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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Statement of Reasons:

MIGUEL O. AGUILAR

Respondent.

BGC Case No. BGC-HQ2013-00005SL
CGCC Case No. CGCC-2013-0725-12

DECISION AND ORDER

Hearing Date: April 29, 2015
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(b), on April 29, 2015, in Sacramento, California. Jason Pope, Staff Counsel III, of the Commission presided, but took no part in making of the Decision.

Timothy M. Muscat, Deputy Attorney General, State of California, represented complainant Wayne J. Quint, Jr., Chief of the Bureau of Gambling Control, Department of Justice, State of California (Bureau).

Elijah Zuniga represented Respondent Miguel O. Aguilar.

During the administrative hearing, Presiding Officer Jason Pope took official notice of the Notice of Hearing and Prehearing Conference, with attachments, sent by the Commission dated February 13, 2015.

During the administrative hearing, upon stipulation of the parties, Presiding Officer Jason Pope accepted into evidence the following exhibits marked as offered by the Bureau:

- (1) Copies of the Statement of Reasons; Statement to Respondent; Certificate of Service by Certified Mail, Receipt for Certified Mail and Signed Domestic Return Receipts and Completed Notice of Defense. Bates Nos. BGC-0001 – 0022.
- (2) Copies of Notices from the Commission:
 - a) Notice of Hearing and Prehearing Conference, without attachments, sent

1 by the California Gambling Control Commission dated February 13, 2015;
2 and b) Conclusion of Prehearing Conference dated March 30, 2015. Bates
3 Nos. BGC-0023 – 0028.

4 (3) Copies of Mr. Aguilar's Application for Third-Party Proposition Player
5 Services License, dated March 20, 2013; Request for Conversion of a Third
6 Party Proposition Player Services Registration to a License and Level I
7 Supplemental Information form, dated January 25, 2007; California
8 Department of Justice, Bureau of Gambling Control, Third-Party Provider
9 of Proposition Player Services Background Investigation Report, Level II,
10 dated April 25, 2008; the Bureau's Third Party Provider of Proposition
11 Player Services Level II Player Renewal Report, with Attachments A, B, C,
12 and D, dated June 24, 2013. Bates Nos. BGC-0029 – 0076.

13 (4) Certified copies of the police records by the San Jose Police Department
14 regarding Mr. Aguilar's arrest on December 20, 2005. Bates Nos. BGC-
15 0077 – 0085.

16 (5) Certified copy of the misdemeanor complaint filed against Mr. Aguilar for
17 violating Vehicle Code Section 23152(a), driving under the influence of
18 alcohol, Vehicle Code section 23152(b), driving with a blood alcohol level
19 of 0.08 or more, and Penal Code section 242-243(e), battery on spouse,
20 cohabitant, parent of child, former spouse, fiancé or dating relationship,
21 filed January 13, 2006. Bates Nos. BGC-0086 – 0090.

22 (6) Certified copy of Mr. Aguilar's misdemeanor convictions for violating
23 Vehicle Code section 23103.5, reckless driving, and Penal Code section
24 242/243, subdivision (e), battery upon a former fiancé in *People v. Miguel*
25 (Super. Ct. Santa Clara County, No. CC616880), on April 18, 2006. Bates
26 Nos. BGC-0091 – 0093.

27 (7) Copy of Mr. Aguilar's written statement to the Bureau regarding his
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December 20, 2005 confrontation with his former fiancé that led to his misdemeanor convictions for violating Vehicle Code section 23103.5, reckless driving, and Penal Code section 242/243, subdivision (e), battery upon a former fiancé. Bates Nos. BGC-0094 – 0096.

During the administrative hearing, upon stipulation of the parties, Presiding Officer Jason Pope accepted into evidence the following exhibits marked as offered by Mr. Aguilar:

- (a) Letter from David Chau;
- (b) Letter from Irma Ceneno;
- (c) Letter from Bongie Matudio;
- (d) Letter from Maribel Madrid;
- (e) Letter from Nina Yabut; and
- (f) Letter from Maria Yabut.

Mr. Aguilar was the sole witness to testify during the hearing.

After the hearing concluded on April 29, 2015, upon stipulation of the parties, the Bureau submitted legible copies of Exhibits 1-7. The record was closed and the matter was submitted for Decision on April 29, 2015.

All members of the Commission executing this Decision and Order heard oral argument and testimony, considered the pleading, papers and documents in evidence, and deliberated and decided the matter in Closed Session on April 29, 2015.

APPLICABLE LAW

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

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

1 CCR section 12060(i).

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

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

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

12 6. No gambling license shall be issued unless, based on all of the information and
13 documents submitted, the commission is satisfied that the applicant is all of the following:

14 (a) A person of good character, honesty, and integrity.

15 (b) A person whose prior activities, criminal record, if any, reputation, habits, and
16 associations do not pose a threat to the public interest of this state, or to the effective regulation
17 and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or
18 illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying
19 on of the business and financial arrangements incidental thereto. Business and Professions Code
20 section 19857.

21 7. An applicant who fails to meet the requirements of Business and Professions Code
22 sections 19856 or 19857 shall be ineligible for licensure. Title 4, CCR section 12218.11(e).

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

27 9. An "unqualified person" means a person who is found to be unqualified pursuant
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1 to the criteria set forth in Business and Professions Code section 19857. Business and
2 Professions Code section 19823(b).

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

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

9 FINDINGS OF FACT

10 1. Mr. Aguilar was issued a Third Party Proposition Player Services registration in
11 June 2004. The Commission approved the conversion of Mr. Aguilar's registration to a license
12 on July 9, 2009, and renewed his license for two years on July 14, 2011 (License No. TPPL-
13 001381). In March 2013, Mr. Aguilar submitted an application to renew his Third Party
14 Proposition Player Services license (Application).

15 2. In July 2013, the Bureau issued a Third Party Provider of Proposition Player
16 Services Level II Player Renewal Report, with Attachments A, B, C, and D, dated June 24, 2013,
17 first informing the Commission that Mr. Aguilar was convicted of Penal Code section 242/243,
18 subdivision (e), battery upon a former fiancé in *People v. Miguel* (Super. Ct. Santa Clara County,
19 No. CC616880), on April 18, 2006.

20 3. At its July 25, 2013 meeting the Commission referred the Application to an
21 evidentiary hearing.

22 4. On August 1, 2013, the Executive Director of the Commission set the Application
23 for an administrative hearing to be conducted pursuant to Business and Professions Code sections
24 19870 and 19871 and Title 4, CCR section 12050(b)(2).¹

25 5. On or about January 15, 2015, the Bureau filed a Statement of Reasons with the
26 Commission recommending the denial of the Application.

27 ¹ This hearing was conducted pursuant to amended hearing procedures provided in Title 4
28 CCR sections that became effective January 1, 2015.

1 6. On or about February 13, 2015, the Commission served a Notice of Hearing and
2 Prehearing Conference on Mr. Aguilar and the Bureau.

3 7. On or about March 25, 2015, the noticed Prehearing Conference was held before
4 Presiding Officer Jason Pope. Timothy M. Muscat, Deputy Attorney General, attended on behalf
5 of the Bureau. Mr. Zuniga appeared on behalf of Mr. Aguilar via telephone after the conference
6 concluded.

7 8. On or about March 30, 2015, the Commission served a Conclusion of Prehearing
8 Conference letter on Mr. Aguilar and the Bureau.

9 9. The Commission heard this matter on April 29, 2015. The Bureau was represented
10 throughout the pendency of the hearing by Deputy Attorney General Timothy M. Muscat. Mr.
11 Aguilar appeared and was represented throughout the pendency of the hearing by Mr. Zuniga.

12 10. Mr. Aguilar has worked as a Third Party Proposition Player for Gaming Fund
13 Group, Inc., since December 2002.

14 11. Mr. Aguilar has never been disciplined by his employer, nor has he had a
15 complaint filed against him by a customer of Gaming Fund Group, Inc.

16 12. On or about April 18, 2006, Mr. Aguilar was convicted of violating Vehicle Code
17 section 23103.5, reckless driving, and Penal Code section 242/243, subdivision (e), battery upon a
18 former fiancé, Ms. Kim Ngo, in *People v. Miguel* (Super. Ct. Santa Clara County, No.
19 CC616880). Mr. Aguilar was sentenced to serve 10 days in jail, three years' probation, 20 hours
20 of volunteer work, attend alcohol and domestic violence programs, and was ordered to pay a fine.

21 13. Mr. Aguilar supplied a written statement to the Bureau, dated May 9, 2013,
22 regarding his December 20, 2005 confrontation with Ms. Ngo that led to his 2006 misdemeanor
23 convictions. In this statement, Mr. Aguilar stated that at the scene of the confrontation he
24 "explained to the officers" what occurred. In this statement Mr. Aguilar further stated that he did
25 not cause Ms. Ngo "any bodily injury" or do "anything violent."

26 14. On direct examination, Mr. Aguilar testified regarding his December 20, 2005
27 physical confrontation with Ms. Ngo that led to his 2006 misdemeanor convictions as follows:
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1 (i) He arrived at Ms. Ngo's residence on December 19, 2005, around 7 P.M.
2 He spent the night at Ms. Ngo's residence watching her nine year old daughter while Ms. Ngo
3 was working at Bay 101 Casino. During the night, he found a cell phone in the residence and
4 called its owner. Gregorio Gutierrez, III answered the call.

5 (ii) During the call, Mr. Aguilar was informed that Ms. Ngo and Mr. Gutierrez
6 were in a relationship. Mr. Aguilar indicated that their phone conversation was civil, and prior to
7 terminating the call both he and Mr. Gutierrez agreed that they would end their relationship with
8 Ms. Ngo.

9 (iii) Sometime in the early morning on December 20, 2005 he called Ms. Ngo
10 at work and asked her to come home so he could leave Ms. Ngo's residence. Upon Ms. Ngo's
11 arrival, he told her he was "done" with her and was leaving. At that point, Ms. Ngo began to
12 scream and cry. He proceeded to put on his jacket and told Ms. Ngo, "I'm not comfortable with it
13 anymore. I'm done. I'm getting out of it."

14 (iv) As he started to leave the house, Ms. Ngo "grabbed" him "by the jacket."
15 At that point, he "pushed her away, to get away." He did not try to choke her and did not grab her
16 blazer. Ms. Ngo followed him outside. When he went outside the residence, he saw Mr.
17 Gutierrez. Following an altercation with Mr. Gutierrez, Mr. Aguilar left the scene.

18 15. On cross-examination, Mr. Aguilar testified regarding his December 20, 2005
19 physical confrontation with Ms. Ngo that led to his 2006 misdemeanor convictions as follows:

20 (i) He was upset and mad after speaking with Mr. Gutierrez over the phone.
21 He was upset when he called Ms. Ngo and asked her to come home so he could leave. When Ms.
22 Ngo came home their conversation became heated.

23 (ii) He was angry at the time Ms. Ngo came home. Their verbal confrontation
24 turned into "shoving." He stated, "I tried to walk out. I didn't want to hurt her." Ms. Ngo was
25 trying to "prevent me from leaving."

26 (iii) When asked: "Why did you plead guilty to domestic violence? He
27 responded: "My lawyer advised me to."
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1 16. During cross-examination, Mr. Aguilar was allowed sufficient time to review
2 Bureau's Exhibit 7 (Mr. Aguilar's written statement) to determine if there were any inaccuracies
3 in that statement he provided. Except for the fact that he did not take a breathalyzer test, and he
4 omitted his visit to Ms. Ngo's auntie's house for two beers after leaving Ms. Ngo's residence, he
5 confirmed the remainder of the statement and repeated that he merely pushed Ms. Ngo so he
6 could "just leave."

7 17. Mr. Aguilar's written statements to the Bureau and testimony before the
8 Commission during the hearing were dishonest and misleading in the following ways:

9 (i) Mr. Aguilar did not, at the scene of the confrontation on December 20, 2005,
10 "explain to the officers" what occurred between him and Ms. Ngo. In fact, as noted in Exhibit 4
11 (BGC-0084), after Mr. Aguilar was advised of his right to remain silent, he chose not to speak to
12 the police.

13 (ii) Mr. Aguilar did not, at the scene of the confrontation on December 20, 2005, avoid
14 committing acts of violence against Ms. Ngo. In fact, Mr. Aguilar shoved Ms. Ngo in an
15 aggressive manner, grabbed her blazer to pull her closer to him, and pushed her down on the
16 kitchen floor. Further, Mr. Aguilar held her on the floor and began placing his hands around her
17 neck. Mr. Aguilar stopped his attack only after Ms. Ngo's nine-year-old daughter entered the
18 kitchen. When this confrontation occurred, Ms. Ngo was only five feet tall, and she weighed only
19 one hundred pounds; Mr. Aguilar was five feet five inches tall, and he weighed one hundred
20 sixty-five pounds.

21 18. On or about June 14, 2007, Mr. Aguilar was provided a SANTA CLARA
22 COUNTY DOMESTIC VIOLENCE CERTIFIED BATTERER'S PROGRAM REPORT
23 (Report) that acknowledged completion of the program. The facilitator marked "Yes" on Item 8
24 of the Report. Item 8 of the Report reads: The batterer demonstrates acceptance of responsibility
25 for the abusive behavior perpetrated against the victim. Mr. Aguilar confirmed he agreed with
26 Item 8 when he accepted the Report that was required to be submitted to the Court as evidence of
27 completion of a probation term. However, Mr. Aguilar did not accept responsibility for his
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1 “abusive behavior” against Ms. Ngo in his written statement to the Bureau or during his
2 testimony before the Commission.

3 19. During cross-examination, regarding Item 8 of the Report, Mr. Aguilar was asked:
4 What did you accept responsibility for? He responded, he “hurt” Ms. Ngo “emotionally” and
5 “reluctantly acted abusively” the moment he decided to lose his cool and “pushed her.” His
6 response and demeanor when answering this question was evasive. His testimony minimized the
7 severity of his actions, lacked candor, was not believable, and demonstrated a lack of honesty and
8 integrity.

9 20. Mr. Aguilar’s testimony regarding his December 20, 2005 physical confrontation
10 with Ms. Ngo that led to his 2006 misdemeanor convictions of violating Vehicle Code section
11 23103.5, reckless driving, and Penal Code section 242/243, subdivision (e), battery upon Ms. Ngo
12 was not credible. Mr. Aguilar was evasive in his responses and minimized the severity of his
13 conduct towards Ms. Ngo.

14 The overall inference Mr. Aguilar would like the Commission to draw from his written
15 statement and testimony, related to his 2006 convictions, is that *he is the victim* because: i) the
16 victim and witnesses identified in Exhibit 4 gave false statements to the police officers; ii) the
17 police officers did not give any credence to his “explanations” and made a mistake in arresting
18 him; iii) the prosecutor wrongfully prosecuted him; iv) he was not vigorously defended by his
19 counsel; and iv) the judge made an error in accepting his plea.

20 The Commission does not draw this unreasonable inference. The Commission does not
21 accept as credible Mr. Aguilar’s version of the events that led to his 2006 convictions. The size
22 difference between Mr. Aguilar and Ms. Ngo makes Ms. Ngo’s version of the confrontation that
23 occurred on December 20, 2005 more credible, than Mr. Aguilar’s version provided years later
24 when his employment was in jeopardy.

25 21. On or about January 25, 2007, Mr. Aguilar signed, under penalty of perjury, a
26 Level I Supplemental Information form. On this form Mr. Aguilar answered “No” to the
27 question: Are you currently on probation? This response was untrue. Mr. Aguilar was still
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1 serving a three year probation from his April 2006 misdemeanor convictions for violating Vehicle
2 Code section 23103.5, and Penal Code section 242/243, subdivision (e), in the case of *People v.*
3 *Miguel Mr. Aguilar* (Super. Ct. Santa Clara County, No. CC616880).

4 Mr. Aguilar contends he “had forgotten” he was on probation, and did not “think it lasted”
5 until January 25, 2007. His contention lacks merit. The contention is not credible given the fact
6 that he confirmed being on probation was a “big deal”, and at the time he signed the Level I
7 Supplemental Information form not one year had elapsed since he was placed on probation. In
8 addition, in January 2007, he was in the process of completing the batterer’s program to show
9 compliance with his probation terms. He completed the batterer’s program on or about June 14,
10 2007, months after signing the Level I Supplemental Information form.

11 Mr. Aguilar’s false answer, provided under penalty of perjury, on the Level I
12 Supplemental Information form designed by the Bureau to safeguard entry in a highly regulated
13 industry such as gaming is inexcusable.

14 22. Mr. Aguilar submitted six letters in support of his Application from colleagues,
15 family and friends. The letters do not establish Mr. Aguilar’s suitability for licensure because
16 none of the letters provided any information about the events that led to Mr. Aguilar’s 2006
17 convictions or caused him to provide a false answer to the question noted in Finding 21.

18 LEGAL CONCLUSIONS

19 1. For reasons set forth in Findings 2 and 10-22, cause exists to deny the Application
20 pursuant to Business and Professions Code sections 19857, subdivisions (a) and (b), and CCR,
21 title 4, section 12218.11, subdivision (e), in that Mr. Aguilar lacks the requisite good character,
22 honesty and integrity and/or poses a threat to the public interest of this state, or to the effective
23 regulation and control of controlled gambling, or creates or enhances the danger of unsuitable,
24 unfair, or illegal practices, methods, and activities in the conduct of controlled gambling.

25 2. Having carefully considered the foregoing Findings of Fact, the Legal
26 Conclusions, and the entire record in this matter, we further find that Mr. Aguilar has not
27 sustained his burden to establish that he is suitable for licensure as required by Business and
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1 Professions Code section 19856(a), and title 4, CCR section 12060(i).

2 3. All arguments of the parties not specifically addressed here were considered and
3 are rejected.

4 NOTICE OF APPEAL RIGHTS

5 Mr. Aguilar has the following appeal rights available under state law:

6 Title 4, CCR section 12064, subsections (a) and (b) provide, in part:

7 [A]n applicant denied a license, permit, registration, or finding of suitability, or
8 whose license, permit, registration, or finding of suitability has had conditions,
9 restrictions, or limitations imposed upon it, may request reconsideration by the
10 Commission within 30 calendar days of service of the decision, or before the
11 effective date specified in the decision, whichever is later. [The] request shall be
12 made in writing to the Commission, copied to the Bureau, and shall state the reasons
13 for the request, which must be based upon either: (1) newly discovered evidence or
14 legal authorities that could not reasonably have been presented before the
15 Commission's issuance of the decision or at the hearing on the matter; or, (2) Other
16 good cause which the Commission may decide, in its sole discretion, merits
17 reconsideration.

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

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

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

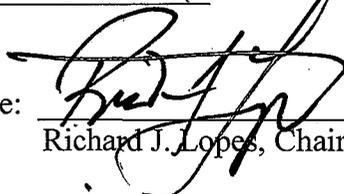
27 A decision of the Commission denying an application or imposing conditions on license
28 shall be subject to judicial review as provided in Business and Professions Code section
19870, subdivision (e). Neither the right to petition for judicial review nor the time for
filing the petition shall be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

ORDER

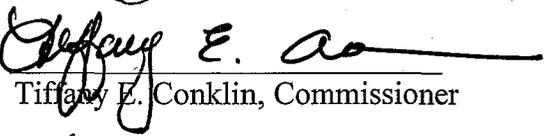
Upon the foregoing findings of fact and legal conclusions, and the entire record in this matter, it is hereby ORDERED that:

1. Miguel O. Mr. Aguilar's Application for a Third Party Proposition Player Services License is DENIED.²
2. Miguel O. Mr. Aguilar shall not apply for any type of license from the California Gambling Control Commission for one (1) year after the effective date of this Order.
3. No costs or fees are to be awarded.
4. This Order is effective on June 27, 2015

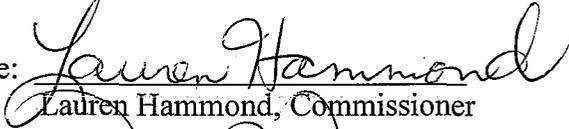
Dated: 5/28/2015

Signature: 
Richard J. Lopes, Chairman

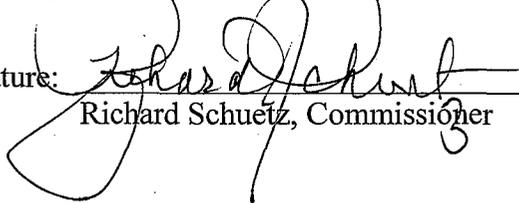
Dated: 5/28/2015

Signature: 
Tiffany E. Conklin, Commissioner

Dated: 5/28/2015

Signature: 
Lauren Hammond, Commissioner

Dated: 5/28/2015

Signature: 
Richard Schuetz, Commissioner

² Pursuant to CCR Title 4, CCR section 12200.3, Mr. Aguilar shall immediately surrender his "TPP PLAYER LICENSEE" badge (License No. TPPL-001381) to Gaming Fund Group, Inc. This badge is void and shall not be used after the effective date of this Decision.