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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Statement of Reasons
Against:

Michael Fuston

Respondent.

BGC Case No. BGC-HQ2015-00001SL
CGCC Case No. CGCC-2014-1211-12B

DECISION AND ORDER

Hearing Date: March 11, 2016
Time: 1:30 p.m.

9 This matter was heard by the California Gambling Control Commission (Commission)
10 pursuant to Business and Professions Code sections 19870 and 19871 and Title 4, California
11 Code of Regulations (CCR) section 12060, in Sacramento, California, on March 11, 2016.

12 James G. Waian (Waian), Deputy Attorney General, State of California, represented
13 complainant Wayne J. Quint, Jr., Chief of the Bureau of Gambling Control (Bureau), Department
14 of Justice, State of California.

15 Respondent Michael Fuston (Fuston) failed to appear and was not represented at the
16 hearing.

17 During the administrative hearing, Presiding Officer Jason Pope took official notice of the
18 Notice of Hearing and Prehearing Conference, with enclosures, sent by the Commission to Fuston
19 and Waian on April 8, 2015.

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

- 22 (1) Statement of Reasons; Statement to Respondent; Copies of Bus. & Prof.
23 Code §§ 19870 & 19871; Copy of Cal. Code. Regs., tit. 4, § 12060; and
24 August 10, 2015, Certificate of Service by Overnight Mail Service, Bates
25 Nos. 001-015;
- 26 (2) March 4, 2015, Executed Notice of Defense, Bates Nos. 016-017;
- 27 (3) Notices from the Commission:
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- 1 a. December 11, 2014, Referral of the Portable Personal Key Employee
2 License Application to an Evidentiary Hearing, Bates Nos. 018-019;
- 3 b. April 8, 2015, Notice of Hearing and Prehearing Conference, with
4 Attachments, Bates Nos. 020-031;
- 5 (4) July 11, 2013, Application for Gambling Key Employee License, signed
6 July 11, 2013, for Michael Fuston, Bates Nos. 032-049;
- 7 (5) February 12, 2014, Request for court records and response from
8 Sacramento Superior Court regarding case numbers 90T08706 and
9 92T01774, Bates Nos. 050-053;
- 10 (6) Certified copy of the (subsequently redacted) court records regarding
11 Michael Fuston's misdemeanor conviction for violation of Penal Code §
12 245, subdivision (a)(1), assault with a deadly weapon or instrument other
13 than a firearm, a misdemeanor, in the case of *People v. Michael Leroy*
14 *Fuston* (Super. Ct. Sacramento County, 1994, No. 94FO4413), Bates Nos.
15 054-061;
- 16 (7) Certified copy of the (subsequently redacted) court records regarding
17 Michael Fuston's felony conviction for violation of Penal Code § 484,
18 subdivision (f)(2), forgery in connection with a credit card, a felony, in the
19 case of *People v. Michael Leroy Fuston* (Super. Ct. Sacramento County,
20 1981, No. 60826), Bates Nos. 062-086;
- 21 (8) September 2, 2015, letter from James G. Waian to Michael Fuston
22 confirming agreement to stipulate to authenticity of court records, Bates
23 No. 087;
- 24 (9) September 10, 2015, excerpt from National Comprehensive Report
25 referencing misdemeanor convictions for case numbers 90T08706 and
26 92T01774, Bates Nos. 088-094;
- 27 (10) July 10, 2014, letter from Jeanine Velasquez to Michael Leroy Fuston
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1 regarding additional information and/or documents required in connection
2 with background investigation, Bates Nos. 095-097; and

3 (11) July 18, 2014, e-mail from Michael Fuston to Sonja Tamayo regarding
4 response to July 10, 2014 letter from Jeanine Velasquez, Bates Nos. 098-
5 099.

6 The matter was submitted on March 11, 2016.

7 FINDINGS OF FACT

8 1. On or about July 11, 2013, Fuston submitted an Application for Gambling
9 Establishment Key Employee License and a Supplemental Background Investigation Information
10 form (collectively, "Application") to the Commission.

11 2. At its December 11, 2014 meeting, the Commission referred Fuston's Application to
12 an evidentiary hearing.

13 3. On or about December 11, 2014, the Executive Director of the Commission set the
14 matter for a Gambling Control Act (GCA) hearing pursuant to CCR section 12050(b).

15 4. On or about March 4, 2015, Fuston submitted a Notice of Defense to the Commission
16 requesting an evidentiary hearing on the consideration of his Application.

17 5. On or about April 8, 2015, the Commission served a Notice of Hearing and
18 Prehearing Conference on Fuston and Waian.

19 6. On or about August 10, 2015, the Bureau filed a Statement of Reasons with the
20 Commission and served the Statement of Reasons on Fuston via Fed-Ex Overnight Delivery. In
21 its Statement of Reasons, the Bureau recommends the denial of Fuston's Application.

22 7. On or about August 19, 2015, the Commission served a Conclusion of Prehearing
23 Conference letter on Fuston and Waian.

24 8. On or about September 29, 2015, the Commission served a Notice of Continuance of
25 Hearing, via certified mail, on Fuston and Waian.

26 9. The Commission heard Case No. CGCC-2014-1211-12B on March 11, 2016. The
27 Bureau was represented throughout the hearing by Deputy Attorney General James G. Waian.

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1 Respondent Michael Fuston failed to appear and was not represented at the hearing.

2 10. On or about September 24, 1981, Fuston was convicted of violating Penal Code
3 section 484f(2), forgery on a credit card, a felony, in the case of *People v. Michael LeRoy Fuston*
4 (Super. Ct. Sacramento County, 1981, No. 60826). Fuston was sentenced to four years of
5 probation and six months in jail, and ordered to pay restitution. Fuston disclosed this conviction
6 on his Application.

7 11. On or about December 6, 1990, Fuston was convicted of violating California Vehicle
8 Code section 23152(a), driving under the influence of alcohol, a misdemeanor, in the case of
9 *People v. Michael Leroy Fuston* (Super. Ct. Sacramento County, 1990, No. 90T08706). Fuston
10 was sentenced to three years of probation. Fuston disclosed this conviction on his Application.

11 12. On or about April 29, 1992, Fuston was convicted of violating California Vehicle
12 Code section 23103, reckless driving, a misdemeanor, in the case of *People v. Michael Leroy*
13 *Fuston* (Super. Ct. Sacramento County, 1992, No. 92T01774). Fuston was sentenced to three
14 years of probation and ordered to complete a Sheriff's Work Project. Fuston did not disclose this
15 conviction on his Application.

16 13. On or about August 11, 1994, Fuston was convicted of violating California Penal
17 Code section 245(A)(1), assault with a deadly weapon other than a firearm, a misdemeanor, in the
18 case of *People v. Michael Leroy Fuston* (Super. Ct. Sacramento County, 1994, No. 94F04413).
19 Fuston was sentenced to three years of formal probation and 60 days in jail. Fuston did not
20 disclose this conviction on his Application.

21 14. Section 6 of the Application requires that an applicant disclose every conviction of a
22 crime, not including Vehicle Code infractions.

23 15. Criminal convictions required to be disclosed in Section 6 of the Application contain
24 relevant facts material to the qualification of an applicant.

25 16. By failing to disclose two of his misdemeanor convictions on his Application, Fuston
26 failed to disclose relevant facts material to his qualification for a key employee license.

27 17. Fuston did not attend the administrative hearing, or submit any information or
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1 evidence in favor of granting his Application.

2 18. All documentary and testimonial evidence submitted by the parties that is not
3 specifically addressed in this Decision and Order was considered but not used by the Commission
4 in making its determination on Fuston's Application.

5 19. The matter was submitted for Commission consideration on March 11, 2016.

6 LEGAL CONCLUSIONS

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

10 21. Public trust and confidence can only be maintained by strict and comprehensive
11 regulation of all persons, locations, practices, associations, and activities related to the operation
12 of lawful gambling establishments and the manufacture and distribution of permissible gambling
13 equipment. Business and Professions Code section 19801(h).

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

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

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

25 25. No person may be issued a key employee license unless the person would qualify for a
26 state gambling license. Business and Professions Code section 19854(b).

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

2 27. At an evidentiary hearing pursuant to Business and Professions Code sections 19870
3 and 19871 and CCR section 12060(b), the burden of proof rests with the applicant to prove his or
4 her qualifications to receive any license under the Gambling Control Act. CCR section 12060(i).

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

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

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

19 31. The Commission shall deny a license to any applicant who is disqualified for failure of
20 the applicant to provide information, documentation, and assurances required by this chapter or
21 requested by the chief, or failure of the applicant to reveal any fact material to qualification, or the
22 supplying of information that is untrue or misleading as to a material fact pertaining to the
23 qualification criteria. Business and Professions Code section 19859(b).

24 32. The Commission shall deny a license to any applicant who is disqualified for
25 conviction of a felony, including a conviction by a federal court or a court in another state for a
26 crime that would constitute a felony if committed in California. Business and Professions Code
27 section 19859(c).

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1 33. An application for a portable personal key employee license shall be denied by the
2 Commission if the Commission finds that the applicant is ineligible, unqualified, disqualified, or
3 unsuitable pursuant to the criteria set forth in the Act or other applicable law, or that granting the
4 license would be inimical to public health, safety, welfare, or would undermine the public trust
5 that the gambling operations are free from criminal or dishonest elements. CCR section
6 12355(a)(1).

7 34. Fuston did not attend the administrative hearing, or submit any information or
8 evidence in favor of granting his Application. As a result, Fuston did not meet his burden of
9 proving his qualifications to receive a key employee license pursuant to Business and Professions
10 Code section 19856(a) and CCR section 12060(i).

11 35. Fuston has failed to meet his burden of demonstrating that he is a person of good
12 character, honesty, and integrity. Therefore, Fuston is unqualified for the issuance of a key
13 employee license pursuant to Business and Professions Code section 19857(a) and CCR section
14 12355(a)(1).

15 36. Fuston has failed to meet his burden of demonstrating that he is a person whose prior
16 activities, criminal record, habits, and associations do not pose a threat to the public interest of
17 this state, or to the effective regulation and control of controlled gambling, or create or enhance
18 the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of
19 controlled gambling or in the carrying on of the business and financial arrangements incidental
20 thereto. Therefore, Fuston is unqualified for the issuance of a key employee license pursuant to
21 Business and Professions Code section 19857(b) and CCR section 12355(a)(1).

22 37. Fuston failed to reveal facts material to qualification. Therefore, Fuston is disqualified
23 from the issuance of a key employee license pursuant to Business and Professions Code section
24 19859(b) and CCR section 12355(a)(1).

25 38. Fuston was convicted of a felony. Therefore, Fuston is disqualified from the issuance
26 of a key employee license pursuant to Business and Professions Code section 19859(c) and CCR
27 section 12355(a)(1).

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1 NOTICE OF APPLICANT'S APPEAL RIGHTS

2 Fuston has the following appeal rights available under state law:

3 CCR section 12064, subsections (a) and (b) provide, in part:

4 An applicant denied a license, permit, registration, or finding of suitability, or whose
5 license, permit, registration, or finding of suitability has had conditions, restrictions,
6 or limitations imposed upon it, may request reconsideration by the Commission
7 within 30 calendar days of service of the decision, or before the effective date
8 specified in the decision, whichever is later. The request shall be made in writing to
9 the Commission, copied to the Bureau, and shall state the reasons for the request,
10 which must be based upon either newly discovered evidence or legal authorities that
11 could not reasonably have been presented before the Commission's issuance of the
12 decision or at the hearing on the matter, or upon other good cause which the
13 Commission may decide, in its sole discretion, merits reconsideration.

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

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

22 CCR section 12066, subsection (c) provides:

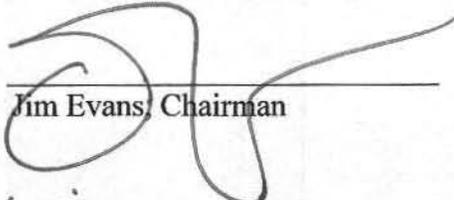
23 A decision of the Commission denying an application or imposing conditions on license
24 shall be subject to judicial review as provided in Business and Professions Code section
25 19870, subdivision (e). Neither the right to petition for judicial review nor the time for
26 filing the petition shall be affected by failure to seek reconsideration.
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ORDER

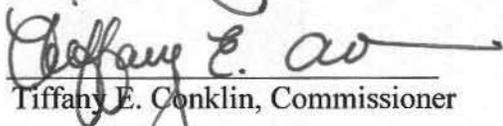
1. Michael Fuston's Portable Personal Key Employee License Application is DENIED.
2. No costs are to be awarded.
3. Each side to pay its own attorneys' fees.

This Order is effective on May 16, 2016.

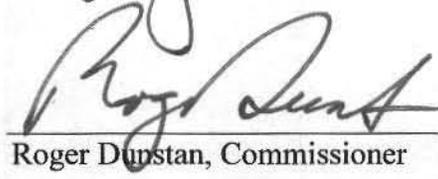
Dated: 4/14/16

Signature: 
Jim Evans, Chairman

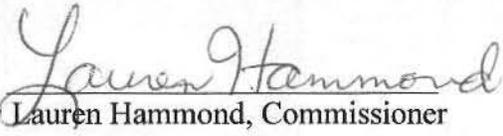
Dated: 4/14/2016

Signature: 
Tiffany E. Conklin, Commissioner

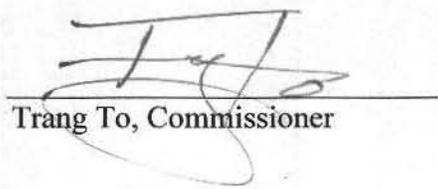
Dated: 4/14/16

Signature: 
Roger Dunstan, Commissioner

Dated: 4/14/16

Signature: 
Lauren Hammond, Commissioner

Dated: 4/14/16

Signature: 
Trang To, Commissioner

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