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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for a Key
Employee License Regarding:

JAMES CRAIG TOBIASZ

Applicant.

BGC Case No. BGC-HQ2013-00008AL
CGCC Case No. CGCC-2013-0321-3

DECISION AND ORDER

Hearing Date: November 12, 2014
Time: 10:00 a.m.

This matter was heard by the California Gambling Control Commission (Commission) pursuant to Business and Professions Code sections 19870 and 19871 and Title 4, California Code of Regulations (CCR) section 12050(b)(2), in Sacramento, California, on November 12, 2014.

Timothy Muscat, Deputy Attorney General, State of California, represented complainant Wayne J. Quint, Jr., Chief of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

James Craig Tobiasz (Tobiasz) failed to appear and was not represented at the hearing.

During the administrative hearing, Presiding Officer Jason Pope took official notice of the following:

- (a) Notice of Hearing and Prehearing Conference, dated August 14, 2014, served by certified mail, return receipt requested; and
- (b) Conclusion of Prehearing Conference letter, dated October 10, 2014.

During the administrative hearing, Presiding Officer Jason Pope accepted into evidence the following exhibits offered by the Bureau:

- (1) Copies of the Statement of Particulars, Statement to Applicant and Certificate of Service by Certified Mail served by the Bureau; and March 21, 2013 Minutes of the Commission¹;

¹ Although listed as "March 21, 2013 Minutes of the Commission," the actual document submitted as evidence during the evidentiary hearing was a Commission Licensing Division Memorandum regarding the

(continued...)

- 1 (2) Copies of the August 14, 2014 Notice of Hearing and Prehearing
2 Conference and October 10, 2014 Conclusion of Prehearing Conference
3 letter;
- 4 (3) Certified copies of Tobiasz's Application for a Gambling Establishment
5 Key Employee License, dated April 30, 2011 and Key Employee
6 Supplemental Background Investigation Information form, dated April 30,
7 2011;
- 8 (4) Certified copies of the police records for Tobiasz's misdemeanor
9 conviction, on or about November 24, 1993, for violating New York Penal
10 Code section 155.25, petit larceny, including the police record entitled
11 "Voluntary Statement" that was signed by Tobiasz on November 21, 1993;
12 and
- 13 (5) Certified copy of a letter from the Bureau to Tobiasz dated March 30, 2012
14 and Tobiasz's response.

15 The matter was submitted on November 12, 2014.

16 FINDINGS OF FACT

- 17 1. Tobiasz works as a Poker Room Supervisor at The Aviator Casino, a key employee
18 position that requires the applicant to submit an Application for a Gambling Establishment Key
19 Employee License.
- 20 2. On or about April 30, 2011, Tobiasz filed an Application for Gambling Establishment
21 Key Employee License (Application) and Key Employee Supplemental Background Investigation
22 Information form to the Commission.
- 23 3. At its March 21, 2013 meeting, the Commission voted to refer the matter of Tobiasz's
24 Application to an evidentiary hearing.
- 25 4. On or about June 13, 2013, the Executive Director of the Commission set the matter
26 for an administrative hearing to be conducted pursuant to Business and Professions Code sections
27 _____
28 (...continued)
application of Tobiasz in anticipation of the March 21, 2013 Commission meeting.

1 19870 and 19871 and Title 4, CCR section 12050(b)(2).

2 5. On or about July 18, 2014, the Bureau filed a Statement of Particulars with the
3 Commission recommending the approval of Tobiasz's Application.

4 6. On or about August 14, 2014, the Commission served a Notice of Hearing and
5 Prehearing Conference on Tobiasz and the Bureau.

6 7. On or about October 9, 2014, the noticed Prehearing Conference was held before
7 Presiding Officer Jason Pope, Attorney III of the Commission. Timothy Muscat, Deputy Attorney
8 General, attended on behalf of the Bureau. Tobiasz failed to attend the Prehearing Conference.

9 8. On or about October 10, 2014, the Commission served a Conclusion of Prehearing
10 Conference letter on Tobiasz and the Bureau.

11 9. The Commission heard Case No. CGCC-2013-0321-3 on November 12, 2014. The
12 Bureau was represented throughout the pendency of the hearing by Deputy Attorney General
13 Timothy Muscat. Tobiasz failed to appear throughout the pendency of the hearing or make any
14 contact with the Commission or the Bureau.

15 10. The failure of an applicant to attend the hearing on his or her application may affect
16 the applicant's ability to apply for and/or receive a work permit, registration or license from the
17 Commission and/or from other jurisdictions.

18 11. On or about November 24, 1993, Tobiasz was convicted of violating New York Penal
19 Code section 155.25, petit larceny, a misdemeanor. Tobiasz was conditionally discharged and
20 ordered to pay a \$100 fine.

21 12. On or about November 21, 1993, Tobiasz signed a Voluntary Statement regarding the
22 circumstances surrounding his petit larceny conviction. In the Voluntary Statement, Tobiasz
23 states that he was working at J.C. Penney when a friend came into the store. Tobiasz's friend
24 approached the sales counter with clothing items totaling \$203.31. Tobiasz charged the
25 merchandise to a J.C. Penney account number belonging to a different customer and had his
26 friend sign a false name on the receipt. Tobiasz's friend left with the merchandise.

27 13. In response to a written inquiry from the Bureau requesting details regarding
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1 Tobiasz's petit larceny conviction, Tobiasz wrote that he was at the scene of the incident and was
2 charged with larceny because he did not cooperate with J.C. Penney regarding the identity of his
3 friend, whom he referred to as the "thief." Tobiasz did not include any other details regarding the
4 circumstances surrounding his petit larceny conviction.

5 14. Tobiasz's written response to the Bureau deliberately omits many of the details of the
6 facts surrounding the circumstances of his petit larceny conviction, including: (1) that Tobiasz
7 was working at J.C. Penney at the time of the theft; and (2) that Tobiasz assisted his friend with
8 the transaction by charging the merchandise to a J.C. Penney account number belonging to a
9 different customer and having his friend sign a false name on the receipt.

10 15. The deliberate omission of critical details of the facts surrounding the circumstances
11 of his petit larceny conviction demonstrates a lack of good character and integrity.

12 16. Failing to attend the hearing, Tobiasz did not present or submit any information or
13 evidence in favor of granting his Application.

14 17. The matter was submitted for Commission consideration on November 12, 2014.

15 LEGAL CONCLUSIONS

16 18. Division 1.5 of the Business and Professions Code, the provisions of which govern the
17 denial of licenses on various grounds, does not apply to licensure decisions made by the
18 Commission under the Gambling Control Act. Business and Professions Code section 476(a).

19 19. At an evidentiary hearing pursuant to Business and Professions Code sections 19870
20 and 19871 and Title 4, CCR section 12050(b)(2), the burden of proof rests with the applicant to
21 demonstrate why a license should be issued. Title 4, CCR section 12050(b)(3).

22 20. The burden of proving his or her qualifications to receive any license from the
23 Commission is on the applicant. Business and Professions Code section 19856(a).

24 21. An application to receive a license constitutes a request for a determination of the
25 applicant's general character, integrity, and ability to participate in, engage in, or be associated
26 with, controlled gambling. Business and Professions Code section 19856(b).

27 22. In reviewing an application for any license, the Commission shall consider whether
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1 issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the
2 license will undermine public trust that the gambling operations with respect to which the license
3 would be issued are free from criminal and dishonest elements and would be conducted honestly.
4 Business and Professions Code section 19856(c).

5 23. The Commission has the power to deny any application for a license, permit, or
6 approval for any cause deemed reasonable by the Commission. Business and Professions Code
7 section 19824(b).

8 24. Tobiasz did not attend the Prehearing Conference or administrative hearing, or
9 submit any information or evidence in favor of granting his Application. As a result, Tobiasz did
10 not meet his burden of demonstrating why a license should be issued pursuant to Business and
11 Professions Code section 19856(a) and Title 4, CCR section 12050(b)(3).

12 NOTICE OF APPLICANT'S APPEAL RIGHTS

13 Tobiasz has the following appeal rights available under state law:

14 Title 4, CCR section 12050, subsection (c)(6) provides, in part:

15 An applicant denied a license, permit, registration, or finding of suitability, or whose
16 license, permit, registration, or finding of suitability has had conditions imposed
17 upon it may request reconsideration by the Commission within 30 days of notice of
18 the decision. The request shall be in writing and shall outline the reasons for the
19 request, which must be based upon either newly discovered evidence or legal
authorities that could not reasonably have been presented before the Commission's
issuance of the decision or at the hearing on the matter, or upon other good cause for
which the Commission in its discretion decides merits reconsideration.

20 Business and Professions Code section 19870, subdivision (e) provides:

21 A decision of the commission denying a license or approval, or imposing any
22 condition or restriction on the grant of a license or approval may be reviewed by
23 petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5 of
24 the Code of Civil Procedure shall not apply to any judicial proceeding described in
the foregoing sentence, and the court may grant the petition only if the court finds
that the action of the commission was arbitrary and capricious, or that the action
exceeded the commission's jurisdiction.

25 Title 4, CCR section 12050, subsection (d) provides:

26 An appeal of a denial or imposition of conditions by the Commission shall be
27 subject to judicial review under Code of Civil Procedure section 1085 (pursuant to
28 Business and Professions Code section 19870, subdivision (e)). Neither the right to
petition for judicial review nor the time for filing the petition shall be affected by failure
to seek reconsideration.

ORDER

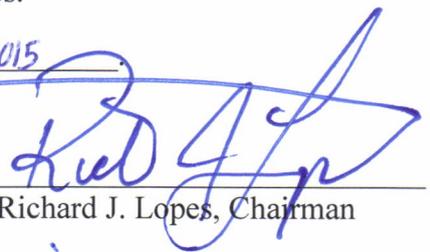
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2 1. James Craig Tobiasz's Application for a Gambling Establishment Key Employee
3 License is DENIED.

4 2. No costs are to be awarded.

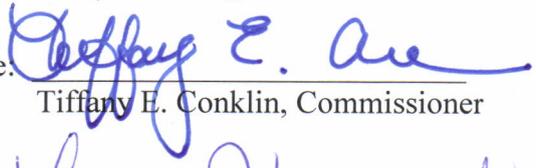
5 3. Each side to pay its own attorneys' fees.

6 This Order is effective on January 2, 2015

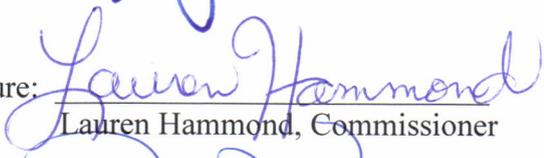
7 Dated: 12/2/2014

Signature: 
Richard J. Lopes, Chairman

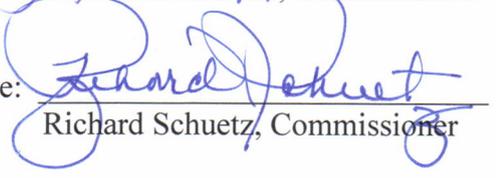
9 Dated: Dec. 2, 2014

Signature: 
Tiffany E. Conklin, Commissioner

11 Dated: 12/2/14

Signature: 
Lauren Hammond, Commissioner

13 Dated: 12/2/14

Signature: 
Richard Schuetz, Commissioner