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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Approval
of State Gambling License Regarding:

ROBERT RUSSELL HARRIS, JR.

Applicant.

CGCC Case No. CGCC-2020-0827-5B

DECISION AND ORDER

Hearing Dates: May 7, 2021
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 12060, in Sacramento, California, and held via Zoom video conference, on May 7, 2021.

Neil Houston, Deputy Attorney General, State of California (DAG Houston), represented complainant Stephanie Shimazu, Director of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

Attorney Tiffany Lichtig (Attorney Lichtig) represented Applicant Robert Harris, Jr., (Harris), who also attended.

During the evidentiary hearing, Presiding Officer Russell Johnson took official notice of the following: the Notice and Agenda of Commission Hearing; the Commission’s Conclusion of Prehearing Conference letter; the Commission’s Notice of Hearing with Harris’ Application and the Bureau’s Report as attachments; the Bureau’s Statement of Reasons, and; Harris’ signed Notice of Defense.

At the prehearing conference, the parties stipulated to four facts which were read into the record at the start of the evidentiary hearing:

(1) Mr. Harris was convicted of violating Health and Safety Code section 11351, possession of cocaine with intent to distribute, a felony, on or about December 3, 1987.

(2) The Orange County Superior Court granted an Order of Dismissal of Mr. Harris’s felony conviction pursuant to Penal Code section 1203.4 on or about June 24, 2016.

1 (3) The Orange County Superior Court granted a Certificate of Rehabilitation to Mr.
2 Harris on or about June 22, 2018.

3 (4) Governor Edmund G. Brown, Jr. granted to Mr. Harris a full and unconditional pardon
4 for Mr. Harris's felony conviction on or about December 24, 2018.

5 During the evidentiary hearing, Presiding Officer Russell Johnson accepted into evidence
6 the following exhibits offered by the Bureau pursuant to a stipulation between the parties:

- 7 (1) Statement to Respondent dated 3/22/2021; Statement of Reasons dated
8 3/22/2021; California Code of Regulations, title 4, section 12060; Business
9 and Professions Code 19870 and 19871; and, Certificate of Service dated
10 3/22/2021, Bates Nos. BCG 1-21;
- 11 (2) CGCC Referral to Evidentiary Hearing dated 9/2/2020; Notice of Defense
12 signed 9/22/2020; and, CGCC Notice of Hearing with Attachments dated
13 12/24/2020, Bates Nos. BGC 22-60;
- 14 (3) Applications for State Gambling License for Robert Russell Harris, Jr. at
15 California Commerce Club dated 1/1/2015; and, Gambling Establishment
16 Owner Applicant-Supplemental Background Investigation Information for
17 Robert Russell Harris, Jr. dated 1/1/2015, Bates Nos. BGC 61-93;
- 18 (4) BGC Initial Background Investigation Report, Level III, for California
19 Commerce Club, Inc., dba Commerce Casino, Robert Russell Harris, Jr.-
20 Successor Trustee and Contingent Beneficiary Commerce Club Trust dated
21 January 2020, with attachments, Bates Nos. BGC 94-118;
- 22 (5) CGCC Licensing Division Memorandum for meeting 8/27/2020, with no
23 attachments, Bates Nos. BGC 119-122;
- 24 (6) License History and Certification of Records; and, Appointment of
25 Designated Agent, Bates Nos. BGC 123-126;
- 26 (7) Court records regarding Robert Russell Harris, Jr. felony conviction
27 11/20/1987 in *People v. Harris* (Super. Ct. Orange County, 1987, Nos.
28

1 86CF01477/C-66312), Bates Nos. BGC 127-159.

2 During the evidentiary hearing, Presiding Officer Russell Johnson accepted into evidence
3 the following exhibits offered by Harris pursuant to a stipulation between the parties:

- 4 (A) Correspondence between BGC Licensing Analyst Casey Albert and Robert
5 Harris 05.2016-04.2020, Bates Nos. RRH 001-009;
- 6 (B) R. Harris Request for Pardon 10.01.2018, Bates Nos. RRH 010-020;
- 7 (C) Tiffany Conklin-Lichtig Letter to CGCC 02.19.2020, Bates Nos. RRH
8 021-024;
- 9 (D) Tiffany Conklin-Lichtig letter to CGCC 04.06.2020, Bates Nos. RRH 025-
10 027;
- 11 (E) Tiffany Conklin-Lichtig Letter to CGCC 07.14.2020, Bates Nos. RRH
12 028-031;
- 13 (F) BGC Letter to Commission 08.04.20, Bates Nos. RRH 032-033;
- 14 (G) Tiffany Conklin-Lichtig Letter to CGCC 08.19.2020, Bates Nos. RRH
15 034-038;
- 16 (H) Correspondence between Tiffany Conklin-Lichtig and OC Public
17 Defender's Office re: Felony Reduction Request 09.08.2020-10.02.2020,
18 Bates Nos. RRH 039-046;
- 19 (I) Correspondence between Tiffany Conklin-Lichtig and CGCC re:
20 Definition of Conviction Legislation Emails to CGCC 11.18.2020-
21 11.20.2020, Bates Nos. RRH 047-049;
- 22 (J) AB1427 Chen_03.25.2021, Bates Nos. RRH 050-063¹;
- 23 (K) Letter of Recommendation from Rick Doll 06.20.2018, Bates Nos. RRH
24 064-065;
- 25 (L) Letter of Recommendation from Steve Williams 06.20.2018, Bates Nos.
26 RRH 066;

27
28 ¹ The Bureau stipulated to admission of Exhibit J, with the caveat that the stipulation was limited to the existence and content solely of the document.

1 (M) Email Recommendation from Retired Police Chief Normal Hansen
2 12.13.2016, Bates Nos. RRH 067-068.

3 The record was closed and the matter was submitted on May 7, 2021.

4 FINDINGS OF FACT

5 1. On or about August 28, 2015, the Bureau received an initial Application for State
6 Gambling License and Gambling Establishment Owner Applicant-Individual Supplemental
7 Background Investigation Information for Harris (collectively referred to as "Application") as
8 successor trustee and contingent beneficiary of the Commerce Trust, which holds 1.37 percent
9 ownership interest in Commerce Casino.

10 2. On January 21, 2020, the Bureau issued an Initial Background Investigation Report,
11 Level III (Report) with respect to Harris' Application. The Report recommended denial of the
12 Application on the basis that Harris was convicted of a felony and is therefore disqualified from
13 licensure.

14 3. At its August 27, 2020 meeting, the Commission referred the matter of Harris'
15 Application to an evidentiary hearing pursuant to CCR section 12054, subdivision (a)(2), to be
16 conducted as a Gambling Control Act hearing under CCR section 12060.

17 4. On or about September 22, 2020, Harris submitted a Notice of Defense signed by his
18 designated agent and attorney, Tiffany Conklin-Lichtig, requesting an evidentiary hearing on the
19 merits of his Application.

20 5. On or about December 24, 2020 the Commission sent a Notice of Hearing to Tiffany
21 Conklin-Lichtig and DAG Houston providing that a hearing was scheduled for May 7, 2021.

22 6. On or about March 22, 2021, the Bureau sent a Statement of Reasons to the
23 Commission and Harris. In the Statement of Reasons, the Bureau requests that the Commission
24 deny the Application on the basis that Harris was convicted of a felony and is therefore
25 disqualified from licensure.

26 7. The Commission heard this matter via Zoom video conference on May 7, 2021. The
27 Bureau was represented by DAG Houston. Harris attended the hearing and was represented by his
28

1 designated agent and attorney, Tiffany Conklin-Lichtig.

2 8. Pursuant to the factual stipulation between the parties and evidence admitted at the
3 hearing, the Commission makes the following factual findings relating to Harris' criminal history:

- 4 a. On December 3, 1987, Applicant was convicted of violating Health and Safety
5 Code section 11351 (possession of cocaine, with intent to distribute), a felony.
- 6 b. The Orange County Superior Court granted an Order of Dismissal of Harris's
7 felony conviction pursuant to Penal Code (PC) section 1203.4 on or about June
8 24, 2016.
- 9 c. The Orange County Superior Court granted a Certificate of Rehabilitation
10 (hereinafter "COR") to Harris on or about June 22, 2018.
- 11 d. Governor Edmund G. Brown, Jr. granted to Harris a full and unconditional
12 pardon for Harris's felony conviction on or about December 24, 2018.

13 9. The Commission does not find Harris to have bad character, lack integrity, or
14 otherwise pose a threat to the public or to the effective regulation of controlled gambling.

15 10. Notwithstanding the Commission's findings in Paragraph 9, Harris is disqualified
16 from licensure pursuant to California Business and Professions Code² section 19859, subdivision
17 (c) and the Commission must, without discretion, deny his Application.

18 11. All documentary and testimonial evidence submitted by the parties that is not
19 specifically addressed in this Decision and Order was considered but not used by the Commission
20 in making its determination on Harris' Application.

21 LEGAL CONCLUSIONS

22 *Harris is Disqualified from Licensure Due to a Felony Conviction*

23 12. Section 19859, subdivision (c)(1) requires the Commission to deny an application for
24 licensure if the applicant has been convicted of a felony. Unlike for misdemeanor convictions,³

25 _____
26 ² All references to statute herein refer to the California Business and Professions Code unless otherwise stated.

27 ³ Section 19859, subdivision (d) provides in part that an applicant shall be disqualified for
28 "conviction of the applicant for any misdemeanor involving dishonesty or moral turpitude within the 10-
year period immediately preceding the submission of the application, unless the applicant has been granted relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code..."

1 there is no exception contained in the Gambling Control Act (GCA) for felony convictions that
2 occurred more than 10 years prior to submission of the application or were dismissed under PC
3 section 1203.4.

4 13. Pursuant to Section 7.5,⁴ a “conviction” means a judgment following a plea or verdict
5 of guilty or a plea of nolo contendere or finding of guilt. Applying the definition of conviction
6 contained in Section 7.5, Harris was convicted of a felony on December 3, 1987.

7 ***The Relief Granted to Harris Does Not Nullify His Felony Conviction***

8 14. Dismissal under PC section 1203.4 does not negate or erase the existence of the felony
9 conviction or make it a legal nullity. (*In re Phillips* (1941) 17 Cal.2d 55, 61; *Los Angeles County*
10 *Dept. of Children & Family Services v. Superior Court* (2003) 112 Cal.App.4th 509, 518; *Meyer*
11 *v. Superior Court In and For Sacramento County* (1966) 247 Cal.App.2d 133, 140.)

12 15. Similarly, receipt of a pardon based on a COR does not erase the existence of the
13 conviction or make it a legal nullity. (*People v. Biggs* (1937) 9 Cal.2d 508). However, the fact
14 that a COR was issued will be indicated on criminal history reported by the FBI or DOJ. (PC
15 section 4852.17).

16 16. A pardon based on a COR entitles the recipient to “exercise thereafter all civil and
17 political rights of citizenship.” (PC section 4852.17.) A pardon granted by the Governor will
18 “operate to restore to the convicted person, all the rights, privileges, and franchises of which he or
19 she has been deprived in consequence of that conviction...” (PC section 4853.) Examples of
20 rights and privileges that are restored as a result of a pardon based on a COR are: the right to vote
21 (PC section 4852.17); relief for specified sex offenders from a further duty to register (PC section
22 290.5); and restoration of the right to own firearms in certain cases. (PC sections 4854 and
23 4852.17.)

24 17. Qualification for a state gambling license is not a civil and political right of citizenship
25 that would be restored as a result of a pardon based on a COR. The Commission may deny a

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27 ⁴ Section 7.5 provides a definition of “conviction” and is contained in general provisions of the
28 Business and Professions Code. While not in the GCA, Section 7.5 is applicable to the Commission due to
section 7.5, subdivision (c), which provides, “except as provided in subdivision (b), this section controls
over and supersedes the definition of conviction contained within individual practice acts under this code.”

1 license for any cause deemed reasonable by the Commission. (Section 19824(b).) Further, the
2 Legislative declarations in the GCA further indicate that there is no right to a license, permit, or
3 other approval granted pursuant to the GCA. Section 19801, subdivisions (f) and (k) provide:

4 (f) It is not the purpose of this chapter to expand opportunities for gambling, or to
5 create any right to operate a gambling enterprise in this state or to have a financial
6 interest in any gambling enterprise. Rather, it is the purpose of this chapter to
regulate businesses that offer otherwise lawful forms of gambling games.

7 (k) ... Any license or permit issued, or other approval granted pursuant to this
8 chapter, is declared to be a revocable privilege, and no holder acquires any vested
right therein or thereunder.

9 18. Based on the foregoing, the Commission concludes that Harris has a felony conviction
10 notwithstanding the relief granted by the court under PC section 1203.4 and receipt of a pardon
11 based on a COR, and is therefore disqualified from licensure under the GCA.

12 ***The Licensing Standards Contained in Section 480 Do Not Apply to the Commission***

13 19. Applicant asserts that the Commission must comply with mandates contained in
14 Section 7.5, subdivision (a). In particular, Applicant urges that in addition to being bound by the
15 definition of conviction in the first sentence, the Commission consider the final sentence in
16 Section 7.5, subdivision (a), that a board “may not deny a license to an applicant who is otherwise
17 qualified pursuant to subdivision (b) or (c) of Section 480,” be taken to mean that the
18 Commission must adhere to licensing standards contained in Section 480, subdivisions (b) and
19 (c).

20 20. Section 480 prohibits a state licensing board from denying an applicant based on a
21 conviction that has been pardoned or dismissed pursuant to PC section 1203.4. (Section 480,
22 subdivisions (b) and (c).) However, Section 476, subdivision (a)⁵ in Division 1.5 of the Business
23 and Professions Code states that “nothing” in Division 1.5 applies to the GCA and the
24 Commission.

25 21. In contrast, Section 7.5 is contained in the general provisions of the Business and
26 Professions Code which apply to nearly all state licensing agencies including the Commission.

27 ⁵ Section 476, subdivision (a) provides: (a) Except as provided in subdivision (b), nothing in this
28 division shall apply to the licensure or registration of persons...pursuant to Chapter 5 (commencing with
Section 19800) of Division 8.

1 Section 7.5, subdivision (a)'s first sentence provides a definition of "conviction" and Section 7.5,
2 subdivision (e) provides that "...this section controls over and supersedes the definition of
3 conviction contained within individual practice acts under this code." Thus, the Commission must
4 utilize the definition of conviction contained in Section 7.5.

5 22. However, as indicated above, Section 476, subdivision (a) makes all of Division 1.5,
6 including Section 480 inapplicable to the Commission. Therefore, the non-definition language in
7 the final sentence in Section 7.5, subdivision (a) "pursuant to ...Section 480" must also be
8 inapplicable to the Commission.

9 ***GCA Licensing Standards***

10 23. Division 1.5 of the Business and Professions Code, the provisions of which govern the
11 denial of licenses on various grounds, does not apply to licensure decisions made by the
12 Commission under the GCA. (Section 476(a).)

13 24. Public trust that permissible gambling will not endanger public health, safety, or
14 welfare requires that comprehensive measures be enacted to ensure that gambling is free from
15 criminal and corruptive elements, that it is conducted honestly and competitively, and that it is
16 conducted in suitable locations. (Section 19810(g).)

17 25. Public trust and confidence can only be maintained by strict and comprehensive
18 regulation of all persons, locations, practices, associations, and activities related to the operation
19 of lawful gambling establishments and the manufacture and distribution of permissible gambling
20 equipment. (Section 19801(h).)

21 26. The Commission has the responsibility of assuring that licenses, approvals, and
22 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose
23 operations are conducted in a manner that is inimical to the public health, safety, or welfare.
24 (Section 19823(a)(1).)

25 27. An "unqualified person" means a person who is found to be unqualified pursuant to
26 the criteria set forth in Section 19857, and "disqualified person" means a person found to be
27 disqualified pursuant to the criteria set forth in Section 19859. (Section 19823(b).)

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1 28. The Commission has the power to limit, condition, or restrict any license, permit, or
2 approval for any cause deemed reasonable by the Commission. (Section 19824(b).)

3 29. The Commission has the power to take actions deemed to be reasonable to ensure that
4 no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled
5 gambling activities. (Section 19824(d).)

6 30. The burden of proof is always on the applicant to prove his, her, or its qualifications to
7 receive any license or other approval under the GCA. (CCR section 12060(i).)

8 31. At an evidentiary hearing pursuant to Sections 19870 and 19871 and CCR section
9 12060(b), the burden of proof rests with the applicant to prove his or her qualifications to receive
10 any license under the GCA. (CCR section 12060(i); Section 19856, subdivision (a).)

11 32. Section 19859, subdivision (c) disqualifies any person from licensure--thereby
12 requiring that the Commission deny the license--when the applicant has a felony conviction.

13 33. An application will be denied if the Commission finds that any of the provisions of
14 Section 19859 apply to the applicant. (CCR section 12040(a)(2).)

15 34. Harris was convicted of a felony on December 3, 1987 and is therefore disqualified
16 from licensure and his application must be denied pursuant to Section 19859, subdivision (c) and
17 CCR section 12040.

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NOTICE OF APPLICANT’S APPEAL RIGHTS

Harris has the following appeal rights available under state law:

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

(a) After the Commission issues a decision following a GCA hearing conducted pursuant to Section 12060, an applicant denied a license, permit, registration, or finding of suitability, or whose license, permit, registration, or finding of suitability has had conditions, restrictions, or limitations imposed upon it, may request reconsideration by the Commission. A request for reconsideration must be:

- (1) Made in writing to the Commission, copied to the Complainant. The Bureau may provide a written response to the Commission within 10 calendar days of receipt of the request; and
- (2) Received by the Commission and Complainant within 30 calendar days of service of the decision, or before the effective date specified in the decision, whichever is earlier.

(b) A request for reconsideration must state the reasons for the request, which must be based upon either:

- (1) 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,
- (2) Other good cause which the Commission may decide, in its sole discretion, merits reconsideration.

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

A decision of the commission denying a license or approval, or imposing any condition or restriction on the grant of a license or approval may be reviewed by petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5 of 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.

CCR section 12066, subsection (c) provides:

A decision of the Commission denying an application or imposing conditions on license shall be subject to judicial review as provided in 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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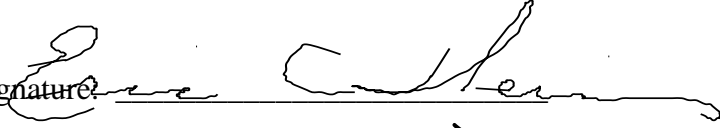
ORDER


1. Robert Harris' Application for a State Gambling License is DENIED.
2. Robert Harris may immediately reapply for any license or permit that he is not ineligible or disqualified for under the Gambling Control Act or its related regulations.
3. No costs are awarded.
4. Each side to pay its own attorneys' fees.

This Order is effective on August 19, 2021.

Dated: 7/20/21 Signature: 
Paula LaBrie, Chair

Dated: 7/20/2021 Signature: 
Cathleen Galgiani, Commissioner

Dated: 7/20/21 Signature: 
Eric Heins, Commissioner

Dated: 7/20/21 Signature: 
Edward Yee, Commissioner