

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

CGCC Case No. GCADS-TRKE013722

In the Matter of the Application for Approval
of Initial Tribal-State Compact Key Employee
Finding of Suitability Regarding:

DEFAULT DECISION AND ORDER

TONYA ROGERS

Applicant.

Hearing Date: July 9, 2015
Time: 1:30 p.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 July 9, 2015.

2. Tonya Rogers (Applicant) failed to appear and was not represented at the hearing.

FINDINGS OF FACT

3. On or about September 27, 2012, the Commission received an Application for Finding of Suitability Tribal Key Employee from Applicant.

4. On or about November 14, 2014, the Bureau of Gambling Control (Bureau) issued its Tribal Key Employee Background Investigation Report in which it concluded that Applicant was unqualified for licensure pursuant to Business and Profession Code section 19857 and disqualified for licensure pursuant to Business and Profession Code section 19859. The Bureau recommended that the Commission deny Applicant's application.

5. Applicant received notice of Commission consideration of her application in four ways. First, Commission staff mailed an evidentiary hearing referral letter via certified mail to Applicant's address of record on January 28, 2015. This letter included a blank Notice of Defense form with instructions to return within 15 days of receipt or else the Commission may issue a default decision. Commission staff did not receive a response even after 30 days had

1 passed. (Exhibit A)

2 6. Second, Applicant received notice of the hearing through a hearing notice sent
3 certified mail on March 11, 2015 to Applicant's address of record which included Exhibit A and
4 stated that the hearing was set to occur on June 11, 2015 at 1:30 pm. Commission staff received a
5 signed United States Postal Service return receipt signed "Tonya Rogers" on March 16, 2015.

6 7. Third and Fourth, Applicant further received notice of the hearing through
7 rescheduled hearing notices sent certified mail on May 29, 2015 setting the hearing for Thursday
8 June 25, 2015 at 1:30 pm, and then again on June 9, 2015, setting the hearing for Thursday July 9,
9 2015 at 1:30 pm. Commission staff received nothing from the applicant in response or from the
10 USPS including the certified mail receipt.

11 DETERMINATION OF ISSUES

12 8. An application to receive a license constitutes a request for a determination of the
13 applicant's general character, integrity, and ability to participate in, engage in, or be associated
14 with, controlled gambling. (Bus. & Prof. Code § 19856, subd. (b).)

15 9. In addition, the burden of proving his or her qualifications to receive any license
16 from the Commission is on the applicant. (Bus. & Prof. Code § 19856, subd. (a).)

17 10. At an evidentiary hearing pursuant to Business and Professions Code sections
18 19870 and 19871 and Title 4, CCR section 12060 the burden of proof rests with the applicant to
19 demonstrate why a license should be issued. (Cal. Code Regs., tit. 4, § 12060, subd. (i).)

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

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

24 * * *

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

27 * * *

28 (F) The waiver of an evidentiary hearing, or failure of

1 the applicant to submit a Notice of Defense, or failure of an
2 applicant to appear at an evidentiary hearing, may result in:

3 1. A default decision being issued by the
4 Commission based upon the Bureau report, any
5 supplemental reports by the Bureau and any other
6 documents or testimony already provided or which might
7 be provided to the Commission

8 12. The Commission takes official notice of the Bureau report, any supplemental
9 reports by the Bureau and any other documents or testimony already provided to it in this matter
10 as required by Business and Professions Code section 19870(a) and Title 4, CCR section 12052,
11 subdivision (c)(2)(F)(1).

12 13. The Commission has jurisdiction to adjudicate this case by default.

13 14. The Commission may deny Applicant's application based upon the Bureau report,
14 any supplemental reports by the Bureau and any other documents or testimony already provided
15 to it, pursuant to CCR section 12052, subdivision (c)(2)(F)(1), and Business and Professions
16 Code sections 19857 and 19859.

17 15. The Commission may further also deny Applicant's application based upon
18 Applicant's failure to prove to the Commission she is qualified to receive either a work permit or
19 a key employee license, as required by Business and Profession Code section 19856(a) and Title
20 4, CCR section 12060(i).

21 16. Therefore, as the Applicant did not return her Notice of Defense form indicating
22 she wanted a hearing on her application, did not attend the default hearing, and did not submit any
23 information or evidence in favor of granting her Application, she did not meet her burden of
24 demonstrating why a finding of suitability should be issued pursuant to Business and Professions
25 Code section 19856(a) and Title 4, CCR section 12060(i). The Commission further finds that
26 pursuant to California Code of Regulations, title 4, section 12052, subdivision (c)(2)(F)(1), her
27 Application is subject to denial.

28 //

//

//

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF APPLICANT'S APPEAL RIGHTS

Applicant has the following appeal rights available under state law:

Title 4, CCR section 12064, subsection (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 within 30 calendar days of service of the decision, or before the effective date specified in the decision, whichever is later.

(b) A request for reconsideration shall be made in writing to the Commission, copied to the Bureau, and shall 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, subsection (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.

///
///
///

ORDER

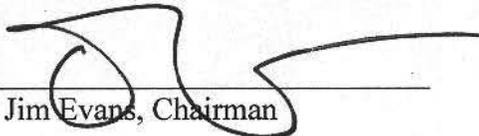
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Tonya Rogers' Application for a Tribal Key Employee Finding of Suitability is DENIED.

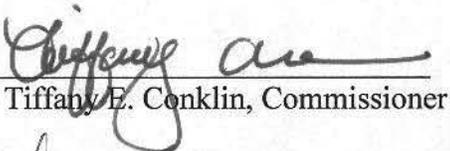
2. Tonya Rogers may not apply to the Commission or the Bureau for any type of license, registration or work permit for one (1) year after the effective date of this Order.

This Order is effective on August 24, 2015.

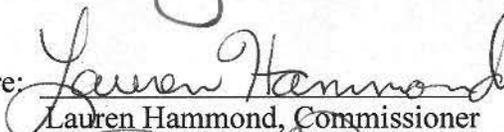
Dated: July 30, 2015

Signature: 
Jim Evans, Chairman

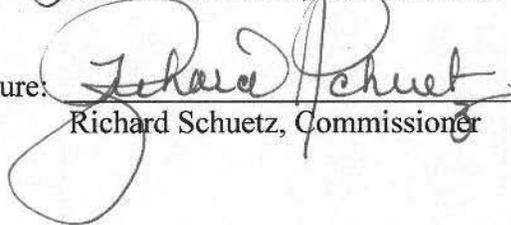
Dated: July 30, 2015

Signature: 
Tiffany E. Conklin, Commissioner

Dated: July 30, 2015

Signature: 
Lauren Hammond, Commissioner

Dated: July 30, 2015

Signature: 
Richard Schuetz, Commissioner

DECLARATION OF STEPHANIE CLARK

I, Stephanie Clark, declare as follows:

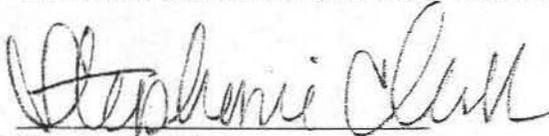
I am employed by the California Gambling Control Commission as an analyst in the Commission's Licensing Division. Tonya Rogers' case has been assigned to me for processing.

On January 28, 2015, I mailed a Gambling Control Act hearing referral letter to Tonya Rogers at [REDACTED] by certified mail pursuant to California Code of Regulations (CCR) Title 4, Division 18, Chapter 1, section 12006. This letter provided notice to Tonya Rogers that consideration of her application was being referred to a Gambling Control Act hearing pursuant to CCR, Title 4, Division 18, Chapter 1, section 12060(a). This letter included a Notice of Defense form (CGCC-ND-002) with instructions to return the Notice of Defense to the Commission within 15 days of receipt in order to preserve their right to an administrative hearing.

Today is March 2, 2015 and I have not received the Notice of Defense form or any communication from Tonya Rogers regarding a request for a Gambling Control Act hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct.

Executed on March 2, 2015, in Sacramento, California.


Stephanie Clark