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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

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

FRANCISCO HERNANDEZ

Applicant.

CGCC Case No. CGCC-2020-0709-6B

DEFAULT DECISION AND ORDER

Hearing Date: Thursday, March 11, 2021
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 Thursday, March 11, 2021 at 10:00 a.m.

2. Francisco Hernandez (Applicant) failed to appear and was not represented at the hearing.

FINDINGS OF FACT

3. On or about May 22, 2017, the Bureau of Gambling Control (Bureau) received an Application for Third-Party Proposition Player Services License for Supervisor, Player or Other Employee from Applicant.

4. Applicant has a valid Third-Party Player Registration, Registration No. TPSU-01098, which expires on April 30, 2021.

5. On or about May 18, 2020, the Bureau issued its Third-Party Player Background Investigation Report in which it recommended that the Commission deny the Applicant's application.

6. On July 9, 2020, the Commission considered Applicant's application and elected to refer it to an evidentiary hearing pursuant to Title 4, CCR section 12054, subdivision (a).

7. Applicant received notice of the Commission's consideration of Applicant's application when Commission staff sent an evidentiary hearing referral letter by certified mail to

1 Applicant's address of record on or about July 10, 2020, which included a blank Notice of
2 Defense form with instructions to return it to the Commission within 21 days of receipt or the
3 Commission may issue a default decision.

4 8. Applicant timely submitted a signed Notice of Defense form requesting an
5 evidentiary hearing on the consideration of his application. The Notice of Defense form was
6 signed by Applicant on July 23, 2020 and also notified the Commission that Applicant was
7 represented by counsel, Michael Norton, and requested that all notices for purposes of the
8 evidentiary hearing be provided to Mr. Norton by email.

9 9. On October 14, 2021 Commission staff sent a notice to Applicant's attorney by
10 email which stated that Applicant's application would be considered at a hearing set to occur on
11 Friday, February 4, 2021 at 10:00 A.M.

12 10. On December 17, 2020, Mr. Norton, on Applicant's behalf, made a written
13 request to withdraw Applicant's request for an evidentiary hearing, thereby waiving the rights
14 listed under Title 4, CCR sections 12052(c)(2)(D) and 12060. A copy of the December 17, 2020
15 correspondence from Applicant's attorney is attached hereto as Exhibit A.

16 11. As a result of Applicant's withdrawal of his request for a hearing, on December
17 24, 2020, Commission staff notified Mr. Norton by email that a default hearing was scheduled on
18 the application for March 11, 2021 by means of video conference using Zoom and provided
19 information on how to participate in or view the hearing.

20 **DETERMINATION OF ISSUES**

21 12. 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 13. The burden of proving Applicant's qualifications to receive any license from the
25 Commission is on the applicant. (Bus. & Prof. Code § 19856, subd. (a).)

26 14. In addition, at an evidentiary hearing pursuant to Business and Professions Code
27 sections 19870 and 19871 and Title 4, CCR section 12060 the burden of proof always rests with
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1 the applicant to demonstrate why a license should be issued. (Cal. Code Regs., tit. 4, § 12060,
2 subd. (i).)

3 15. Title 4, CCR section 12052, subdivision (c), provides in pertinent part:

4 (c) An applicant for any license, permit, finding of suitability,
5 renewal, or other approval shall be given notice of the meeting at
6 which the application is scheduled to be heard. Notice shall be given
pursuant to Section 12006.

7 (2) If the application is to be scheduled at an evidentiary
8 hearing, pursuant to subsections (a) or (b) of Section 12060, the
notice of hearing shall inform the applicant of the following:

9 (F) The waiver of an evidentiary hearing, failure of the
10 applicant to submit a Notice of Defense, or failure by the applicant to
11 appear at an evidentiary hearing, may result in a default decision or a
hearing without applicant participation in accordance with Section
12057.

12 16. Title 4, CCR section 12057, subdivision (a), provides in pertinent part:

13 (a) When an applicant fails to submit a completed Notice of Defense, CGCC-ND-
14 002 (Rev. 12/18) according to the timelines on the form, affirmatively waives his,
15 her, or its right to an evidentiary hearing, or he, she, or it fails to appear at an
16 evidentiary hearing, the Commission will, based on the interests of justice and
judicial economy:

17 (1) Issue a default decision after the consideration of the Bureau report, any
18 supplemental reports by the Bureau, and any other documents or testimony
provided or which may be provided to the Commission before the decision is issued;

19 17. The Commission has jurisdiction to adjudicate this case by default.

20 18. A TPPPS registration includes all conditions of a temporary license provided in
21 subsections (a), (b), (d), and (e) of Section 12122. (Cal. Code Regs., tit. 4, § 12130, subd. (d).)

22 19. Upon issuance or denial of a license by the Commission, the temporary license
23 will become void and cannot be used thereafter. (Cal. Code Regs., tit. 4, § 12122, subd. (d).)

24 20. The Commission may deny Applicant's application based upon the Bureau report,
25 any supplemental reports by the Bureau and any other documents or testimony already provided
26 to it, pursuant to Title 4, CCR sections 12052, subdivision (c)(2)(F) and 12057, and Business and
27 Professions Code sections 19857 and 19859.
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1 21. The Commission may further also deny Applicant’s application based upon
2 Applicant’s failure to prove to the Commission Applicant is qualified to receive a license or other
3 approval as required by Business and Profession Code section 19856, subdivision (a) and Title 4,
4 CCR section 12060, subdivision (i).

5 22. Therefore, as the Applicant withdrew his request for a hearing, did not attend the
6 default hearing, and did not submit any information or evidence in favor of granting Applicant’s
7 application, Applicant did not meet the burden of demonstrating why a license should be issued
8 pursuant to Business and Professions Code section 19856, subdivision (a) and Title 4, CCR
9 section 12060, subdivision (i). By failing to meet Applicant’s burden of proving Applicant’s
10 qualifications for licensure, Applicant has failed to satisfy the Commission that Applicant is a
11 person that is in all other respects qualified to be licensed pursuant to Business and Professions
12 Code section 19857(c). As a result, the Commission finds that pursuant to California Code of
13 Regulations, Title 4, sections 12040, subdivision (a)(1), 12052, subdivision (c)(2)(F), and 12057,
14 Applicant’s Application is subject to denial.

15 23. In addition, as Applicant’s application is subject to denial, Applicant’s current
16 registration is void pursuant to Title 4, CCR section 12122, subdivision (d).

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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, subdivision (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. A request for reconsideration must be:

(1) Made in writing to the Commission, copied to the Complainant. The Bureau may provide a written response to the Commission within 10 calendar days of receipt of the request; and

(2) Received by the Commission and Complainant within 30 calendar days of service of the decision, or before the effective date specified in the decision, whichever is earlier.

(b) A request for reconsideration must 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, subdivision (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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2 1. FRANCISCO HERNANDEZ’S Application for Approval of Third-Party
3 Proposition Player Services License is DENIED.

4 2. FRANCISCO HERNANDEZ’S Third-Party Player Registration, No. TPPL-
5 022891 is void and cannot be used hereafter.

6 3. FRANCISCO HERNANDEZ may not apply to the Commission or the Bureau for
7 any type of license, registration, or work permit for one (1) year after the effective date of this
8 Order.

9 This Order is effective on April 12, 2021.

10 Dated: 3/11/21

10 Signature: 

11 Paula LaBrie, Chair

12
13 Dated: 3/11/2021

13 Signature: 

14 Eric Heins, Commissioner

15
16 Dated: 3/11/21

16 Signature: 

17 Edward Yee, Commissioner

Mathauser, Pamela

From: Michael Norton <nortonesq@gmail.com>
Sent: Thursday, December 17, 2020 10:17 AM
To: Patterson, Kate
Cc: Noel A. Fischer; Yolanda Morrow; Mathauser, Pamela
Subject: Re: 12.11.20 Conclusion of Prehearing Conference-Hernandez

To all parties,

This is to confirm, after speaking with my client, that Francisco Hernandez no longer wants to obtain a gaming license. We withdraw his request for a hearing and ask that his application be withdrawn and abandoned. If you need any further information or clarification please let me know. Thank you for your time and professionalism in this matter.

On Fri, Dec 11, 2020 at 12:55 PM Patterson, Kate <kpatterson@cgcc.ca.gov> wrote:

Good afternoon,

A letter summarizing our discussion at the prehearing conference yesterday is attached. The letter also includes information about the hearing that we did not discuss yesterday in the event that Mr. Hernandez decides to proceed with his hearing. I am sending this correspondence by email only. However, I am happy to provide a copy by mail upon request.

Thank you,

Kate Jeffries Patterson

Presiding Officer

California Gambling Control Commission

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Email: kpatterson@cgcc.ca.gov

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