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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Statement of Particulars
Against:

MICHAEL FREESE ARVIZU



Applicant.

BGC Case No. HQ2013-00005AL
CGCC Case No. CGCC-2013-0221-1

DECISION AND ORDER

Hearing Date: September 22, 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 September 22, 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 Freese Arvizu (Arvizu) represented himself.

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 Particulars filed and served by the Bureau;
- (2) Copies of the March 25, 2013 letter from Amy Arndt notifying Arvizu that the Commission voted to preliminarily deny his application; May 8, 2013 Notice of Hearing and Prehearing Conference; May 28, 2013 Notice of

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

5 (3) Arvizu's April 17, 2013 request for an evidentiary hearing;

6 (4) Copies of Arvizu's August 29, 2011 Application for Gambling
7 Establishment Key Employee License, form CGCC-31 (Rev. 08/09),
8 received by the Commission on October 6, 2011; and Arvizu's August 29,
9 2011 Key Employee Supplemental Background Investigation Information,
10 form BGC-APP (Rev. 08/09);

11 (5) Copies of Arvizu's December 30, 2011 letter regarding his 1991
12 conviction; and Arvizu's February 20, 2013 letter regarding his 1974 and
13 1982 convictions;

14 (6) Certified copy of the court records regarding Arvizu's September 27, 1991
15 misdemeanor conviction for violating Penal Code section 314(1), in the
16 case People v. Arvizu (Mun. Ct., Monrovia Judicial Dist., L.A. County,
17 1991, 91M00215); and

18 (7) Redacted copies of Arvizu's criminal history record regarding the
19 following misdemeanor convictions: (1) July 30, 1974, misdemeanor
20 conviction for violating Penal Code section 415, disturbing the peace, in
21 the case People v. Arvizu (Mun. Ct., Alhambra Judicial Dist., L.A. County,
22 1974, M73032); (2) November 9, 1982, misdemeanor conviction for
23 violating Penal Code section 273g, immoral acts before a child, in the case
24 People v. Arvizu (Super. Ct., L.A. County, 1982, M057363); and (3)
25 September 27, 1991, misdemeanor conviction for violating Penal Code
26 section 314, subdivision (1), indecent exposure, in the case People v.
27 Arvizu (Mun. Ct., Monrovia Judicial Dist., L.A. County, 1991,
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1 91M00215).

2 Presiding Officer Jason Pope also accepted into evidence the following exhibit offered by
3 Arvizu:

- 4 (a) Copies of the following letters in support of the application of Arvizu: (1)
5 September 9, 2014 letter from Andrew Schneiderman; (2) August 29, 2014
6 letter from Darrell J. Federico; (3) Undated letter from Martin Kasko; (4)
7 September 9, 2014 letter from Paul K. Mercurio; (5) September 7, 2014
8 letter from Daniel F. Arvizu; (6) Undated letter from Adrien M. Gallegos;
9 and (7) June 7, 2013 letter from Joseph Lee.

10 The matter was submitted on September 22, 2014.

11 FINDINGS OF FACT

- 12 1. Arvizu currently holds an Interim Personal Portable Key Employee License as a
13 Security Captain, a position of quasi-law enforcement, for Commerce Casino.
- 14 2. As Security Captain for Commerce Casino, Arvizu has unrestricted access to the entire
15 gaming area as well as all areas of the hotel.
- 16 3. On or about August 29, 2011, Arvizu submitted an Application for Gambling
17 Establishment Key Employee License (Application) and a Key Employee Supplemental
18 Background Investigation Information form to the Commission.
- 19 4. At its February 21, 2013 meeting, the Commission voted to preliminarily deny
20 Arvizu's Application.
- 21 5. On or about April 17, 2013, Arvizu submitted a written request for an evidentiary
22 hearing to challenge the preliminary denial of his Application.
- 23 6. On or about May 8, 2013, the Executive Director of the Commission set the matter
24 for an administrative hearing to be conducted pursuant to Business and Professions Code sections
25 19870 and 19871 and Title 4, CCR section 12050(b)(2).
- 26 7. On or about May 8, 2013, the Commission served a Notice of Hearing and Prehearing
27 Conference on Arvizu and the Bureau.
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1 8. On or about May 28, 2013, the Commission served a Notice of Postponement of
2 Hearing on Arvizu and the Bureau.

3 9. On or about July 11, 2014, the Bureau filed and served a Statement of Particulars on
4 Arvizu recommending the approval of his Application.

5 10. On or about July 21, 2014, the Commission served a Notice of Hearing and Prehearing
6 Conference on Arvizu and the Bureau.

7 11. On August 20, 2014, the noticed Prehearing Conference was held before Presiding
8 Officer Jason Pope, Attorney III of the Commission. Ronald Diedrich, Deputy Attorney General,
9 attended on behalf of the Bureau. Arvizu attended and represented himself.

10 12. On or about August 21, 2014, the Commission served a Conclusion of Prehearing
11 Conference on Arvizu and the Bureau.

12 13. The Commission heard Case No. CGCC-2013-0221-1 on September 22, 2014. The
13 Bureau was represented throughout the pendency of the hearing by Deputy Attorney General
14 Ronald Diedrich. Arvizu represented himself throughout the pendency of the hearing.

15 14. On or about July 30, 1974, Arvizu was convicted of violating Penal Code section 415,
16 disturbing the peace, a misdemeanor, in the case People v. Arvizu (Mun. Ct., Alhambra Judicial
17 Dist., Los Angeles County, 1974, Case No. M73032). Arvizu was sentenced to two years'
18 probation and ordered to attend counseling.

19 15. Arvizu successfully completed probation and attended counseling.

20 16. During the hearing, Arvizu testified that the circumstances surrounding his conviction
21 involved exposing himself to an adult female while in a parked automobile.

22 17. On or about November 9, 1982, Arvizu was convicted of violating Penal Code section
23 273g, immoral acts before a child, a misdemeanor, in the case People v. Arvizu (Super. Ct., Los
24 Angeles County, 1982, Case No. M057363). Arvizu was sentenced to two years' probation and
25 ordered to attend counseling.

26 18. Arvizu successfully completed probation and attended counseling.

27 19. On or about February 20, 2013, Arvizu submitted a letter to the Commission
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1 explaining the circumstances surrounding his 1974 and 1982 convictions. In his letter, regarding
2 the 1982 conviction, Arvizu states that he was charged with exposing himself in public, but that
3 he cannot recall the details of the incident.

4 20. During the hearing, Arvizu testified that the circumstances surrounding his 1982
5 conviction involved driving up to a bus stop, asking a minor, who appeared to Arvizu to be an
6 adult, if she wanted a ride. The minor replied with a racial epithet. In response, Arvizu partially
7 stood up in his vehicle and grabbed his crotch area. Arvizu was fully clothed at the time.

8 21. On or about September 27, 1991, Arvizu was convicted of violating Penal Code
9 section 314, subdivision (1), indecent exposure, a misdemeanor, in the case People v. Arvizu
10 (Mun. Ct., Monrovia Judicial Dist., Los Angeles County, 1991, Case No. M00215). Arvizu was
11 sentenced to two days in jail, suspended sentence, and 36 months' probation.

12 22. Arvizu successfully completed probation.

13 23. During the hearing, Arvizu testified that the circumstances surrounding his conviction
14 were as follows: Arvizu was in an unhappy marriage with his wife, whom he described as
15 mentally ill, and had filed for divorce. During a custody/divorce hearing, Arvizu was arrested
16 based on allegations of indecent exposure by his wife and her sister, a minor. As a result of
17 having been convicted of two prior misdemeanors, Arvizu's counsel advised him that he would
18 not win the case. Despite protestations of innocence, Arvizu plead guilty to indecent exposure
19 upon the advice of counsel.

20 24. Arvizu has worked for Commerce Casino for the past 31 years. Arvizu has a positive
21 work history with Commerce that does not include any disciplinary action.

22 25. Arvizu testified during the hearing that he made mistakes when he was younger, but
23 that he has grown up and changed for the better.

24 26. Arvizu's wife, Sabrina Arvizu, testified during the hearing that Arvizu is a great
25 husband and father and dedicated employee.

26 27. Arvizu submitted seven letters written by family, friends, employers and co-workers in
27 support of his Application. Each letter describes Arvizu as a person of good character and model
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1 employee, and recommends the approval of his Application.

2 28. Arvizu's criminal history, which includes three misdemeanor convictions, all three of
3 which involved indecent exposure or immoral acts, and two of the three involving a minor,
4 demonstrates a lack of good character and integrity and a pattern of prior activities that poses a
5 threat to the public interest of the State of California.

6 29. The threat to the public interest of the State of California is heightened by Arvizu's
7 position as Security Captain of Commerce Casino, a position of quasi-law enforcement.

8 30. The testimony of Arvizu and his wife, and the content of the seven letters are all
9 favorable toward Arvizu's character and in support of his Application. However, they are not
10 persuasive that Arvizu is a person of good character or a person whose history of criminal
11 activities does not pose a threat to the public interest of the State of California.

12 31. The matter was submitted for Commission consideration on September 22, 2014.

13 LEGAL CONCLUSIONS

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

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

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

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

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

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

7 38. An “unqualified person” means a person who is found to be unqualified pursuant to
8 the criteria set forth in Business and Professions Code section 19857, and “disqualified person”
9 means a person who is found to be disqualified pursuant to the criteria set forth in Business and
10 Professions Code section 19859. Business and Professions Code section 19823(b).

11 39. The Commission has the power to deny any application for a license, permit, or
12 approval for any cause deemed reasonable by the Commission. Business and Professions Code
13 section 19824(b).

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

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

24 42. Arvizu’s criminal history demonstrates a lack of good character and integrity. As a
25 result, Arvizu has failed to demonstrate that he is a person of good character, honesty and
26 integrity pursuant to Business and Professions Code section 19857(a). Therefore, Arvizu is
27 unqualified for licensure pursuant to Business and Professions Code section 19857(a).

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1 43. Arvizu's criminal history demonstrates a pattern of prior activities that pose a threat to
2 the public interest of the State of California. Therefore, Arvizu has failed to demonstrate that he
3 is a person whose prior activities, criminal record, reputation and habits do not pose a threat to the
4 public interest of this state pursuant to Business and Professions Code section 19857(b).
5 Therefore, Arvizu is unqualified for licensure pursuant to Business and Professions Code section
6 19857(b).

7 44. Given that Arvizu is unqualified for licensure pursuant to Business and Professions
8 Code section 19857(a) and (b), Arvizu has failed to meet the burden of proving his qualifications
9 to receive a Gambling Establishment Key Employee License from the Commission. Business
10 and Professions Code section 19856(a).

11 NOTICE OF APPLICANT'S APPEAL RIGHTS

12 Arvizu has the following appeal rights available under state law:

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

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

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

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

Title 4, California Code of Regulations (CCR) section 12050, subsection (d) provides:

An appeal of a denial or imposition of conditions by the Commission shall be
subject to judicial review under Code of Civil Procedure section 1085 (pursuant to
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.

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ORDER

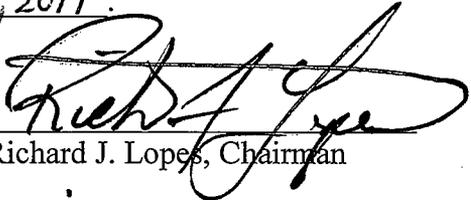
1. Michael Freese Arvizu's Application for Gambling Establishment Key Employee License is DENIED.

2. No costs are to be awarded.

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

This Order is effective on November 10, 2014.

Dated: 10/9/2014

Signature: 
Richard J. Lopez, Chairman

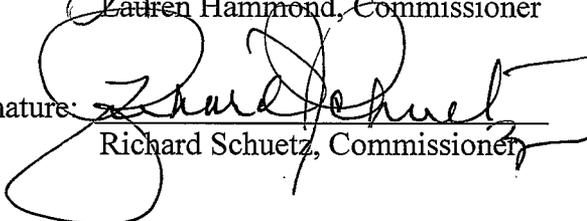
Dated: Oct. 9, 2014

Signature: 
Tiffany E. Conklin, Commissioner

Dated: 10/9/2014

Signature: 
Lauren Hammond, Commissioner

Dated: Oct 9, 2014

Signature: 
Richard Schuetz, Commissioner