

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

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

ERNESTO DE JESUS DE LEON, JR.
Registration No. TPPL-020575

Applicant.

BGC Case No. BGC-HQ2019-0002-1SL
CGCC Case No. CGCC-2019-0530-10E

DECISION AND ORDER

Hearing Date: November 22, 2019
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), in Sacramento, California, on November 22, 2019.

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

Applicant Ernesto De Jesus De Leon, Jr. was present at the hearing on his own behalf without representation.

During the administrative hearing, Presiding Officer Jason Pope took official notice of the Notice of Hearing and Prehearing Conference letter with attachments, the Bureau's Statement of Reasons, Applicant's signed Notice of Defense, and the Commission's Conclusion of Prehearing Conference letter.

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

(1) August 28, 2019 Statement to Applicant, Statement of Reasons, and excerpts from the California Business and Professions Code and California Code of Regulations; August 13, 2019 Commission Letter re Notice of Hearing and Prehearing Conference with attachments; Declaration of Service, Bates Nos. 0001-0029;

(2) Application for Third-Party Proposition Player Services License; Level I Supplemental

1 Information, Bates Nos. 0030-0040;

2 (3) The Bureau's Third-Party Player Initial Background Investigation Report, Level III,
3 March 2019, Bates Nos. 0041-0050;

4 (4) Commission Correspondence: (1) May 17, 2019 Letter regarding Notice of Scheduled
5 Commission Meeting; (2) May 30, 2019 Licensing Division Memorandum, Bates Nos. 0051-
6 0055;

7 (5) Applicant's Registration History, Bates Nos. 0056;

8 (6) Certification of Official Records signed June 19, 2019, Bates Nos. 0057;

9 (7) Email Correspondence between the Bureau, Applicant, and Cary Cauley, Bates Nos.
10 0058-0063;

11 (8) Appointment of Designated Agent for Owners and Proposition Players received by the
12 Bureau on November 22, 2017, Bates Nos. 0064;

13 (9) Email Correspondence regarding Employment Verification for Sycuan Casino, Bates
14 Nos. 0065-0074;

15 (10) Email Correspondence between the Bureau and the Chula Vista Police Department
16 regarding Work Permit Verification, Bates Nos. 0075-0080;

17 (11) Email Correspondence between the Bureau and Commission, Bates Nos. 0081-0084;

18 (12) Applicant's L.E. Gaming, Inc. Application for Employment, Bates Nos. 0085-0088.

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

21 (A) Letters of Reference, Correspondence and Awards (12 pages, not numbered):

22 (i) Declaration of Bella Rouiller;

23 (ii) Declaration of Maria Angelina Francisco, M.D.;

24 (iii) Declaration of Joel Mendoza;

25 (iv) Declaration of Dennis Ejaus;

26 (v) Declaration of Reynaldo De Jesus;

27 (vi) Letter of Reference by Alva Harman;

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- 1 (vii) November 2008 Correspondence from Daniel Tucker, Tribal Chairman,
2 Sycuan Bank of the Kumeyaay Nation to Applicant;
- 3 (viii) Letter of Reference by David Kato, Senior Manager, L.E. Gaming;
- 4 (ix) September 5, 2017 Correspondence from Applicant to Kaymarie Sandoval,
5 SPHR, Sycuan Bank of Kumeyaay Nation;
- 6 (x) August 16, 2018 correspondence from Applicant to the Bureau;
- 7 (xi) Photographs.

8 The matter was submitted on Wednesday, November 22, 2019.

9 FINDINGS OF FACT

10 1. From October of 1991 to June of 2017, Applicant was employed as a slot attendant
11 by Sycuan Casino Resort (Sycuan Casino) located in El Cajon, California.

12 2. In October 2017, Applicant began working as a third-party proposition player at
13 L.E. Gaming, a third-party provider of proposition player services. On his application for
14 employment with L.E. Gaming, Applicant wrote that he was "laid off (budget cut)" as his reason
15 for leaving Sycuan Casino.

16 3. On November 7, 2017, the Commission issued Applicant registration number
17 TPPL-020575, with an expiration date of November 30, 2019 to allow for his work as a third-
18 party proposition player for L.E. Gaming.

19 4. On November 22, 2017, the Bureau received Applicant's Application for a Third-
20 Party Proposition Player Services License, as well as a Level I Supplemental Information form
21 (collectively herein "Application") to convert his registration as a third-party proposition player to
22 a license. The Application was signed by Applicant under penalty of perjury on November 14,
23 2017.

24 5. On the employment history section of the Application, Applicant stated that his
25 reason for leaving his employment with Sycuan Casino was because he was "laid off."
26 However, during the course of the Bureau's investigation it was discovered that Applicant was
27 actually terminated by Sycuan Casino for cause and was not considered to be eligible for re-hire.
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1 6. On August 14, 2018, a Bureau Staff Services Analyst asked Applicant to explain
2 the discrepancy between his statement on the Application that he was laid off from Sycuan
3 Casino and the information discovered by the Bureau indicating that Applicant was terminated.

4 7. On August 16, 2018, Applicant provided a written statement to the Bureau
5 explaining the circumstances of his termination with Sycuan Casino. Applicant wrote that on June
6 29, 2017, he was informed by the Human Resources Manager of the Sycuan Casino that he was
7 terminated. Applicant's termination occurred after he had been placed on suspension due to
8 allegations of sexual harassment by a coworker.

9 8. On November 5, 2018, the Bureau requested that Applicant more specifically
10 explain the discrepancy between his statement on the Application that he was laid off from
11 Sycuan Casino and the information discovered by the Bureau indicating that Applicant was
12 terminated.

13 9. Applicant provided a response to the Bureau on November 7, 2018. The letter
14 states that during his exit meeting at Sycuan Casino, he was not provided a copy of any
15 termination documents and he was apprised of "the possibility of being rehired." The letter does
16 not directly respond to the Bureau's questions regarding the reason that Applicant claimed that he
17 was laid off on the Application when he was actually terminated.

18 10. On or about March 26, 2019, the Bureau issued a Third-Party Player Background
19 Investigation Report, Level III, recommending denial of Applicant's Application on the basis that
20 he provided untrue and misleading information on his Application regarding his termination from
21 Sycuan Casino.

22 11. On April 8, 2019, a Commission Licensing Division staff member requested that
23 Applicant clarify his prior statement and usage of "laid off" versus "terminated."

24 12. Applicant responded on April 11, 2019 that he thought "laid off" and
25 "termination" were synonymous, he was not given termination paperwork, and believed the
26 allegations of sexual harassment made against him were false.

27 13. On May 30, 2019, pursuant to California Code of Regulations, title 4, section
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1 12054, subdivision (a)(2), the Commission referred consideration of Applicant's Application to
2 an evidentiary hearing to be held under the provisions of California Code of Regulations, title 4,
3 section 12060.

4 14. On or about June 25, 2019, The Commission received a signed Notice of Defense
5 from Applicant requesting an evidentiary hearing.

6 15. On or about August 23, 2019, the Bureau filed a Statement of Reasons with the
7 Commission recommending the denial of Applicant's Application and the cancellation of his
8 registration as a third-party proposition player.

9 16. On November 22, 2019, Applicant testified at the hearing that he was a long time
10 employee at the Sycuan Casino when he was accused of sexual harassment by a coworker. This
11 was the second allegation made by this coworker over an approximately five year period.
12 Applicant was suspended for 3 days and an investigation ensued. Thereafter, Applicant was
13 terminated.

14 17. Applicant testified that his brother filled out the application for employment at
15 L.E. Gaming for Applicant. Applicant testified that his brother suggested that he write "laid off
16 (budget cut)" as his reason for leaving Sycuan Casino. Applicant agreed to the statement that he
17 was laid off because he thought that a layoff was the same as a termination.

18 18. Applicant testified that his brother wanted him to get a job as soon as possible.
19 Applicant also stated that he understood that his brother filled out the employment application in
20 a way that would make him more likely to get the job and that Applicant signed it, knowing the
21 statement "budget cut" was untrue.

22 19. Applicant testified that his mother filled out the Application seeking a third-party
23 proposition player services license and wrote that Applicant was "laid off" from Sycuan Casino
24 on the Application. Applicant signed the document and submitted it to the Bureau.

25 20. Applicant testified that his mother also wrote the November 2018 response to the
26 Bureau alleging that Applicant was not given any termination paperwork by Sycuan Casino and
27 was told that he was eligible for re-hire.
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1 21. While Applicant did not fill out the employment application for L.E. Gaming, or
2 prepare the Application for a third-party proposition player services license, it is clear that he
3 participated in discussions with his family about the content of the documents and Applicant
4 signed the documents and submitted them to the Bureau. Applicant had been in the industry for
5 approximately twenty five years and is presumed to understand the importance of providing
6 truthful information to regulators.

7 22. Applicant testified at the hearing that he thought “terminated” and “laid off” had
8 the same meaning. However, the fact that Applicant and his brother included the detail “budget
9 cuts” in his L.E. Gaming Application indicates that he understood that being “laid off” is typically
10 a result of an employer’s business needs rather than misconduct by an employee. Further,
11 Applicant admitted at the hearing that he understood his brother wrote “laid off (budget cuts)” on
12 the application because he believed it would make Applicant more likely to receive the job at L.E.
13 Gaming. This indicates that Applicant and his brother understood there was a meaningful
14 difference between a termination and a layoff.

15 23. Contained in Applicant’s exhibit A is a September 2017 letter he sent to Sycuan
16 Casino requesting a copy of his “termination letter” for use in his appeal to the Equal
17 Employment Opportunity Commission. This document further indicates that Applicant was aware
18 that “termination” was the correct way to describe his separation from employment with Sycuan
19 Casino.

20 24. The Commission finds that Applicant’s failure to disclose on the Application that
21 he was terminated from the Sycuan Casino was based on a purposeful intent to deceive the
22 Bureau about the circumstances of his separation from employment.

23 25. The Commission makes no findings regarding the allegations of sexual harassment
24 against Applicant in his prior job. However, the fact that Applicant was terminated due to serious
25 allegations and was dishonest regarding the reasons that he left his employment with Sycuan
26 Casino is the basis for denial of his Application.

27 26. All documentary and testimonial evidence submitted by the parties that is not
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1 specifically addressed in this Decision and Order was considered but not used by the Commission
2 in making its determination on Applicant's Application.

3 LEGAL CONCLUSIONS

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

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

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

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

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

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

26 7. The Commission has the power to limit, condition, or restrict any license for any cause
27 deemed reasonable by the Commission. (Bus. & Prof. Code section 10982(b).)

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1 8. No gambling license shall be issued unless, based on all of the information and
2 documents submitted, the commission is satisfied that the applicant is a person of good character,
3 honesty and integrity. (Business and Professions Code section 19857(a).)

4 9. No gambling license shall be issued unless, based on all of the information and
5 documents submitted, the commission is satisfied that the applicant is a person whose prior
6 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the
7 public interest of this state, or to the effective regulation and control of controlled gambling, or
8 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
9 the conduct of controlled gambling or in the carrying on of the business and financial
10 arrangements incidental thereto. (Business and Professions Code section 19857(b).)

11 10. The commission shall deny a license to any applicant who is disqualified for failure of
12 the applicant to provide information, documentation, and assurances required by this chapter or
13 requested by the chief, or failure of the applicant to reveal any fact material to qualification, or the
14 supplying of information that is untrue or misleading as to a material fact pertaining to the
15 qualification criteria. (Business and Professions Code section 19859(b).)

16 11. A requester shall be ineligible for licensing as a third-party proposition player if the
17 requester has failed to meet the requirements of Business and Professions Code sections 19856,
18 19857 or 19859, subdivisions (b), (e), or (f). (CCR section 12218.11, subdivisions (e) and (f).)

19 12. Applicant did not meet his burden of proving that he is a person of good character,
20 honesty, and integrity. Therefore, Applicant is not qualified to receive a third party proposition
21 player license pursuant to Business and Professions Code section 19857(a). As a result, Applicant
22 is not eligible to receive a third-party proposition player services license pursuant to CCR section
23 12218.11(e).

24 13. Applicant failed to reveal a fact material to qualification and supplied information that
25 was untrue as to a material fact pertaining to the qualification criteria. Therefore, Applicant is not
26 qualified to receive a third party proposition player license pursuant to Business and Professions
27 Code section 19859(b). As a result, Applicant is not eligible to receive a third-party proposition
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1 player services license pursuant to CCR section 12218.11(f).

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

6 NOTICE OF APPLICANT'S APPEAL RIGHTS

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

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

9 An applicant denied a license, permit, registration, or finding of suitability, or whose
10 license, permit, registration, or finding of suitability has had conditions, restrictions,
11 or limitations imposed upon it, may request reconsideration by the Commission
12 within 30 calendar days of service of the decision, or before the effective date
13 specified in the decision, whichever is later. The request shall be made in writing to
14 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.

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

16 A decision of the commission denying a license or approval, or imposing any
17 condition or restriction on the grant of a license or approval may be reviewed by
18 petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5 of
19 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.

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

21 A decision of the Commission denying an application or imposing conditions on license
22 shall be subject to judicial review as provided in Business and Professions Code section
23 19870, subdivision (e). Neither the right to petition for judicial review nor the time for
24 filing the petition shall be affected by failure to seek reconsideration.

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ORDER

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1. Ernesto De Jesus De Leon, Jr.'s Application for a Third-Party Proposition Player Services License for Supervisor, Player or Other Employee is DENIED.

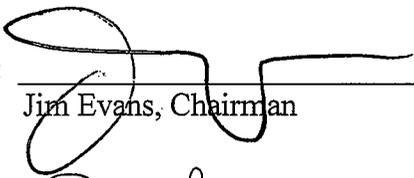
2. Ernesto De Jesus De Leon, Jr.'s regular registration as a third-party proposition player, Registration Number TPPL-020575, is CANCELLED.

3. No costs are to be awarded.

4. Each side to pay its own attorneys' fees.

This Order is effective on February 9, 2020.

Dated: 1/9/2020

Signature: 
Jim Evans, Chairman

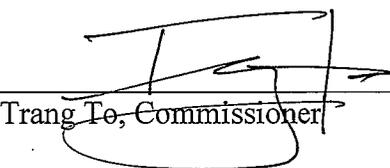
Dated: 1/9/2020

Signature: 
Paula LaBrie, Commissioner

Dated: 1/9/2020

Signature: 
Gareth Lacy, Commissioner

Dated: 1/9/2020

Signature: 
Trang To, Commissioner