

BEFORE THE
DEPARTMENT OF JUSTICE
GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CHARLES ERIC YUELL,

Respondent.

OAH No. 2010010605

PROPOSED DECISION

This matter was heard before Dian M. Vorters, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 30, 2010, in Sacramento, California.

Neil D. Houston, Deputy Attorney General, represented Jacob A. Appelsmith, Chief of the California Department of Justice, Bureau of Gambling Control (Bureau).

Charles Eric Youell (respondent) appeared on his own behalf.

Evidence was received and the matter was submitted for decision on June 30, 2010.

FACTUAL FINDINGS

1. Jacob A. Appelsmith (complainant), filed this accusation in his official capacity on or about July 17, 2009. At all times relevant to this proceeding, respondent has been licensed by the Bureau to act as a Tribal Key Employee (TRKE 008793, Level II).

2. On March 29, 2007, respondent signed a renewal Application for Finding of Suitability as a Tribal Key Employee. At that time, respondent was employed at River Rock Casino, in Geyserville, California, as a "Slot Shift Supervisor." In his renewal application, respondent disclosed prior convictions on January 1995 for driving under the influence (DUI) and June 1996 for possession of controlled substances. On May 30, 2008, the renewal application was submitted by respondent's employer on his behalf to the Department of Justice for a background check.

3. The Bureau's licensing division conducted an investigation of respondent's background and prepared a Background Investigation Report on or about November 17, 2008. The background investigation confirmed that respondent had been convicted of five misdemeanor offenses as follows:

- a. On February 15, 1995, in the Superior Court of California, County of Ukiah, respondent was convicted of violating Vehicle Code sections 14601.1, subdivision (a) (driving on a suspended license); and 23152, subdivision (a) (DUI); and Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance, all misdemeanors. Respondent was sentenced to five years probation and 30 days in jail.
- b. On November 1, 1995, in the Superior Court of California, County of Ukiah, respondent was convicted of violating Health and Safety Code sections 11550 (use/under the influence of a controlled substance); and 11377, subdivision (a) (possession of a controlled substance); both misdemeanors. Respondent was sentenced to two years probation and 120 days in jail.

4. On November 14, 2008, respondent submitted a written explanation for his omissions stating that he did not remember the conviction for driving on a suspended license. The Bureau concluded that since respondent had substantially disclosed the convictions on his application with River Rock Casino and the convictions were more than ten years old, a recommendation for approval of his application for a Finding of Suitability was warranted.

5. On January 29, 2009, the Gambling Control Commission convened and considered various matters including approval of respondent's application for a Finding of Suitability. The Commission adopted the staff recommendation for approval of respondent's application. At the time, the Commission was not aware of the fact that respondent had been convicted two weeks earlier for a violation of Penal Code section 647, subdivision (b). (Factual Finding 6.)

6. On January 13, 2009, in the Superior Court of California, County of Mendocino in Case No. MC-UK-CR-CR-08-0087790-002, respondent was convicted on his plea of guilty, to violating Penal Code section 647, subdivision (b) (soliciting an act of prostitution), a misdemeanor.¹ Respondent was sentenced to 36 months probation, jail time, and fines. Respondent has not been granted relief from his conviction pursuant to Penal Code sections 1203.4, 1203.4a, or 1203.45.

¹ "Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor: ... (b) Who solicits or who agrees to engage in or who engages in any act of prostitution. ... As used in this subdivision, 'prostitution' includes any lewd act between persons for money or other consideration." (Pen. Code, § 647, subd. (b).)

The record contains no evidence regarding the incident or the circumstances underlying respondent's conviction. Respondent did not testify at hearing and did not submit any documentary evidence.

Soliciting an act of prostitution is a misdemeanor involving moral turpitude. (*In re Boyd* (1957) 48 Cal.2d 69; *People v. Jaimez* (1986) 184 Cal.App.3d 146, 150.) A violation of Penal Code section 647, subdivision (b), constitutes "lewd and dissolute" conduct which is defined in CALJIC 16.402 to mean "lustful, lascivious, unchaste, wanton, or loose in morals and conduct." (*People v. Norris* (1978) 88 Cal.App.3d Supp. 32, 40.)

LEGAL CONCLUSIONS

Applicable Laws

1. Business and Professions Code section 19857 provides that no gambling license shall be issued unless the Commission is satisfied that the applicant is (a) a "person of good character, honesty, and integrity" and (b) a "person whose activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state, or the effective regulation and control of gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto."

2. Business and Professions Code section 19859, subdivision (d), mandates that, for 10 years following an applicant's conviction for a misdemeanor involving moral turpitude, the Commission shall deny a license application, unless the applicant has been granted relief pursuant to Penal Code sections 1203.4, 1203.4a, or 1203.45.

3. California Code of Regulations, title 4, section 12568, subdivision (c), provides that "a state gambling license, finding of suitability, or approval granted by the Commission . . . shall be subject to revocation by the Commission" on any of the following grounds:

- (1) If the Commission finds the holder to have been convicted of a felony or a crime of moral turpitude that would disqualify the holder from licensure,

[¶]...[¶]

- (3) If the Commission finds the holder no longer meets any criterion for eligibility, qualification, suitability or continued operation, including those set forth in Business and Professions Code sections 19857, 19858, or 19880, as applicable, or

- (4) If the Commission finds the holder currently meets any of the criteria for mandatory denial of an application set forth in Business and Professions Code sections 19859 or 19860.

Cause for Discipline

4. Respondent's previously granted application for a Finding of Suitability as a Tribal Key Employee must be revoked pursuant to Business and Professions Code section 19859, subdivision (d), in that respondent was convicted less than 10 years ago of a misdemeanor involving moral turpitude and has not been granted relief under Penal Code sections 1203.4, 1203.4a, or 1203.45. The Commission has no discretion to do otherwise.

5. Respondent's license is further subject to revocation under section 19857, by reason of his Penal Code section 647, subdivision (b) conviction, soliciting an act of prostitution, a crime of moral turpitude which does not support a finding that respondent is a "person of good character, honesty, and integrity" and (b) a "person whose activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state."

6. Prior to any future application for a Finding of Suitability, respondent's attention is directed to language in Business and Professions Code section 19859, subdivision (d), providing for positive consideration by the Commission of any relief granted pursuant to Penal Code sections 1203.4, 1203.4a, or 1203.45.

ORDER

The Finding of Suitability as a Tribal Key Employee and license (No. TRKE 008793), issued by the Bureau to Charles Eric Youell, is REVOKED.

DATED: August 3, 2010



DIAN M. VORTERS
Administrative Law Judge
Office of Administrative Hearings

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STATE OF CALIFORNIA

In the Matter of:

CHARLES ERIC YUELL,

Respondent

OAH number 2010010605

DECISION AND ORDER

DECISION AND ORDER OF THE COMMISSION:

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by a majority vote of the California Gambling Control Commission as its final decision and order in this matter and is effective upon execution below by the Commission members.

IT IS SO ORDERED

Dated: 9/22/10

Signature: Dean Shelton
Dean Shelton, Chairman

Dated: [Signature]

Signature: 9/22/10
James Shelby, Commissioner

Dated: 9/22/10

Signature: Stephanie Shimazu
Stephanie Shimazu, Commissioner