

BEFORE THE  
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Third-Party  
Proposition Player Services Player License for:  
  
DEREK MARTIN GAXIOLA, JR.  
Registration No. TPPL-018611  
  
Applicant.

CGCC Case No. CGCC-2018-11C  
BGC Case No. BGC-HQ2018-0010SL

**DECISION AND ORDER**

Hearing Date: March 21, 2019  
Time: 1:30 p.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), in Sacramento, California, on March 21, 2019.

Colin Wood, Deputy Attorney General, State of California, represented complainant Stephanie Shimazu, Director of the Bureau of Gambling Control (Bureau), Department of Justice, State of California (Complainant).

Derek Gaxiola (Applicant) was present at the hearing on his own behalf without representation.

During the evidentiary hearing, Presiding Officer Jason Pope took official notice of the Notice of Hearing and attachments, the Bureau's Statement of Reasons, the signed Notice of Defense, and the Conclusion of Prehearing conference letter.

During the administrative hearing, Presiding Officer Jason Pope accepted into evidence the following exhibits offered by the Complainant as identified in their table of contents:

(1) Statement to Respondent; Statement of Reasons; excerpts from the Business and Professions Code and Code of Regulations; August 16, 2018, Declaration of Service by Certified Mail Service, with return; and Notice of Defense, dated February 6, 2018, Bates Nos. 001-024;

(2) Commission Notices and Communications:

a. Licensing Division Memorandum for January 11, 2018 Commission meeting, Bates Nos. 025-026;

1 b. January 17, 2018, Referral of Application for Initial Third-Party  
2 Proposition Player Services License to an Evidentiary Hearing, Bates Nos.  
3 027-028;

4 c. April 24, 2018, Notice of Hearing, with attachments , Bates Nos. 029-  
5 041;

6 d. September 18, 2018, Conclusion of Prehearing Conference, Bates Nos.  
7 042-047;

8 (3) Redacted copies of Applicant's Application for Third-Party Proposition Player  
9 Services License for Supervisor, Player or Other Employee and Level I Supplemental  
10 Information, dated October 2016, Bates Nos. 048-058;

11 (4) Redacted copy of the Bureau's October 2017, Third-Party Supervisor  
12 Background Investigation Report, Level III, regarding Applicant, Knighted Ventures, LLC, Bates  
13 Nos. 059-065;

14 (5) Redacted copy of the Los Angeles County Sheriff's Department records,  
15 regarding January 2012 conviction; redacted Los Angeles County Superior Court documents from  
16 January 24, 2012 conviction, in the case of *People v. Derek Gaxiola* (Sup. Ct. Los Angeles  
17 County, Jan 2012, No. 2BF00338); Redacted copy of the Los Angeles County Superior Court  
18 documents from March 1, 2016 conviction, in the case of *People v. Derek Martin Gaxiola* (Sup.  
19 Ct. Los Angeles County, Mar 2016, No. 5HT00667), Bates Nos. 066-100;

20 (6) Appointment of Designated Agent for Owners and Proposition Players  
21 Applicant and Knighted Ventures, LLC, Bates Nos. 101.

22 During the administrative hearing, Presiding Officer Jason Pope accepted into evidence  
23 the following exhibits offered by the Applicant:

24 (A) Exhibit A: Certified copies of court records from Superior Court of California,  
25 County of Los Angeles, Case No. 2BF00338, pages 1-4;

26 (B) Exhibit B: (1) Certified copies of court records from Superior Court of  
27 California, County of Los Angeles, Case No. 5HT00667, pages 5-12; (2) Notices to  
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1 Appear/Reappear, pages 13-14;

2 (C) Exhibit C: Case No. 5HT00667, Notice of Completion of Wet Reckless  
3 Conviction Program and receipts, pages 15-17.

4 The record was left open until April 18, 2019 to permit the parties to submit briefs  
5 addressing the Bureau's contention that misdemeanor vandalism is considered a crime involving  
6 moral turpitude.

7 Attorney Collin Wood submitted a brief on behalf of the Bureau on April 4, 2019.  
8 Applicant did not submit a brief on the issue of moral turpitude. The record closed and the matter  
9 was submitted for Commission consideration on April 18, 2019.

#### 10 FINDINGS OF FACT

11 1. On or about January 24, 2012, Applicant was convicted of violating Penal Code  
12 section 594, subdivision (a), vandalism with damages in excess of \$400, a misdemeanor, in the  
13 case of *People v. Michael Rizo and Derek M. Gaxiola* (Los Angeles Co. Sup. Ct., No.  
14 2BF00338).

15 2. On March 1, 2006, Applicant was convicted of violating Vehicle Code section 23103,  
16 reckless driving, a misdemeanor, in the case of *People v. Derek Martin Gaxiola* (Los Angeles Co.  
17 Sup. Ct., 2007, No. 5HT00667).

18 3. On or about January 24, 2017, the Bureau received Applicant's Application for a  
19 Third-Party Proposition Player Services Player License and a Level I Supplemental Information  
20 form (collectively, Application) to allow for his employment as a third-party proposition player at  
21 Knighted Ventures, LLC (Knighted).

22 4. Applicant has been employed by Knighted since October 2016 as a proposition player,  
23 for which he was issued a registration, number TPPL-018611.

24 5. On or about September 28, 2017, the Bureau sent a Third-Party Player Background  
25 Investigation Report to the Commission in which the Bureau recommended that Applicant's  
26 Application for a license be denied on the basis that he was convicted of a crime of moral  
27 turpitude within the 10-year period preceding submission of his Application.

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1 Commission under the Gambling Control Act. Business and Professions Code section 476,  
2 subdivision (a).

3 15. At an evidentiary hearing pursuant to Business and Professions Code sections 19870  
4 and 19871 and Title 4, CCR section 12060(b), the burden of proof rests with the applicant to  
5 prove his qualifications to receive any license under the Gambling Control Act. Title 4, CCR  
6 section 12060(i); Business and Professions Code section 19856, subdivision (a).

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

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

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

18 19. No gambling license shall be issued unless the Commission is satisfied that the  
19 applicant is, among other things qualified to be licensed as provided in Gambling Control Act.  
20 Business and Professions Code section 19857, subdivision (c).

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

25 21. Business and Profession Code 19859, subdivision (d) disqualifies any applicant from  
26 licensure that has been convicted of a misdemeanor involving moral turpitude within the 10 year  
27 period immediately before the application was submitted, unless the applicant has been granted  
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1 relief pursuant to Section 1203.4; 1203.4a or 1203.45 of the Penal Code.

2 22. Applicant did not prove that mandatory disqualification is inapplicable and that he is  
3 not disqualified from licensure pursuant to Business and Professions Code section 19859,  
4 subdivision (d) or eligible for licensing as a third party proposition player pursuant (CCR section  
5 12218.11). Therefore, the Commission must deny Applicant's application since he is disqualified  
6 from licensure by law.

7 23. In addition, as Applicant's application is subject to denial, Applicant would no longer  
8 be eligible for a registration under Title 4, CCR section 12204, subdivision (d) and Applicant's  
9 current registration is subject to cancellation pursuant to Title 4, CCR section 12205, subdivision  
10 (a).

11 24. Based on the Commission's current regulations, 4 CCR sections 12204, subdivision  
12 (d) and 12218.11, subdivision (d), Applicant will no longer be eligible for a registration or license  
13 as a third-party provider of proposition player services, owner, supervisor, or player due to the  
14 denial of his current Application. However, Applicant may apply for any other license, permit, or  
15 registration as soon as he either obtains relief from the January 24, 2012 conviction pursuant to  
16 California Penal Code sections 1203.4, 1203.4a, or 1203.45, or after the expiration of ten years  
17 from the date of the conviction.

#### 18 NOTICE OF APPLICANT'S APPEAL RIGHTS

19 Applicant has the following appeal rights available under state law:

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

21 An applicant denied a license, permit, registration, or finding of suitability, or whose  
22 license, permit, registration, or finding of suitability has had conditions, restrictions,  
23 or limitations imposed upon it, may request reconsideration by the Commission  
24 within 30 calendar days of service of the decision, or before the effective date  
25 specified in the decision, whichever is later. The request shall be made in writing to  
26 the Commission, copied to the Bureau, and shall state the reasons for the request,  
which must be based upon either 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 upon other good cause which the  
Commission may decide, in its sole discretion, merits reconsideration.

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

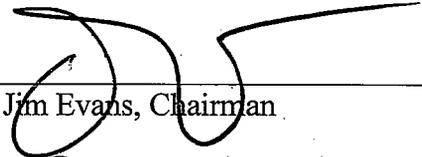
A decision of the Commission denying an application or imposing conditions on license shall be subject to judicial review as provided in Business and Professions Code section 19870, subdivision (e). Neither the right to petition for judicial review nor the time for filing the petition shall be affected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

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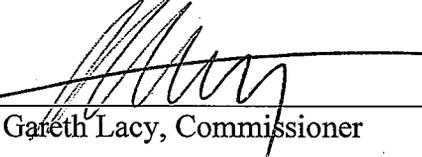
ORDER

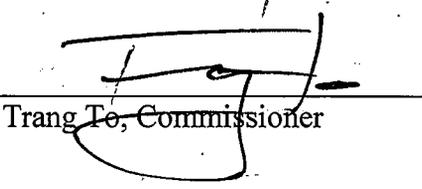
1. Derek Gaxiola's Application for a Third-Party Proposition Player Services Player License is DENIED.
2. Derek Gaxiola's Third-Party Player Registration, No. TPPL-018611 is cancelled.
3. Should Applicant obtain relief from his January 24, 2012 conviction pursuant to California Penal Code sections 1203.4, 1203.4a, or 1203.45, he may immediately apply for any license, permit, or registration that he is not ineligible or disqualified for under the Gambling Control Act or its related regulations.
4. No costs are to be awarded.
5. Each side to pay its own attorneys' fees.

This Order is effective on June 17, 2019.

Dated: 5/16/2019 Signature:   
Jim Evans, Chairman

Dated: 5/16/2019 Signature:   
Paula LaBrie, Commissioner

Dated: 5/16/2019 Signature:   
Gareth Lacy, Commissioner

Dated: 5/16/2019 Signature:   
Trang To, Commissioner