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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Statement of Reasons for
Denial of License Application:

JOHN PATRICK BUYS

Respondent.

BGC Case No. BGC-HQ2013-00007AL
CGCC Case No. CGCC-2013-0321-2

DECISION AND ORDER

Hearing Date: November 7, 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 7, 2014.

Ronald Diedrich, 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.

Michael F. Babitzke, Esq. (Babitzke) represented respondent John Patrick Buys (Buys).

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

- (a) Notice of Hearing and Prehearing Conference, dated July 21, 2014, served by certified mail, return receipt requested; and
- (b) Conclusion of Prehearing Conference letter, dated August 21, 2014.

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

- (1) Statement of Reasons filed and served by the Bureau;
- (2) Copies of the June 14, 2013 letter from Tina Littleton notifying the parties that the hearing for this matter will be held pursuant to Title 4, CCR section 12050(b)(2); July 21, 2014 Notice of Hearing and Prehearing Conference;

1 August 21, 2014 Conclusion of Prehearing Conference letter; August 28,
2 2014 letter from Babitzke requesting a continuance of the hearing; August
3 29, 2014 Notice of Representation of Buys by Babitzke; September 2, 2014
4 letter from Tina Littleton notifying the parties that Babitzke's request for a
5 continuance of the hearing is granted; and September 10, 2014 Notice of
6 Rescheduled Hearing;

- 7 (3) Buys' October 17, 2011 Application for Gambling Establishment Key
8 Employee License CGCC-031 (Rev. 08/09), dated October 12, 2011 and
9 Buys' September 29, 2011 Key Employee Supplemental Background
10 Investigation Information BGC-APP. 016A (Rev. 08/09), dated September
11 15, 2011;
- 12 (4) Certified copy of the court records regarding Buys' November 23, 2004
13 misdemeanor conviction for violating California Vehicle Code section
14 23152(b), in the case of *People v. John Patrick Buys* (Super. Ct. San
15 Joaquin County, 2004, LM031433A);
- 16 (5) Certified copy of the court records regarding Buys' July 25, 2007
17 misdemeanor convictions for violating California Penal Code sections 148
18 and 647(f), in the case of *People v. John Patrick Buys* (Super. Ct. San
19 Joaquin County, 2007, SM258043A) and August 8, 2007 Modification of
20 Probation that was granted in the 2004 case of *People v. John Patrick Buys*
21 (Super. Ct. San Joaquin County, 2004, LM031433A); and
- 22 (6) Stockton Police Department's Incident Reports regarding the
23 circumstances that led to Buys' July 25, 2007 misdemeanor convictions for
24 violating California Penal Code sections 148 and 647(f) in the case of
25 *People v. John Patrick Buys* (Super. Ct. San Joaquin County, 2007,
26 SM258043A) and August 8, 2007 Modification of Probation that was
27 granted in the 2004 case of *People v. John Patrick Buys* (Super. Ct. San
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1 Joaquin County, 2004, LM031433A).

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

- 4 (a) Order for Dismissal pursuant to California Penal Code sections 17(b),
5 1203.4 and 1203.4a in the case of *People v. John Patrick Buys* (Super. Ct.
6 San Joaquin County, 2007, SM258043); and
7 (b) Order for Dismissal pursuant to California Penal Code sections 17(b),
8 1203.4 and 1203.4a in the case of *People v. John Patrick Buys* (Super. Ct.
9 San Joaquin County, 2004, LM031433A).

10 The matter was submitted on November 21, 2014.

11 FINDINGS OF FACT

- 12 1. Buys works as a Floor Manager at the Cameo Club, a key employee position that
13 requires the applicant to submit an application for a key employee license with the Commission.
14 2. On or about October 12, 2011, Buys submitted an Application for Gambling
15 Establishment Key Employee License (Application) and Key Employee Supplemental
16 Background Investigation Information form to the Commission.
17 3. On or about October 25, 2011, the Commission granted Buys an Interim Personal
18 Portable Key Employee License, License No. GEKE-001708.
19 4. On or about November 29, 2012, the Bureau completed its Cardroom Key Employee
20 Background Investigation Report (Report) regarding Buys' Application and sent the Report to the
21 Commission.
22 5. At its March 21, 2013 meeting, the Commission voted to refer the matter of Buys'
23 Application to an evidentiary hearing.
24 6. On or about March 25, 2013, the Executive Director of the Commission set the
25 matter for an administrative hearing to be conducted pursuant to Business and Professions Code
26 sections 19870 and 19871 and Title 4, CCR section 12050(b)(2).
27 7. On or about July 9, 2014, the Bureau filed a Statement of Reasons with the
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1 Commission recommending the denial of Buys' Application.

2 8. On or about July 21, 2014, the Commission served a Notice of Hearing and Prehearing
3 Conference on Buys and the Bureau.

4 9. On or about August 20, 2014, the noticed Prehearing Conference was held before
5 Presiding Officer Jason Pope, Attorney III of the Commission. Ronald Diedrich, Deputy
6 Attorney General, attended on behalf of the Bureau. Babitzke appeared on behalf of Buys, who
7 also attended.

8 10. On or about August 21, 2014, the Commission served a Conclusion of Prehearing
9 Conference letter on Babitzke and the Bureau.

10 11. On or about August 28, 2014, Babitzke submitted a written request for a continuance
11 of the hearing on Buys' Application.

12 12. On or about September 2, 2014, the Executive Director of the Commission granted
13 Buys' request for a continuance of the hearing.

14 13. On or about September 4, 2014, Buys served a Notice of Representation, whereby he
15 appointed Babitzke as his attorney and legal representative in this matter, on the Commission and
16 the Bureau.

17 14. On or about September 10, 2014, the Commission served a Notice of Rescheduled
18 Hearing on Babitzke and the Bureau.

19 15. The Commission heard Case No. CGCC-2013-0321-2 on November 7, 2014. The
20 Bureau was represented throughout the pendency of the hearing by Deputy Attorney General
21 Ronald Diedrich. Buys appeared and was represented throughout the pendency of the hearing by
22 Babitzke.

23 16. On or about November 23, 2004, Buys was convicted of violating California Vehicle
24 Code section 23152(b), driving under the influence of alcohol with .08 or higher blood alcohol, a
25 misdemeanor, in the case *People v. John Patrick Buys* (Super. Ct. San Joaquin County, 2004,
26 LM31433A). Buys was sentenced to 5 years' probation, 2 days in jail, and ordered to pay a fine
27 and attend three months of a county approved alcohol program.

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1 17. Buys' November 23, 2004 conviction for driving under the influence of alcohol with
2 .08 or higher blood alcohol has been dismissed pursuant to California Penal Code sections 17(b),
3 1203.4 and 1203.4a.

4 18. On or about July 25, 2007, Buys was convicted of violating California Penal Code
5 sections 148, resisting a public officer, a misdemeanor, and 647(f), disorderly conduct: public
6 intoxication, a misdemeanor, in the case *People v. John Patrick Buys* (Super. Ct. San Joaquin
7 County, 2007, SM258043A). Buys was sentenced to 5 years' probation and 60 days in jail
8 (served through participation in an Alternate Work Program).

9 19. At the time of Buys' July 25, 2007 convictions, Buys was still on probation from his
10 November 23, 2004 conviction for driving under the influence of alcohol with .08 or higher blood
11 alcohol level.

12 20. At the time of Buys' October 12, 2011 Application, Buys was still on probation from
13 his July 25, 2007 convictions for resisting a public officer and disorderly conduct: public
14 intoxication.

15 21. Buys' July 25, 2007 convictions for resisting a public officer and disorderly conduct:
16 public intoxication have been dismissed pursuant to California Penal Code sections 17(b), 1203.4
17 and 1203.4a.

18 22. According to the Stockton Police Department's Incident Reports, Buys called the
19 police to report a disturbance with an acquaintance, Kenneth L. (Kenneth). The Stockton Police
20 arrived at Buys' home. Buys and Kenneth were very intoxicated and yelling at one another.
21 During an argument, Buys asked Kenneth to leave. Kenneth pushed Buys causing Buys to fall to
22 the floor. The police told Buys to stay in his house and go to bed. The police walked Kenneth
23 out of the house and placed him in the patrol car. While the police were placing Kenneth in the
24 patrol car, Buys came out of his house, stood in front of his door, flipped off the police officers
25 and screamed profanity at them. The police officers told Buys to go back inside his house and
26 stay there. Buys again screamed profanity at the police officers and went back into his house.

27 Buys then opened the front door holding a black long barreled BB gun that looked like a
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1 rifle. The police ordered Buys to put the gun down. Buys refused and began to lift the gun to his
2 shoulder and point the gun at the police. The police advanced toward Buys with their guns drawn
3 and told him again to put the gun down. One of the police officers noticed the fore-grip of the
4 gun fall down like on a BB or pellet gun and yelled that it was a fake gun. According to one
5 incident report, while approaching Buys, one of the police officers grabbed the barrel of the BB
6 gun and engaged in a struggle with Buys, ultimately forcing Buys backward into the house.
7 According to another incident report, Buys went back inside his house, the police officers then
8 entered the house and struggled with Buys over the BB gun. During a struggle over the BB gun,
9 another police officer tazed Buys. The police forced Buys to the floor, handcuffed him, and
10 placed him in custody. The police transported Buys to the county hospital where he was pre-
11 booked and then transported him to the county jail where he was booked.

12 23. While there are some minor conflicts as to the description of events, the Stockton
13 Police Department Incident Reports are reliable records regarding the circumstances surrounding
14 Buys' July 25, 2007 convictions.

15 24. During the hearing, Buys testified that he went to a bowling alley to watch his friend
16 bowl and started consuming alcohol. Buys and two other individuals left the bowling alley and
17 went to a bar where Buys continued consuming alcohol. Buys and Kenneth left the bar and went
18 to Buys' home. By the time Buys and Kenneth reached Buys' home, Buys was already
19 intoxicated. Buys and Kenneth continued consuming alcohol at Buys' home. Given his level of
20 intoxication, Buys has a limited recollection of the events after returning home. Buys recalls
21 calling the police because he had a confrontation with Kenneth. The police arrived and arrested
22 Kenneth. Buys pointed a replica gun at police officers. Buys was then arrested.

23 25. Buys testified that the replica gun was a pellet or BB gun that looks like a rifle. Buys
24 testified that neither he nor anyone else had fired the pellet or BB gun.

25 26. Buys showed a reckless disregard for his safety and the perceived safety of the police
26 officers and others by beginning to raise a BB gun that looks like a rifle and point the BB gun at
27 police officers.
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1 27. Buys testified that he did not have any justification for his actions and that he had
2 made a horrible mistake. Buys testified that his actions were out of character and not how he
3 lived his life.

4 28. Buys appeared remorseful while testifying. Buys' testimony demonstrated ownership
5 of his prior actions.

6 29. Buys is no longer on probation and testified that he has not had any further arrests or
7 difficulties with police officers.

8 30. Buys testified that he continues to consume alcohol, but does so to relax, not to get
9 drunk. Buys testified that he has been intoxicated on at least one occasion since May 2007.

10 31. There was no evidence presented that Buys has had any legal or employment issues,
11 whether or not derived from the consumption of alcohol, since May 2007, a period of seven and a
12 half years.

13 32. Given the amount of time since his May 2007 convictions, Buys has demonstrated a
14 sufficient level of rehabilitation from his prior criminal behavior.

15 33. Buys' testimony appears honest and credible.

16 34. During the hearing, a number of witnesses testified on behalf of Buys. Steven Franza
17 (Franza), a retired law enforcement officer and patron of the Cameo Club, testified that he has
18 known Buys for approximately five years. Franza and Buys have spent some time socializing
19 together, including having a beer at Buys' home. Franza testified that he has never seen Buys
20 intoxicated or seen him consume alcohol at the Cameo Club. While not an expert in the field of
21 gaming, Franza testified that Buys seems to be responsible and handle issues at work fairly well.
22 Franza also testified that Buys is honest and a person of good character. Franza's testimony
23 appears credible.

24 35. Edward Burrage (Burrage), a patron of the Cameo Club, testified on behalf of Buys.
25 Burrage testified that he has seen Buys work at the Cameo Club, as Burrage has been going to the
26 Cameo Club approximately twice a week for nine or ten years. Burrage testified that Buys is
27 professional and polite. Burrage testified that he has never seen Buys consume alcohol or be
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1 intoxicated at the Cameo Club. Burrage also testified that Buys is honest and a person of good
2 character. Burrage's testimony appears credible.

3 36. Danielle Buys (Danielle), Buys' ex-wife and mother of their three children, testified
4 on behalf of Buys. Danielle testified that Buys is honest, calm, and a great father. Danielle
5 testified that Buys enjoys his work and takes it very seriously. Regarding Buys' behavior
6 resulting in his July 25, 2007 convictions, Danielle testified that Buys made an error in judgment,
7 and that she never felt that she or their kids were unsafe around him. Danielle also testified that
8 Buys appeared to reduce his drinking after the incident, although she no longer spends time with
9 him socially. Danielle's testimony appears credible.

10 37. Robert McCaullay (McCaullay), General Manager of the Cameo Club and Buys' boss,
11 testified on behalf of Buys. McCaullay testified that Buys does an admirable job at work, making
12 good decisions and working well with customers. McCaullay testified that he never receives
13 complaints from customers about Buys. McCaullay's testimony appears credible.

14 38. Jason Brisby (Brisby), a Floor Manager at the Cameo Club, testified on behalf of
15 Buys. Brisby testified that he has known Buys for 15 years and that Buys is a terrific employee
16 and Floor Manager. Brisby testified that Buys is fair and honest, and that Buys disclosed the
17 circumstances surrounding his July 25, 2007 convictions to Brisby. Brisby testified that it was an
18 isolated incident. Brisby also testified that he has never seen Buys consume alcohol at work.
19 Brisby's testimony appears credible.

20 39. The testimony of Buys, Franza, Burrage, Danielle, McCaullay, and Brisby is favorable
21 toward Buys' character and in support of his Application.

22 40. Buys is a good employee with a positive work history given the credible testimony of
23 Buys' employer, co-worker and patrons of the Cameo Club.

24 41. Buys' criminal history, which includes three misdemeanor convictions, all of which
25 were alcohol related, a violation of probation, and the pointing of a BB gun that looked like a rifle
26 at a police officer, demonstrates a past flagrant disregard for the law, legal authority and safety of
27 others.

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1 and 19871 and Title 4, CCR section 12050(b)(2), the burden of proof rests with the applicant to
2 demonstrate why a license should be issued. Title 4, CCR section 12050(b)(3).

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

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

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

13 52. The Commission has the responsibility of assuring that licenses, approvals, and
14 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose
15 operations are conducted in a manner that is inimical to the public health, safety, or welfare.
16 Business and Professions Code section 19823(a)(1).

17 53. An "unqualified person" means a person who is found to be unqualified pursuant to
18 the criteria set forth in Business and Professions Code section 19857, and "disqualified person"
19 means a person who is found to be disqualified pursuant to the criteria set forth in Business and
20 Professions Code section 19859. Business and Professions Code section 19823(b).

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

24 55. No gambling license shall be issued unless, based on all of the information and
25 documents submitted, the commission is satisfied that the applicant is a person of good character,
26 honesty and integrity. Business and Professions Code section 19857(a).

27 56. No gambling license shall be issued unless, based on all of the information and
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1 documents submitted, the commission is satisfied that the applicant is a person whose prior
2 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the
3 public interest of this state, or to the effective regulation and control of controlled gambling, or
4 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
5 the conduct of controlled gambling or in the carrying on of the business and financial
6 arrangements incidental thereto. Business and Professions Code section 19857(b).

7 57. No gambling license shall be issued unless, based on all of the information and
8 documents submitted, the commission is satisfied that the applicant is a person that is in all other
9 respects qualified to be licensed as provided in this chapter. Business and Professions Code
10 section 19857(c).

11 58. Buys has met his burden of proving that he is a person of good character, honesty and
12 integrity pursuant to Business and Professions Code section 19857(a). Therefore, Buys is
13 qualified for licensure pursuant to Business and Professions Code section 19857(a).

14 59. Buys' prior activities, criminal record and habits do not pose a threat to the public
15 interest of the State of California or to the effective regulation and control of controlled gambling
16 pursuant to Business and Professions Code section 19857(b). As a result, Buys is qualified for
17 licensure pursuant to Business and Professions Code section 19857(b).

18 60. Buys is qualified to be licensed in all other respects pursuant to Business and
19 Professions Code section 19857(c).

ORDER

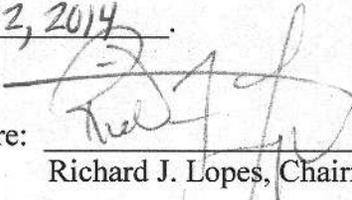
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2 1. John Patrick Buys' Application for Gambling Establishment Key Employee License is
3 APPROVED.

4 2. No costs are to be awarded.

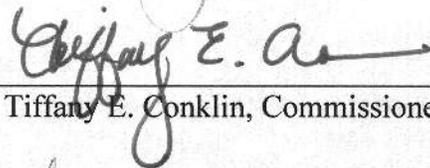
5 3. Each side to pay its own attorneys' fees.

6 This Order is effective on December 22, 2014.

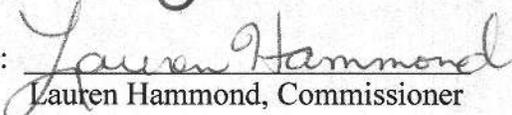
7 Dated: 12/22/2014

8 Signature: 
Richard J. Lopes, Chairman

9 Dated: Dec. 22, 2014

10 Signature: 
Tiffany E. Conklin, Commissioner

11 Dated: Dec. 22, 2014

12 Signature: 
Lauren Hammond, Commissioner

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15 STATEMENT OF DISAGREEMENT

16 Commissioner Schuetz disagrees with the Findings of Fact in paragraphs 28, 32, 42, 43 and 44.

17 As a result, Commissioner Schuetz does not support the conclusion to grant Buys' Application.

18 In addition to the Findings of Fact other than in paragraphs 28, 32, 42, 43 and 44, Commissioner

19 Schuetz offers the following factual considerations as support of his conclusion to deny Buys'

20 Application. Commissioner Schuetz concurs with the decision not to award costs and for each

21 side to pay its own attorneys' fees.

22 1. In February and May, 2004, Buys had two vehicles repossessed for failure to pay
23 automobile loans.

24 2. On or about June 24, 2004, Buys filed for bankruptcy in the Eastern District of
25 California.

26 3. Buys' financial history shows a lack of fiscal responsibility.

27 4. Buys was a 28 year old father of three at the time of his May 2007 convictions for
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1 resisting a public officer and disorderly conduct: public intoxication, and when he pointed what
2 police officers initially perceived to be a rifle at the police, which demonstrates a severe lack of
3 responsibility for the health, welfare and safety of others.

4 5. The police officers' reaction of drawing their weapons and carefully approaching Buys
5 when Buys pointed what police officers initially perceived to be a rifle at the police demonstrates
6 that they viewed Buys' actions as a serious threat to their safety and the safety of Kenneth, who
7 police were placing into custody.

8 6. By driving under the influence of alcohol and pointing what police officers initially
9 perceived to be a rifle at the police, Buys endangered lives on two occasions following his
10 consumption of alcohol.

11 7. Buys' criminal history, refusal to follow police orders, screaming profanity and
12 threatening harm to police officers demonstrates a flagrant disregard for the law, law
13 enforcement, legal authority and the safety of others.

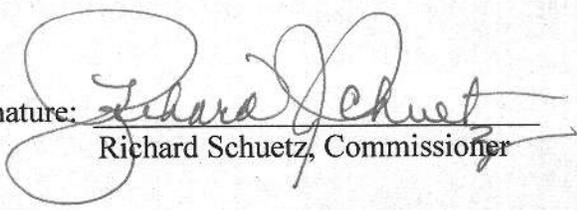
14 8. Given that Buys was still on probation during the filing of his Application with the
15 Commission, that he has been on probation for eight of the past ten years (from 2004 through
16 2012), that he still consumes alcohol and has been intoxicated on at least one occasion since May
17 2007, and the fact that significantly less than ten years has passed since his most recent criminal
18 conviction, Buys has not demonstrated a sufficient amount of rehabilitation from his prior
19 criminal behavior.

20 9. Buys' criminal history, which includes three misdemeanor convictions, all of which
21 were alcohol related, two of which occurred while Buys was still on probation for his first
22 misdemeanor conviction, his screaming profanity, refusing to follow orders and struggling with
23 police officers, pointing what police officers initially perceived to be a rifle at the police, his lack
24 of fiscal responsibility, and reckless disregard for the health, welfare and safety of others,
25 including law enforcement, demonstrates that Buys is not a person of good character.
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10. Buys' prior activities and criminal record pose a threat to the public interest of the State of California.

Dated: Dec. 22, 2014

Signature: 
Richard Schuetz, Commissioner