

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Approval
of Third-Party Proposition Player License for:

BRYAN ALEXIS LEON GARCIA

Applicant.

CGCC Case No. CGCC-2018-0111-11Ai

DECISION AND ORDER

Hearing Date: December 5, 2018
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 December 5, 2018.

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

3. Bryan Leon Garcia (Applicant) was present on his own behalf.

4. During the administrative hearing, Presiding Officer Kate Patterson took official notice of the following:

- a) Notice of Hearing with enclosures including Applicant's Application and the Bureau Report, dated March 7, 2018, served by certified mail, return receipt requested;
- b) Notice of Defense, signed January 23, 2018
- c) Notice of Continued Hearing, dated August 15, 2018;
- d) Conclusion of Prehearing Conference letter, dated August 9, 2018; and
- e) Statement of Reasons, filed July 3, 2018.

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

- 1 a) Statement of Reasons dated June 4, 2018; Statement to Respondent dated
2 June 28, 2018; Copy of Bus. & Prof. Code, §§ 19870 & 19871; Copy of
3 Cal. Code. Regs., tit. 4, § 12060; Declaration of Service by Certified Mail
4 and E-Mail dated June 29, 2018; Notice of Defense, signed January 23,
5 2018; CGCC Notice of Hearing, with attachments, dated March 7, 2018;
6 CGCC Notice of Conclusion of Pre-Hearing Conference., Bates Nos. 001-
7 043;
- 8 b) Application for Third-Party Proposition Player Services License for
9 Supervisor, Player or Other Employee dated November 2015; Level I
10 Supplemental Information dated November 2015., Bates No. 044-065;
- 11 c) BGC Third-Party Player Background Investigation Report, Level III,
12 Bryan Alexis Leon Garcia, Acme Player Services, LLC, with attachment,
13 dated November 2017., Bates Nos. 066-071;
- 14 d) CGCC Licensing Division Memorandum, dated January 11, 2018; CGCC
15 Referral of Initial Third-Party Proposition Player Services to an
16 Evidentiary Hearing, dated January 12, 2018., Bates Nos. 072-075;
- 17 e) BGC communications and requests for additional information, and
18 responses, Bates No. 076-115;
- 19 f) Employment communications and records from Blackstone Gaming
20 regarding Bryan Garcia, Bates Nos. 116-118;
- 21 g) Appointment of Designated Agent for Owners and Proposition Players
22 dated November 2015, Bates Nos. 119.

23 6. The matter was submitted on December 5, 2018.

24 **FINDINGS OF FACT**

25 7. On or about December 29, 2015, the Bureau received an Application for Third
26 Party Proposition Player Services License for Supervisor, Player or Other Employee from
27 Applicant along with a Supplemental Information Application, (collectively Application). On this
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1 Application, Applicant stated that his employment with Blackstone Gaming, LLC (Blackstone)
2 was “terminated due to late arrival from lunch.”

3 8. On or about January 30, 2015, Applicant was issued a Third-Party Proposition
4 Player Services Registration, registration number TPPL-014789 as an employee of Blackstone.
5 On or about September 23, 2015, the Bureau received notification of Applicant’s termination
6 from his employment with Blackstone. On or about December 2, 2015, Application was issued a
7 Third-Party Proposition Player Services Registration, registration number TPPL-016247 as an
8 employee of Acme when his registration was transferred there. Applicant’s registration expires
9 on February 28, 2019.

10 9. On or about February 23, 2017, the Bureau sent Applicant a letter asking for
11 clarification about his statement that he was “terminated due to late arrival from lunch” from
12 Blackstone Gaming.

13 10. On or about March 2, 2017 Applicant responded that he was terminated from
14 Blackstone due to late arrival from lunch. He stated that Blackstone considered this abandonment
15 of employment by being late for almost 20 minutes from lunch and they terminated him
16 immediately.

17 11. Subsequently, the Bureau contacted Blackstone who provided additional
18 information on Applicant’s termination. This information indicated that Applicant had falsified a
19 time card, received a written warning, and was subsequently terminated. The Bureau sent
20 Applicant a letter on March 10, 2017 for further clarification and to explain the discrepancy.

21 12. On or about March 16, 2017, Applicant explained that he was terminated for a late
22 arrival from lunch and for placing the wrong time on the time card. These two incidents happened
23 at the same time and place. Applicant stated that the reason for termination was due mostly to the
24 late arrival from lunch. He also stated he was not aware that the real reason for his termination
25 was due to the falsification of the time card as they happened at the same time.

26 13. On or about November 13, 2017, the Bureau provided its Third-Party Player
27 Background Investigation Report to the Commission where it concluded that Applicant was not
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1 qualified for licensure. The Bureau recommended that the Commission deny Applicant's
2 application.

3 14. On or about January 11, 2018, the Commission considered Applicant's application
4 and elected to refer it to an evidentiary hearing pursuant to Title 4, CCR section 12054,
5 subdivision (a), subsection (2). Commission staff mailed an evidentiary hearing referral letter via
6 certified mail to Applicant's address of record which included a blank Notice of Defense form
7 with instructions to return it to the Commission within 15 days of receipt or else the Commission
8 may issue a default decision.

9 15. Commission staff received a Notice of Defense form from Applicant on January
10 26, 2018, requesting an evidentiary hearing, signed January 23, 2018.

11 16. Commission staff mailed a Notice of the Hearing sent certified mail on March 7,
12 2018 to Applicant's address of record which provided the initial date for the hearing as September
13 11, 2018. This hearing was ultimately continued with notice sent on August 15, 2018 where the
14 hearing was scheduled to occur on Wednesday, December 5, 2018 at 10:00 a.m.

15 17. On July 3, 2018, the Bureau submitted a Statement of Reasons wherein it
16 recommended that Applicant's application be denied.

17 18. On August 1, 2018, Presiding Officer Kate Patterson conducted a pre-hearing
18 conference with Deputy Attorney General Tim Muscat and Applicant appeared via telephone. On
19 August 9, 2018, a letter confirming this conference was mailed out to the parties.

20 19. On December 5, 2018, the hearing was conducted with Deputy Attorney General
21 Tim Muscat and Applicant both appearing. The record thereafter closed and the matter was
22 submitted.

23 Applicant's Testimony

24 20. Applicant testified at the hearing on his own behalf and subject to cross
25 examination. Applicant testified that he did not intend to deceive the Bureau in filling out his
26 Application in describing his termination from employment with Blackstone. In explaining the
27 discrepancy between his Application response and his March 16, 2017 follow up response to the
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1 Bureau, Applicant stated that he believed the late arrival from lunch was the main reason for his
2 termination rather than the falsification of his time card.

3 21. In describing the incident, Applicant stated that he put the wrong starting time for
4 his lunch as he believed he needed to take a longer lunch to assist a girlfriend who was having
5 problems in the parking lot. He testified that everyone got a 30 minute lunch break and had a 5
6 minute grace period with Blackstone. Believing that he had a five minute grace period for
7 lunches, he put his lunch starting time five minutes into the future. Apparently Applicant then lost
8 track of time and only came back to work when he was contacted by his supervisor. Ultimately,
9 Applicant was about 14 minutes late for a 30 minute lunch.

10 22. Applicant indicated he briefly talked with his supervisor upon returning before
11 being told to go back to his table. Later that morning when the supervisor viewed the surveillance
12 tape and saw him putting the wrong start time, Applicant was suspended.

13 23. A few days later, Applicant met with other supervisors from Blackstone. Applicant
14 believed he was fired the moment he walked in to meet with them and did not pay attention to
15 what they were saying. He stated he knew what he did was wrong and that he was already guilty.
16 The Blackstone employers asked him to sign a document which listed the circumstances of
17 concerning his discipline. Applicant stated that he did not read the document at the time and now
18 knows he should have. He merely wanted to the sign the document and leave. He admitted to the
19 allegations in the document and signing it, but denies making the statement “ADP is down [sic]
20 im going to write down whatever.”

21 24. When Applicant applied to work with Acme he testified that he told them about
22 what had happened at Blackstone and that he falsified the timecard, but Acme was not troubled
23 by it and hired him anyway. As a result, Applicant did not think the substance of his termination
24 at Blackstone was a big deal at that time and did not place a longer explanation for his
25 termination on the Application or upon the initial follow up inquiries from the Bureau.

26 25. Applicant gave credible testimony that he now believes the falsification of the time
27 card is in fact a very big deal and would now handle the matter differently. He also stated that he
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1 now reads all the documents put before him and takes things more seriously. Applicant stated this
2 was his first job out of school and he didn't know anything.

3 26. Weighing in Applicant's favor, he has been employed with Acme for three years
4 with no problems in his employment. He stated he has had no arrests or criminal record, no
5 tickets, and a good credit score. Applicant also testified he was a good student with scholarships
6 and indeed Applicant believed that this was part of his problem in that he took his school
7 seriously and did not take his employment with that same level of responsibility.

8 27. Ultimately, while placing the false time on the time card reflects poor judgement
9 and weighing against Applicant, it is his interaction with the Bureau in not explaining the full
10 basis for his termination in his Application that is more disconcerting. Applicants must be
11 forthright and honest with the Bureau, telling the truth and the whole truth in all inquiries and
12 especially those pertaining to derogatory incidents such as this.

13 28. However, Applicant's testimony concerning his current better understanding of his
14 termination was credible. Specifically, believing it was not a big deal when completing his
15 Application versus his understanding as a big deal when responding to the Bureau to follow up
16 inquiries and at the hearing.

17 29. In support of Applicant's initial confused understanding of his termination from
18 Blackstone, the documentary evidence on this point was ambiguous. In the verification of
19 employment document provided to the Bureau, Blackstone stated that Applicant was terminated
20 due to falsification of time cards, received a written warning, and was subsequently terminated.
21 However, the document provided to Applicant and signed by him stated under the Problem or
22 Violation section that it was for "Attendance" and "Professionalism." Later on in the same
23 document under the section "Summary of Problem or Violation" the notice stated that Applicant
24 took 44 minutes for his lunch break and wrote the wrong time on his card. Under the "Correction
25 Action to be Taken" section, the notice focused entirely on the long lunch break time and didn't
26 mention the falsification of the time card at all. On another form where Applicant was actually
27 terminated, it stated that the discharge was "due to violation of company policy." Again there was
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1 no mention of the time card falsification.

2 30. Moreover, even during Bureau's investigation with Blackstone, Blackstone's
3 communications were ambiguous. In one document wherein a phone conversation with
4 Blackstone is memorialized, the Bureau sought clarification about Applicant's termination and
5 whether it had been for "attendance or falsifying the timecard" and Blackstone stated
6 "categorized as attendance." In a subsequent email exchange with Blackstone, Blackstone stated
7 that "the specific incident was when he did not return from his break within the allotted time and
8 indicated a different time on his timecard. This falls under our category of Attendance."

9 31. Though it is apparent now that Applicant should have put both his late arrival from
10 lunch and for falsifying his time card on his Application, Applicant did not appear to be trying to
11 deceive the Bureau and the Commission or hide his past derogatory employment history. To the
12 contrary he did answer the Bureau with the truth as he understood it at the time, but not the whole
13 truth until further follow up from the Bureau.

14 32. In all other respects surrounding this interaction with the Bureau, Applicant's
15 testimony at the hearing appeared forthright and honest, indicating an individual who has learned
16 from his mistakes and who will exercise better judgment in the future.

17 **LEGAL CONCLUSIONS**

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

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

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

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

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

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

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

16 40. No gambling license shall be issued unless, based on all of the information and
17 documents submitted, the commission is satisfied that the applicant is a person of good character,
18 honesty and integrity. (Bus. & Prof. Code § 19857, subd. (a).)

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

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

4 43. A requester shall be ineligible for licensing [as a third party proposition player] if
5 the requester has failed to meet the requirements of Business and Professions Code sections
6 19856 or 19857. (Cal. Code Regs., tit. 4, § 12218.11, subd. (e).)

7 44. Respondent has met his burden of proving that he is a person of good character,
8 honesty, and integrity. Therefore, Respondent is qualified to receive a third party proposition
9 player license pursuant to Business and Professions Code section 19857(a). As a result,
10 Respondent is not ineligible to receive a third party proposition player license pursuant to CCR
11 section 12218.11(e).

12 45. Respondent has met his burden of proving that he is a person whose prior
13 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the
14 public interest of this state, or to the effective regulation and control of controlled gambling, or
15 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
16 the conduct of controlled gambling or in the carrying on of the business and financial
17 arrangements incidental thereto. Therefore, Respondent is qualified to receive a third party
18 proposition player license pursuant to Business and Professions Code section 19857(b). As a
19 result, Respondent is not ineligible to receive a third party proposition player license pursuant to
20 CCR section 12218.11(e).

21 46. Respondent has met his burden of proving that he is not disqualified from
22 licensure pursuant to Business and Professions Code section 19859 nor ineligible for licensing as
23 a third party proposition player pursuant to CCR section 12218.11.

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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

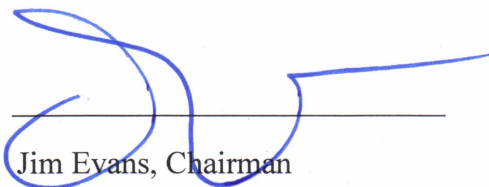
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3 1. BRYAN ALEXIS LEON GARCIA'S application for Third-Party Proposition
4 Player License is APPROVED.

5 2. No costs are to be awarded.

6 3. Each side to pay its own attorneys' fees.
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8 This Order is effective on December 19, 2018.
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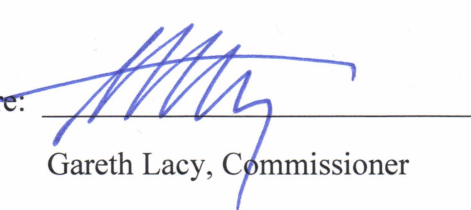
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11 Dated: 12/19/2018

Signature: 
Jim Evans, Chairman

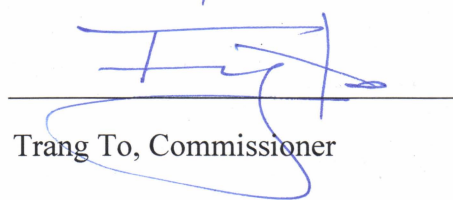
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14 Dated: 12/19/2018

Signature: 
Paula LaBrie, Commissioner

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17 Dated: 12/19/2018

Signature: 
Gareth Lacy, Commissioner

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20 Dated: 12/19/18

Signature: 
Trang To, Commissioner