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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Statement of Particulars:

Thomas Stephan Miller

License Number TRKE-012129

Applicant.

BGC Case No. BGC-HQ2014-00001SL
CGCC Case No. CGCC-2013-1212-18D

DECISION AND ORDER

Hearing Date: November 17, 2015
Time: 2:00 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, in Sacramento, California, on November 17, 2015. The administrative record was kept open until November 24, 2015 to provide the parties with extra time to submit certain additional information.

William L. Williams, Jr. (Williams), 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 Thomas Stephan Miller (Miller) represented himself.

During the administrative hearing, Presiding Officer Jason Pope took official notice of the Notice of Hearing and Prehearing Conference, with enclosures, sent by the Commission to Miller and Williams on May 1, 2015.

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

- (1) Copies of the Statement of Reasons; Statement to Respondent; Certificate of Service by Certified Mail, and Completed Notice of Defense dated March 2, 2015, Bates Nos. 0001-0020;
- (2) Copies of the Notices from the Commission:
 - a. Commission letter dated September 4, 2015 re Notice of Rescheduled

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Hearing;

- b. Commission letter dated August 17, 2015 re Notice of Continuance of Hearing;
- c. Commission letter dated August 6, 2015 re Conclusion of Prehearing Conference;
- d. Commission letter dated May 1, 2015 re Notice of Hearing and Prehearing Conference;
- e. Commission letter dated 12/19/13 re Referral to Evidentiary Hearing;
- f. Commission Memorandum dated December 12, 2013;
- g. Commission letter dated November 27, 2013 re Notification of Scheduled Commission Meeting;
- h. Commission letter dated February 26, 2013 re follow-up to the February 21, 2013 Commission Meeting;
- i. Commission Memorandum dated February 21, 2013;
- j. Commission letter dated February 8, 2013 re Notice of Recommended Denial of Tribal Key Employee Application; and
- k. Commission Meeting Minutes dated May 18, 2006, Bates Nos. 0021-0054;

- (3) Copies of Thomas Miller's Initial Application for Tribal Key Employee dated January 18, 2011; and Thomas Miller's Renewal Application for Tribal Key Employee dated December 11, 2012, Bates Nos. 0055-0068;
- (4) Copy of the Background Investigative Report dated April 10, 2012, Bates Nos. 0069-0078;
- (5) Copy of the Determination of Suitability dated October 21, 2009, Bates Nos. 0079-0083;
- (6) Copy of the Superior Court of King County Docket dated December 09, 2005, Bates Nos. 0084-0091; and

- 1 (7) Copy of the Kings County Sheriff's Department Booking Request Form
2 and Crime Report dated June 05, 2004, Bates Nos. 0092-0119.

3 During the administrative hearing, Presiding Officer Jason Pope accepted into evidence
4 the following exhibit offered by Miller:

- 5 (a) Letters of Reference from Joseph F. Morales, M.A.; Michelle Anderson;
6 Susan Lackey; Joseph T. Vigil; Bret Brakeman; Karen K. Kalfayan; Dr.
7 Travis Lee Brakeman, DPT; Theresa Brakeman; and Alice Roberts.

8 The matter was submitted on November 24, 2015.

9 FINDINGS OF FACT

- 10 1. On or about April 28, 2011, Miller submitted an initial Application for Finding of
11 Suitability Tribal Key Employee to the Commission.
- 12 2. On or about December 11, 2012, Miller submitted a renewal Application for Finding
13 of Suitability Tribal Key Employee (Application).
- 14 3. At its December 12, 2013 meeting, the Commission voted to refer the consideration of
15 Miller's Application to an evidentiary hearing
- 16 4. On or about March 2, 2015, Miller submitted a Notice of Defense to the Commission
17 requesting an evidentiary hearing.
- 18 5. On or about May 1, 2015, the Commission served a Notice of Hearing and Prehearing
19 Conference on Miller and Williams.
- 20 6. On or about July 10, 2015, the Bureau filed a Statement of Particulars with the
21 Commission and served the Statement of Particulars on Miller via certified mail. In its Statement
22 of Particulars, the Bureau recommends the approval of Miller's Application.
- 23 7. On or about August 5, 2015, the noticed Prehearing Conference was held before
24 Presiding Officer Jason Pope, Attorney III of the Commission. William L. Williams, Jr., Deputy
25 Attorney General, attended on behalf of the Bureau. Miller attended on his own behalf.
- 26 8. On or about August 6, 2015, the Commission served a Conclusion of Prehearing
27 Conference letter on Miller and Williams.
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1 9. On or about August 17, 2015, the Commission served a Notice of Continuance of
2 Hearing on Miller and Williams.

3 10. On or about September 4, 2015, the Commission served a Notice of Rescheduled
4 Hearing on Miller and Williams.

5 11. The Commission heard Case No. CGCC-2013-1212-18D on November 17, 2015. The
6 Bureau was represented throughout the hearing by Deputy Attorney General William L.
7 Williams, Jr. Applicant Thomas Miller represented himself throughout the hearing. The
8 administrative record was kept open until November 24, 2015 to provide the parties with extra
9 time to submit certain additional information.

10 12. In June 2004, Miller was arrested by the Hanford Police Department and charged with
11 six counts of violating Penal Code section 288(a), lewd and lascivious acts with a child under the
12 age of 14. The synopsis of the Hanford Police Department's Narrative Report (Narrative Report)
13 provides that "[Miller] fondles victim(s) on several occasions over the last month."

14 13. Following the June 2004 arrest, on or about February 14, 2005, Miller was convicted
15 of violating Penal Code section 647(a), disorderly conduct: soliciting a lewd act, a misdemeanor.

16 14. Soliciting a lewd act, a violation of Penal Code section 647(a), is a serious crime that
17 demonstrates a lack of good character and integrity.

18 15. During the hearing, Miller became defensive and combative when testifying regarding
19 his June 2004 arrest and February 14, 2005 conviction. Miller testified that he never engaged in
20 any conduct giving rise to the conviction, and that the victim statements in the Narrative Report
21 were "all lies."

22 16. Despite repeated Commissioner inquiries, Miller offered extremely limited testimony
23 regarding the circumstances precipitating his June 2004 arrest and February 14, 2005 conviction.
24 Miller eventually acknowledged that he was living at the same residence as the victim prior to his
25 arrest.

26 17. Based upon Miller's defensive and combative attitude when testifying regarding his
27 June 2004 arrest and February 14, 2005 conviction, Miller was unable to thoughtfully
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1 demonstrate candor.

2 18. More than ten years have elapsed since Miller's February 14, 2005 conviction. No
3 evidence was presented that Miller has had any subsequent criminal convictions.

4 19. Despite the fact that Miller's conviction took place over ten years ago, Miller's
5 defensive and combative attitude when testifying demonstrates that an insufficient amount of time
6 has elapsed for Miller to be able to reconcile his actions with the resulting arrest and conviction.

7 20. During the hearing, Miller provided insufficient testimony and evidence to show that
8 his arrest and subsequent criminal conviction were meritless.

9 21. During the hearing, Miller provided insufficient testimony and evidence to support his
10 version of the alleged event(s) precipitating his arrest and subsequent criminal conviction;
11 namely, that he never engaged in any conduct giving rise to the arrest or conviction.

12 22. On or about May 20, 2008, Miller's February 14, 2005 conviction for disorderly
13 conduct: soliciting a lewd act, was set aside and dismissed pursuant to Penal Code section 1204.3.

14 23. In his Supplemental Background Investigation Information form, Miller failed to
15 disclose the following: (1) that he was terminated from employment at Tachi Palace Hotel and
16 Casino; (2) that his license to work at Tachi Palace Hotel and Casino had been revoked; and (3)
17 that he applied to the Commission for a work permit, which was subsequently denied.

18 24. By failing to disclose pertinent facts on his Supplemental Background Investigation
19 Information form regarding his employment and licensing history, Miller was not forthcoming in
20 his Application.

21 25. Miller submitted a letter to the Bureau explaining his failures to disclose his full
22 employment and licensing history on his Supplemental Background Investigation Information
23 form. Miller states that his failure to disclose his termination from, and license revocation by,
24 Tachi Palace Hotel and Casino was "un-deliberate" and that he "probably was just rushing
25 through the supplemental." Miller states that his failure to disclose that he applied for, and was
26 denied, a work permit was an "oversight."

27 26. Miller's explanation for his failures to disclose pertinent facts on his Supplemental
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1 Background Investigation Information form are unconvincing.

2 27. Miller submitted nine letters of reference in support of his Application. The letters
3 came from the following individuals: (1) Joseph F. Morales, M.A.; (2) Michelle Anderson; (3)
4 Susan Lackey; (4) Joseph T. Vigil; (5) Bret Brakeman; (6) Karen K. Kalfayan; (7) Dr. Travis Lee
5 Brakeman, DPT; (8) Theresa Brakeman; and (9) Alice Roberts. Alice Roberts is the
6 Office/Volunteer Coordinator for St. Vincent de Paul Center, which provides food, clothing and
7 other supportive services. The remaining eight letters of reference came from Miller's family
8 members.

9 28. The content of all nine letters is favorable toward Miller's character and in support of
10 his Application. However, given that eight of the letters of reference came from family members,
11 the letters offer limited usefulness in assessing Miller's suitability for licensure.

12 29. There was no evidence presented of any disciplinary action or other issues related to
13 Miller's work history in the gambling industry.

14 30. Based upon Miller's February 14, 2005 misdemeanor conviction for violating Penal
15 Code section 647(a), disorderly conduct: soliciting a lewd act; his inability to thoughtfully
16 demonstrate candor while testifying; an insufficient amount of time having elapsed for Miller to
17 be able to reconcile his actions with the resulting arrest and conviction; and his providing
18 insufficient testimony and evidence to show that his arrest and subsequent criminal conviction
19 were meritless and that he never engaged in any conduct giving rise to his arrest and conviction,
20 Miller has failed to meet his burden of proving his qualifications to receive a finding of suitability
21 from the Commission.

22 31. As a result of Miller's misdemeanor conviction for violating Penal Code section
23 647(a), disorderly conduct: soliciting a lewd act; an insufficient amount of time having elapsed
24 for Miller to be able to reconcile his actions with the resulting arrest and conviction; and his
25 failure to present sufficient testimony or evidence to show that his arrest and subsequent criminal
26 conviction were meritless and that he never engaged in any conduct giving rise to his arrest and
27 conviction, Miller failed to meet his burden of proving that he is a person whose prior activities,
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1 criminal record and reputation do not pose a threat to the public interest of the State of California.

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

5 33. The matter was submitted for Commission consideration on November 24, 2015.

6 LEGAL CONCLUSIONS

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

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

14 36. At an evidentiary hearing pursuant to Business and Professions Code sections 19870
15 and 19871 and CCR section 12060(b), the burden of proof rests with the applicant to prove his or
16 her qualifications to receive any license under the Gambling Control Act. CCR section 12060(i).

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

21 38. An "unqualified person" means a person who is found to be unqualified pursuant to
22 the criteria set forth in Section 19857. Business and Professions Code section 19823(b).

23 39. The Commission has the power to deny any application for a license, permit, or
24 approval for any cause deemed reasonable by the Commission. Business and Professions Code
25 section 19824(b).

26 40. The burden of proving his or her qualifications to receive any license from the
27 Commission is on the applicant. Business and Professions Code section 19856(a).

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1 CCR section 12066, subsection (c) provides:

2 A decision of the Commission denying an application or imposing conditions on license
3 shall be subject to judicial review as provided in Business and Professions Code section
4 19870, subdivision (e). Neither the right to petition for judicial review nor the time for
5 filing the petition shall be affected by failure to seek reconsideration.

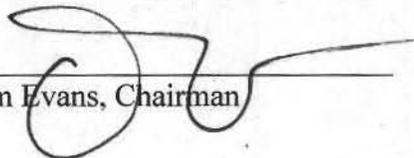
6 ORDER

- 7 1. Thomas Stephan Miller's Renewal Application for Finding of Suitability Tribal Key
8 Employee is DENIED.
9 2. No costs are to be awarded.
10 3. Each side to pay its own attorneys' fees.

11 This Order is effective on February 8, 2016.

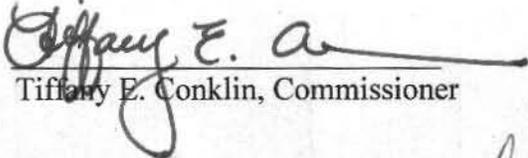
12 Dated: Jan. 7 2016

Signature: _____

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14 Jim Evans, Chairman

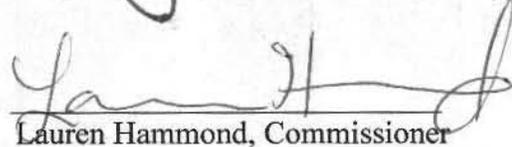
15 Dated: Jan. 7, 2016

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17 Tiffany E. Conklin, Commissioner

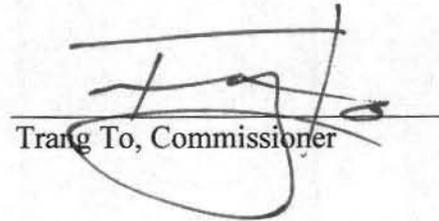
18 Dated: Jan. 7, 2016

Signature: _____

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20 Lauren Hammond, Commissioner

21 Dated: Jan 7, 2016

Signature: _____

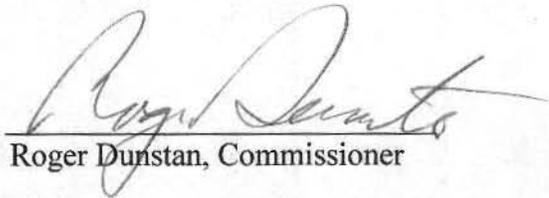
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23 Trang To, Commissioner
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1 Commissioner Dunstan disagrees with the Findings of Facts in paragraphs 19, 30 and 31,
2 and finds that the ten year period that has elapsed since Miller's February 14, 2005 conviction is a
3 sufficient amount of time for Miller to have rehabilitated himself and demonstrate suitability for
4 licensure. As a result, Commission Dunstan does not support the conclusion to deny Miller's
5 Application. However, Commissioner Dunstan concurs with the decision not to award costs and
6 for each side to pay its own attorneys' fees.

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8 Dated:

January 7, 2016

Signature:


Roger Dunstan, Commissioner