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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

CGCC Case No. CGCC-2019-0221-9

In the Matter of the Application for Approval
of Initial Regular Work Permit/Temporary
Work Permit:

EDUARDO JESUS MARTINEZ

Applicant.

DECISION AND ORDER

Hearing Date: September 24, 2019
Time: 10:00 a.m.

1. This matter was scheduled for hearing before 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, on September 24, 2019.

2. The Bureau of Gambling Control (Bureau) was represented by Deputy Attorney General Timothy Muscat with the Indian and Gaming Law Section, Department of Justice, Attorney General's Office.

3. Eduardo Jesus Martinez (Applicant) was present on his own behalf.

4. During the administrative hearing, Presiding Officer Russell Johnson took official notice of the following:

(1) Notice of Hearing with enclosures including Applicant's application and the Bureau Report, dated January 8, 2019, served by certified mail, return receipt requested;

(2) Notice of Defense, signed February 25, 2019; and

(3) Conclusion of Prehearing Conference letter, dated August 14, 2019.

5. During the administrative hearing, Presiding Officer Russell Johnson accepted into evidence the following exhibits offered by the Bureau:

(1) Copies of Letter dated August 6, 2019; Statement to Respondent; Statement of Reasons; Business and Professions Code sections 19870 and

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19871; California Code of Regulations, title 4, section 12060; Declaration of Service by Certified Mail; Letter dated May 30, 2019 re Notice of Hearing and Prehearing Conference, without enclosures; Letter dated August 14, 2019 re Conclusion of Pre-hearing Conference; Bates Nos. 0001-0036;

(2) Application for Initial Regular Work Permit/Temporary Work, Permit Received February 13, 2018; Work Permit Questionnaire; Authorization to Release Information; Request for Live Scan Service; Reconciliation Form, Bates Nos. 0037-0047;

(3) California Department of Justice, Bureau of Gambling Control, Work Permit Initial Background Investigation Report Level III January 2019, Bates Nos. 0048-0062;

(4) Letters from California Gambling Control Commission regarding, Temporary Work Permit and Cancellation of Temporary Work Permit, Bates Nos. 0063-0069;

(5) Certification of Official Records dated March 12, 2019, Bates No. 0070;

(6) Department of Justice Fingerprint Information, Bates Nos. 0071-0072;

(7) Santa Barbara County Court Documents; Conviction February 6, 2008; Case Number 1286620; Santa Barbara County Sheriffs Department Report, Case Number 07-19772, Bates Nos. 0073-0083;

(8) California Department of Justice, Bureau of Gambling Control Telephone Contact Sheets, Emails, and Correspondence, Bates. Nos. 0084-0093;

(9) Tribal Key Employee Supplemental Background Information, Bates Nos. 0094-0115; and

(10) Notice of Defense Received March 1, 2019, Bates Nos. 0116-0117.

6. During the administrative hearing, Presiding Officer Russell Johnson accepted into evidence Exhibit A offered by the Applicant which included letters from David Stearns, the

1 owner of Central Coast Casino and John Ruckman, a friend and co-worker to Applicant.

2 7. The matter was submitted on September 24, 2019.

3 **FINDINGS OF FACT**

4 8. On or about February 6, 2008, Applicant was convicted of violating Penal Code
5 section 415, disturbing the peace, as a misdemeanor. This conviction was the result of Applicant's
6 actions on or around November 15, 2007 and involved the applicant sending "annoying"
7 messages to a female friend. The substance and nature of what occurred in these messages is
8 disturbing and discussed below.

9 9. In or around August 2012, Applicant started employment with Chumash Casino
10 Resort (Chumash). As part of his application process, he described his conduct in his 2007
11 criminal conviction as including his friends and as merely a practical joke to pretend to be a
12 stalker. He admitted to escalating the situation, speaking to a police officer, and ultimately
13 pleading no contest.

14 10. On or about, December 2, 2016, the Bureau sent Applicant a letter as part of
15 Applicant's background investigation for a tribal key employee finding of suitability, asking him
16 to explain the discrepancy between his statement to Chumash and the description of facts as
17 contained in the police report. Applicant responded in an email on December 9, 2016 that he
18 didn't know what to write down and stated he didn't know he was supposed to write what was in
19 the report, but he did say the report is accurate. He clarified again by email on December 19, 2016
20 by saying he was the only one of his friends that was charged, but that based on the direction he
21 received from the public defender that he should just say he was mad at the victim and that he
22 take all the blame for a plea deal.

23 11. Soon thereafter, the Bureau recommended that Applicant's application be denied
24 and informed Chumash of its determination. On or around April 19, 2017, Chumash terminated
25 Applicant's employment and the Bureau abandoned his application on or around April 24, 2017.

26 12. On or about February 13, 2018, the Bureau received an Application for Initial
27 Regular Work Permit/Temporary Work Permit from Applicant along with a Supplemental Work
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1 Permit Questionnaire, (collectively Application). On this Application, Applicant disclosed his
2 conviction for violating Penal Code section 415, and described it as annoying phone calls.

3 13. On or about, March 2, 2018 Applicant was issued a temporary work permit for
4 work at Central Coast Casino.

5 14. On or around June 8, 2018, the Bureau asked applicant to explain the 2007
6 incident. On or around June 18, 2018, Applicant sent an email wherein he finally showed candor
7 about what had transpired in the incident, and he did not reference other individuals having
8 participated. Applicant also admitted that he was dishonest in his application with Chumash.

9 15. On or about January 1, 2019, the Bureau provided its Work Permit Initial
10 Background Investigation Report to the Commission where it concluded that Applicant was not
11 qualified for licensure. The Bureau recommended that the Commission deny Applicant's
12 application.

13 16. On January 15, 2019, the Commission cancelled Applicant's temporary work
14 permit pursuant to CCR Section 12128(b)(2) and sent notice of the cancellation to Applicant and
15 Central Coast Casino.

16 17. On February 21, 2019, the Commission considered Applicant's application and
17 elected to refer it to an evidentiary hearing pursuant to Title 4, CCR section 12054, subdivision
18 (a), subsection (2). Commission staff mailed an evidentiary hearing referral letter via certified
19 mail to Applicant's address of record which included a blank Notice of Defense form with
20 instructions to return it to the Commission within 15 days of receipt or else the Commission may
21 issue a default decision.

22 18. Commission staff received a Notice of Defense form, signed February 25, 2019
23 from Applicant on March 1, 2019, requesting an evidentiary hearing.

24 19. Commission staff mailed a Notice of the Hearing sent certified mail on May 30,
25 2019 to Applicant's address of record which stated the hearing was scheduled to occur on
26 Tuesday, September 24, 2019 at 10:00 a.m.

27 20. On or about August 6, 2019, the Bureau prepared and served upon Applicant a
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1 Statement of Reasons wherein it recommended that Applicant's application be denied. This was
2 received by the Commission on August 7, 2019.

3 21. On August 13, 2019, Presiding Officer Russell Johnson conducted a pre-hearing
4 conference with Deputy Attorney General Timothy Muscat and Applicant appearing via
5 telephone. A letter confirming this conference was mailed out to the parties the next day.

6 22. On September 24, 2019, at 10:00 a.m. the hearing was conducted with Deputy
7 Attorney General Timothy Muscat and Applicant both appearing. The record thereafter closed
8 and the matter was submitted.

9 November 2007 Criminal Incident

10 23. The police report states Applicant used a phone with a number the victim's friend
11 was unaware of and fabricated a story where a stalker played by the Applicant was following her
12 and watching her. These messages also stated that stalker knew where the victim and the
13 Applicant lived. This placed the victim in fear of returning home.

14 24. The victim contacted the Applicant about the texts, and he lied saying he was in
15 the hospital for a heart condition. She spoke with him later and he said that he and a friend from
16 the police department had tracked the messages and found the stalker, beat him up, and arrested
17 him. Applicant also said that there were three girls tied up in the basement with a picture of the
18 victim on the wall. Applicant later told the victim that the stalker had not in fact been arrested, but
19 rather he had killed the stalker.

20 25. Applicant was eventually contacted by the police wherein he lied about who was
21 sending the messages. Applicant was also confronted about the elements of the fabricated story he
22 gave to the victim. Applicant initially admitted to part of the story being fabricated such as the
23 friend being a police officer, but affirmed other parts of the story as being true including the three
24 girls tied up in the basement. When told by the police that he could be charged with filing a false
25 police report if he was lying, Applicant confessed to making the story up. However, when the
26 police officer asked if Applicant had sent the texts, Applicant again lied and placed blame on
27 another friend who was out of town. When the police officer stated they could trace the messages
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1 to where they came from, Applicant finally admitted to sending the messages.

2 Applicant's Testimony

3 26. Applicant testified at the hearing on his own behalf and was cross examined.
4 Applicant testified in a manner consistent with the police report and his statement on June 18,
5 2019 and not that of his prior statements to Chumash or the Bureau. He admitted to fabricating
6 the entire story about the stalker and other girls because he liked the victim and she did not
7 reciprocate. Applicant testified that he initially lied to the police officer about the text messages,
8 but eventually confessed to it being made up. While he admitted in his prior statements that he
9 described the incident as a joke, he did not think it was a joke at the hearing. He stated he believes
10 people shouldn't be hurt like that. Applicant also explicitly stated he was to blame for the
11 messages and no one else.

12 27. Applicant testified that he went to counseling as part of the terms of his probation
13 for around three sessions in or around 2008. He also went to counseling following his termination
14 from Chumash. During this counseling he talked about his conviction and he stated that he
15 learned he was really at fault for his actions and no one else.

16 28. Applicant testified that he talked to the victim on or around 2012, or about five
17 years after the incident. He apologized and said he did something that was completely wrong. He
18 indicated that she said she understood but would never forgive him.

19 29. Applicant stated he had done a lot of maturing in the last 10 or 11 years. He
20 realized his faults. He accepted all responsibility and not just part of it.

21 Applicant's References

22 30. Applicant submitted a reference from his onetime employer David Stearns at
23 Central Coast Casino. The statement indicates that Mr. Stearns does not know any of the specifics
24 that occurred in the 2007 incident. Applicant indicated that he tried to tell Mr. Stearns in the
25 application process but had been told it was in the past and Mr. Stearns didn't want to know. Mr.
26 Stearns spoke highly of Applicant.

27 31. Applicant also submitted a reference from John Ruckman, a friend who Applicant
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1 has known for over 8 years. Mr. Ruckman spoke highly of Applicant and had seen a lot of
2 growth. The letter does not disclose any awareness of the incident described above, but Applicant
3 indicated at the hearing that Mr. Ruckman did know about it before writing the letter.

4 Conclusion

5 32. Applicant's history raises a number of concerns. First, the actions for which
6 Applicant was convicted are unquestionably disturbing. Applicant sent text messages to the
7 victim leading her to believe she was being stalked and that the stalker knew where she lived; told
8 the victim that he had found the stalker, beat him up and that police arrested the stalker; told the
9 victim that there were three girls tied up in the stalker's basement and that a picture of her (the
10 victim) was on the basement wall; and then telling the victim that he had actually killed the
11 stalker. Applicant lied to the victim to cause pain and suffering all because he felt hurt that she
12 did not reciprocate his feelings. While those actions occurred when applicant was 19, and were
13 over 10 years ago, they raise serious questions about Applicant's overall character.

14 33. Second, Applicant lied about the incident at multiple points in time over the last 10
15 years. He lied about it to the police officer who initially contacted him in multiple ways before
16 good police interrogation knocked down his lies. Applicant also lied and minimized the incident
17 in his statement to Chumash on his initial application in 2012, five years after the incident
18 occurred. In that statement, he diverted responsibility to his friends, and tried to pass the text
19 messages off as a joke. Applicant also said that he "withheld" information from the police officer,
20 when in fact; Applicant had explicitly lied to the police officer multiple times.

21 34. Next, in 2016, when the Bureau reviewed his tribal key employee finding of
22 suitability application which included the 2012 statement, the Bureau compared it to the police
23 report and asked for Applicant to explain the discrepancies between the two. Applicant again tried
24 to divert responsibility onto others by saying he didn't know what to write down and that he had
25 been advised to take all the blame by the public defender. Applicant tried to explain to the Bureau
26 a second time that he was the only one of his friends that was charged, implying that they had
27 been involved. He also tried to blame the public defender who he said told him to say he was mad
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1 at the victim.

2 35. Third, while applicant provided a statement to the Bureau in June 18, 2018 which
3 finally displayed candor about the incident, this was only two years after he had last lied or
4 minimized his involvement in the incident. With a history of deception, deflection, and
5 minimizing his actions from 2007 all the way to 2016, serious doubts are raised about Applicant's
6 character, honesty, and integrity, as well as his ability to participate in controlled gambling.
7 Additionally, the fact that Applicant in 2016 did not give the whole story about the incident that
8 he gave in 2018 reflects his intent to provide misleading information to the Bureau and
9 Commission.

10 36. In support of his application, are the facts that this incident occurred over ten years
11 ago, when Applicant was only 19. Indeed, Applicant's testimony at the hearing reflected remorse
12 about the incident and also a better understanding of his culpability following counseling which
13 he obtained in 2017. His efforts in this regard are to be commended. Furthermore, his references
14 from Mr. Stearns and Mr. Ruckman are positive signs for Applicant. Ultimately however, these
15 efforts and testimony do not sufficiently rehabilitate Applicant's suitability.

16 **LEGAL CONCLUSIONS**

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

20 38. An application to receive a license constitutes a request for a determination of the
21 applicant's general character, integrity, and ability to participate in, engage in, or be associated
22 with, controlled gambling. (Bus. & Prof. Code § 19856, subd. (b).)

23 39. At an evidentiary hearing pursuant to Business and Professions Code sections
24 19870 and 19871 and Title 4, CCR section 12060 the burden of proof rests with the applicant to
25 demonstrate why a license or other approval should be issued. (Cal. Code Regs., tit. 4, § 12060,
26 subd. (i); Bus. & Prof. Code § 19856, subd. (a).)

27 40. Public trust and confidence can only be maintained by strict and comprehensive
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1 regulation of all persons, locations, practices, associations, and activities related to the operation
2 of lawful gambling establishments and the manufacture and distribution of permissible gambling
3 equipment. (Bus. & Prof. Code § 19801, subd. (h).)

4 41. The Commission has the responsibility of assuring that licenses, approvals, and
5 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose
6 operations are conducted in a manner that is inimical to the public health, safety, or welfare. (Bus.
7 & Prof. Code § 19823, subd. (a)(1).)

8 42. An “unqualified person” means a person who is found to be unqualified pursuant
9 to the criteria set forth in Business and Professions Code section 19857, and “disqualified person”
10 means a person who is found to be disqualified pursuant to the criteria set forth in Business and
11 Professions Code section 19859. (Bus. & Prof. Code § 19823, subd. (b).)

12 43. The Commission has the power to deny any application for a license, permit, or
13 approval for any cause deemed reasonable by the Commission. (Bus. & Prof. Code § 19824,
14 subd. (b).)

15 44. 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 of good character,
17 honesty and integrity. (Bus. & Prof. Code § 19857, subd. (a).)

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

25 46. The commission shall deny a license to any applicant who is disqualified for
26 failure of the applicant to provide information, documentation, and assurances required by this
27 chapter or requested by the chief, or failure of the applicant to reveal any fact material to
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1 qualification, or the supplying of information that is untrue or misleading as to a material fact
2 pertaining to the qualification criteria. (Bus. & Prof. Code § 19859, subd. (b).)

3 47. An application for a work permit shall be denied by the Commission if the
4 applicant meets any of the criteria for mandatory disqualification under Business and Professions
5 Code section 19859 or is found unqualified pursuant to the criteria set forth in subdivisions (a) or
6 (b) of Business and Professions Code section 19857. (Cal. Code Regs., tit. 4, § 12105(a).)

7 48. Applicant has not met his burden of proving that he is a person of good character,
8 honesty, and integrity. Applicant's actions during the 2007 incident, and his repeated lies and
9 minimizing in 2007, 2012, and 2016, and the corresponding lack of time since the last deceitful
10 acts reflect poorly on his character, honesty, and integrity. Therefore, Applicant is not qualified
11 pursuant to Business and Professions Code section 19857(a) and is therefore subject to denial
12 under Title 4, CCR section 12105(a)(2).

13 49. Applicant has not met his burden of proving that he is a person whose prior
14 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the
15 public interest of this state, or to the effective regulation and control of controlled gambling, or
16 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
17 the conduct of controlled gambling or in the carrying on of the business and financial
18 arrangements incidental thereto. Applicants provided lies and misleading statements to law
19 enforcement and regulatory agencies about his involvement in the incident in 2007, 2012, and
20 2016. The actions of lying or providing misleading information to governmental agencies since
21 the incident pose a threat to the effective regulation of controlled gambling. Therefore, Applicant
22 is not qualified pursuant to Business and Professions Code section 19857(b) and is therefore
23 subject to denial under Title 4, CCR section 12105(a)(2).

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1 50. Respondent has not met his burden of proving that he is not disqualified from
2 licensure pursuant to Business and Professions Code section 19859. Applied providing
3 misleading statements about the 2007 incident to the Bureau in his 2016 statements. Therefore,
4 Applicant is subject to denial pursuant to Business and Professions Code section 19859(b) and
5 Title 4, CCR section 12105(a)(2).

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NOTICE OF APPLICANT’S APPEAL RIGHTS

Applicant has the following appeal rights available under state law:

Title 4, CCR section 12064, subsection (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 within 30 calendar days of service of the decision, or before the effective date specified in the decision, whichever is later.

(b) A request for reconsideration shall be made in writing to the Commission, copied to the Bureau, and shall 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.

Title 4, CCR section 12066, subsection (c) provides:

A decision of the Commission denying an application or imposing conditions on a 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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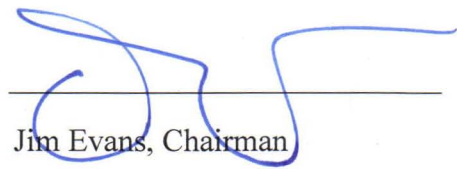
ORDER

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1. EDUARDO JESUS MARTINEZ' application for initial work permit is denied.
2. No costs are to be awarded.
3. Each side to pay its own attorneys' fees.

This Order is effective on 12/4/19.

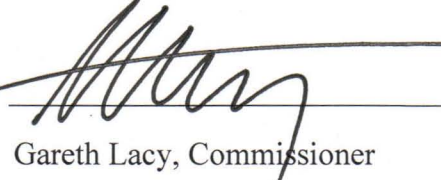
Dated: 11/4/19

Signature: 
Jim Evans, Chairman


Dated: 11/4/19

Signature: 
Paula LaBrie, Commissioner

Dated: 11/4/19

Signature: 
Gareth Lacy, Commissioner

Dated: 11/4/19

Signature: 
Trang To, Commissioner