary standard requires respondent to produce evidence of such weight that, when balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words,

he need only prove it is more likely than not he did not violate the statutes alleged. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

AGENCY

4. An agent's knowledge of information pertaining to the agency that is acquired in the course of such agency is imputed to the principal. (*In re the Marriage of Cloney* (2011) 91 Cal.App.4th 429, 439.) This rule arises from an agent's duty to disclose to his principal all information material to the agency acquired during the course of the agency. (*Ibid.*)

PURCHASE OPTION

5. A purchase option, when supported by consideration, is a contract by which the owner of property (optionor) gives another (optionee) the exclusive right to purchase the property for a stipulated price within a specified time." (*County of San Diego v. Miller* (1975) 13 Cal.3d 684, 688.) It is merely the optionor's irrevocable offer to sell the property to the optionee. (*Warner Bros. Pictures, Inc. v. Brodel* (1948) 31 Cal.2d 766, 772.) "An option is not a sale of the property, but a sale of a right to purchase the property. (*Wachovia Bank v. Lifetime Industries, Inc.* (2006) 145 Cal.App.4th 1039, 1049.) It grants no interest in the property. (*Id.*, at p. 1050.)

THE GAMBLING CONTROL ACT

6. The Gambling Control Act (Bus. & Prof. Code, div. 8, ch. 5, § 19800 et seq.; the Act) is a comprehensive statutory scheme regulating gambling in the State of California. The Act is administered through a bifurcated system of oversight and regulation, which includes the Commission and the Bureau.

7. The Commission is responsible for "assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare." (Bus. & Prof. Code, § 19823, subd. (a)(1).) It is also responsible for "assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare." (Bus. & Prof. Code, § 19823, subd. (a)(2).)

8. The Commission carries out its responsibilities by requiring people "to apply for a license, permit, registration, or approval as specified in this chapter, or regulations adopted pursuant to this chapter." (Bus. & Prof. Code, § 19824, subd. (a).) It may "deny any application for a license, permit, or approval provided for in this chapter or regulations adopted pursuant to this chapter, limit, condition, or restrict any license, permit, or approval,

or impose any fine upon any person licensed or approved.” (Bus. & Prof. Code, § 19824, subd. (b).)

9. The Bureau is responsible for receiving and processing applications for licenses, permits, and approvals; is required to investigate the qualifications of any applicant prior to issuance of the license, permit, or approval applied for; and may make a recommendation to the Commission about whether an application should be approved or denied. (Bus. & Prof. Code, § 19826, subd. (a).) The Bureau is also responsible for investigating alleged violations of the Act or any regulation adopted pursuant thereto, and may seek disciplinary action for any such violations. (Bus. & Prof. Code, § 19826, subds. (c)-(e).) The Bureau “has all powers necessary and proper to enable it to carry out fully and effectually the duties and responsibilities . . . specified in this chapter.” (Bus. & Prof. Code, § 19827, subd. (a).)

10. “The owner of a gambling enterprise shall apply for and obtain a state gambling license. The owner of a gambling enterprise shall be known as the owner-licensee.”¹² (Bus. & Prof. Code, § 19851, subd. (a).) If the owner is not a natural person, each of the following must individually apply for and obtain a gambling license before the owner may be issued a license:

(a) If the owner is a corporation, then each officer, director, and shareholder, other than a holding or intermediary company, of the owner. The foregoing does not apply to an owner that is either a publicly traded racing association or a qualified racing association.

(b) If the owner is a publicly traded racing association, then each officer, director, and owner, other than an institutional investor, of 5 percent or more of the outstanding shares of the publicly traded corporation.

(c) If the owner is a qualified racing association, then each officer, director, and shareholder, other than an institutional investor, of the subsidiary corporation and any owner, other than an institutional investor, of 5 percent or more of the outstanding shares of the publicly traded corporation.

¹² “Gambling enterprise” is “a natural person or an entity, whether individual, corporate, or otherwise, that conducts a gambling operation and that by virtue thereof is required to hold a state gambling license under this chapter.” (Bus. & Prof. Code, § 19805, subd. (m).) “‘Gambling license’ or ‘state gambling license’ means any license issued by the state that authorizes the person named therein to conduct a gambling operation.” (Bus. & Prof. Code, § 19805, subd. (p).)

(d) If the owner is a partnership, then every general and limited partner of, and every trustee or person, other than a holding or intermediary company, having or acquiring a direct or beneficial interest in, that partnership owner.

(e) If the owner is a trust, then the trustee and, in the discretion of the commission, any beneficiary and the trustor of the trust.

(f) If the owner is a limited liability company, every officer, manager, member, or owner.

(g) If the owner is a business organization other than a corporation, partnership, trust, or limited liability company, then all those persons as the commission may require, consistent with this chapter.

(h) Each person who receives, or is to receive, any percentage share of the revenue earned by the owner from gambling activities.

(i) Every employee, agent, guardian, personal representative, lender, or holder of indebtedness of the owner who, in the judgment of the commission, has the power to exercise a significant influence over the gambling operation.

(Bus. & Prof. Code, § 19852.)

11. Business and Professions Code section 19805, subdivision (x), defines “key employee” as:

[A]ny natural person employed in the operation of a gambling enterprise in a supervisory capacity or empowered to make discretionary decisions that regulate gambling operations, including, without limitation, pit bosses, shift bosses, credit executives, cashier operations supervisors, gambling operation managers and assistant managers, managers or supervisors of security employees, or any other natural person designated as a key employee by the department for reasons consistent with the policies of this chapter.

A “‘key employee license’ means a state license authorizing the holder to be employed as a key employee.” (Bus. & Prof. Code, § 19805, subd. (y).)

12. A key employee license is required as follows:

Every person who, either as owner, lessee, or employee, whether for hire or not, either solely or in conjunction with others, deals, operates, carries on, conducts, maintains, or exposes for play any controlled game in this state, or who receives, directly or indirectly, any compensation or reward, or any percentage or share of the money or property played, for keeping, running, or carrying on any controlled game in this state, shall apply for and obtain from the commission, and shall thereafter maintain, a valid state gambling license, key employee license, or work permit, as specified in this chapter. In any criminal prosecution for violation of this section, the punishment shall be as provided in Section 337j of the Penal Code.

(Bus. & Prof. Code, § 19850.)

13. A key employee license shall be renewed as follows:

(a) Subject to the power of the commission to deny, revoke, suspend, condition, or limit any license, as provided in this chapter, a license shall be renewed biennially.

(b) An application for renewal of a gambling license shall be filed by the owner licensee or key employee with the department no later than 120 calendar days prior to the expiration of the current license. The commission shall act upon any application for renewal prior to the date of expiration of the current license. Upon renewal of any owner license, the commission shall issue an appropriate renewal certificate or validating device or sticker.

(Bus. & Prof. Code, § 19876.)

14. A key employee who has submitted an application to renew his license is entitled to an interim renewal license when “the Executive Director [of the Commission] determines, pursuant to subsection (a) of Section 12060, that it is appropriate for the application to be considered at a GCA hearing.” (Cal. Code Regs., tit. 4, § 12035, subd. (a)(2).)

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STATUTORY BASES FOR DENIAL ALLEGED IN STATEMENT OF ISSUES

15. Business and Professions Code section 19854 provides:

(a) Every key employee shall apply for and obtain a key employee license.

(b) No person may be issued a key employee license unless the person would qualify for a state gambling license.

(c)(1) Except as provided in paragraph (2), a key employee license shall entitle the holder to work as a key employee in any key employee position at any gambling establishment, provided that the key employee terminates employment with one gambling establishment before commencing work for another.

(2) Notwithstanding paragraph (1), a key employee with a valid personal portable license may work as a key employee in any key employee position in more than one gambling establishment.

(d) The commission shall establish a program for portable personal licenses for key employees, as well as a process by which valid key employee licenses then in effect shall be converted to personal portable licenses. The commission may, as part of that process, establish a fee to be paid by a key employee when seeking a personal portable license. The commission shall seek to implement the requirements imposed by this subdivision on or before July 1, 2008.

16. The Commission shall deny an application for licensure unless it is convinced the applicant is:

(a) A person of good character, honesty, and integrity.

(b) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state, or to the effective regulation and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto.

(Bus. & Prof. Code, § 19857.)

17. An applicant for licensure is disqualified and the Commission must deny his application for:

Failure of the applicant to provide information, documentation, and assurances required by this chapter or requested by the chief, or failure of the applicant to reveal any fact material to qualification, or the supplying of information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

(Bus. & Prof. Code, § 19859, subd. (b).)

Cause for Denial

18. The only legal basis for denying an application to renew a key employee license pursuant to Business and Professions Code section 19854 is if the applicant would not qualify for a state gambling license. (Bus. & Prof. Code, § 19854, subd. (b).) The Fourth and Fifth Causes for Denial contain no legal or factual allegations about respondent not qualifying for a state gambling license. Therefore, no cause exists pursuant to Business and Professions Code section 19854 to deny his renewal application based on his not submitting to an interview by Special Agent Cardwood on May 7, 2015, or his not disclosing his financial interest in the 500 Club, the terms of the joint venture, and the terms of the construction loan to the Bureau or the Commission.

19. It was undisputed respondent declined to be interviewed by Special Agent Cardwood on May 7, 2015. However, the persuasive evidence established respondent believed he had a legitimate reason for doing so based on his concern that Special Agent Cardwood had given untruthful testimony before the Commission on April 28, 2015. The persuasive evidence further established respondent was willing to be interviewed on May 7, 2015, by someone other than Special Agent Cardwood, or on a later date by Special Agent Cardwood. There was no requirement that respondent be interviewed on May 7, 2015, or by Special Agent Cardwood, and no one from the Bureau made any attempt to reschedule his interview. Therefore, respondent did not fail to provide information required by law or requested by the Bureau, fail to disclose a fact material to his qualification as a key employee, or supply false or misleading information, and no cause exists to deny his renewal application pursuant to Business and Professions Code section 19859, subdivision (b).

20. It was undisputed respondent did not disclose his financial interest in the 500 Club, the terms of the joint venture, or the terms of the construction loan to the Bureau or the Commission. But the persuasive evidence established he answered all questions on each of his renewal applications completely and truthfully, and the Commission does not consider such information material to one's suitability for licensure. The persuasive evidence further established no one from the Bureau or the Commission asked him any questions which would have required him to disclose his financial interest in the 500 Club, the terms of the joint venture, or the terms of the construction loan in order for his answers to be complete

and truthful. In other words, respondent was under no obligation to disclose such information to the Bureau or the Commission, and no cause exists pursuant to Business and Professions Code section 19857, subdivisions (a) and (b), to deny his renewal application.

Conclusion

21. No cause exists to deny respondent's Application for Gambling Establishment Key Employee License pursuant to Business and Professions Code sections 19854, 19857, subdivisions (a) and (b), or 19859, subdivision (b), for the reasons explained in Legal Conclusions 18 through 20, individually and collectively. Therefore, his application should be granted, and his key employee license should be renewed.

Costs of Prosecution

22. Business and Professions Code section 19930, subdivision (d), provides:

In any case in which the administrative law judge recommends that the commission revoke, suspend, or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee or applicant for a license to pay the department the reasonable costs of the investigation and prosecution of the case.

"Costs" include "the preparation and prosecution of the case by the Office of the Attorney General." (Bus. & Prof. Code, § 19930, subd. (f)(2).)

23. California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed,

the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

24. No legal basis exists for awarding costs pursuant to Business and Professions Code section 19930, subdivision (d), for the reasons explained in Legal Conclusions 21 and 22, and none are awarded.

ORDER

1. Respondent Leon Bernardi's Application for Gambling Establishment Key Employee License is GRANTED, and Key Employee License No. GEKE-001408 is RENEWED.

2. Complainant's request for an award of costs pursuant to Business and Professions Code section 19930, subdivision (d), is DENIED.

DATED: April 27, 2018

DocuSigned by:

Coren D. Wong

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COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings