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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

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

ALAN ERIKSON

Respondent.

CGCC Case No. GCADS-TRKE-020582

DECISION AND ORDER

Hearing Date: May 27, 2021
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, in Sacramento, California, and held via Zoom video conference, on May 27, 2021.

Colin Wood, Deputy Attorney General, State of California (Wood), represented complainant Stephanie Shimazu, Director of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

Applicant Alan Erikson (Applicant) appeared with the assistance of his attorney Gabriel Pacheco (Pacheco).

During the evidentiary hearing, Presiding Officer Kate Patterson took official notice of the Notice of Hearing with Applicant's Application for Tribal-State Compact Key Employee Finding of Suitability and the Bureau's Initial Background Investigation Report, the Bureau's Statement of Reasons, Applicant's signed Notice of Defense, and the Commission's Conclusion of Prehearing Conference letter.

During the evidentiary hearing, Presiding Officer Kate Patterson accepted into evidence the following exhibits offered by the Bureau:

- 1) Statement to Respondent dated 4/1/2021; Statement of Reasons dated 3/31/2021; Business & Professions Code 19870 & 19871; California Code of Regulations, title 4, section 12060; Certificate of Service dated 4/2/2021, Bates

- 1 Nos. 001 – 021;
- 2 2) CGCC Referral to Evidentiary Hearing dated 10/13/2020; Notice of Defense
- 3 signed 10/29/2020, letter from representative Gabriel Pacheco dated
- 4 10/30/2020; CGCC Notice of Hearing with Attachments A & B, dated
- 5 1/15/2021, Bates Nos. 022 – 042;
- 6 3) Application for Finding of Suitability Tribal Key Employee for Alan Erikson
- 7 dated 2/27/2020; Tribal Key Employee Supplemental Background
- 8 Investigation Information dated 2/25/2019; Application for Finding of
- 9 Suitability Tribal Key Employee renewal dated 2/28/2020 Bates Nos. 043 –
- 10 053;
- 11 4) BGC Tribal Key Employee Background Investigation Report for Alan Richard
- 12 Erikson for Santa Rosa Indian Community dated September 2020, with
- 13 attachments, Bates Nos. 054 – 062;
- 14 5) License History and Certification of Records, Bates Nos. 063 – 064;
- 15 6) Court Documents from Riverside County Superior Court for violation date
- 16 10/29/1990, conviction date 12/4/1990, Case No. CR37576, Bates Nos. 065 –
- 17 074;
- 18 7) BGC Correspondence and E-mails, Bates Nos. 075 – 094;
- 19 8) Employment Verification for Alan Erikson, Bates Nos. 095 – 097.

20 During the evidentiary hearing, Presiding Officer Kate Patterson also accepted into

21 evidence the following exhibits offered by Applicant:

- 22 (A) Character letters from : 1) Ted Thay; 2) Mike Perches; 3) Garratt Codd; and 4)
- 23 Dusty Mart;
- 24 (B) Summary of Issues Brief.

25 FINDINGS OF FACT

26 **Procedural History**

- 27 1. On or about March 12, 2019, the Bureau received an Application for Finding of
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1 Suitability Tribal Key Employee and Tribal Key Employee Supplemental Background
2 Investigation Form (Supplemental) and a renewal application from Applicant on March 2, 2020
3 (collectively, Application) from Applicant to work as a tribal key employee for Tachi Palace,
4 which is owned and operated by the Santa Rosa Indian Community of the Santa Rosa Rancheria.

5 2. On or about September 29, 2020, the Bureau submitted to the Commission a Level III
6 Tribal Key Employee Background Investigation Report on Applicant. In this report, the Bureau
7 recommends that the Commission deny Applicant's Application.

8 3. At its meeting on October 13, 2020, the Commission referred consideration of
9 Applicant's Application to Gambling Control Act (GCA) evidentiary hearing to be held pursuant
10 to Title 4, CCR section 12060.

11 4. On or about November 2, 2020, the Bureau received from Applicant a signed notice of
12 defense requesting an evidentiary hearing on his Application.

13 5. On or about January 15, 2021, the Commission sent a Notice of Hearing, via
14 electronic mail, to Applicant's attorney Pacheco and Deputy Attorney General Wood. The
15 hearing was set for May 27, 2021.

16 6. On or about April 2, 2021, the Bureau sent a Statement of Reasons to Applicant via
17 certified mail. In the Statement of Reasons, the Bureau requests that the Commission deny
18 Applicant's Application. The Commission received the Bureau's Statement of Reasons on or
19 about April 5, 2021.

20 7. On or about April 6 2021, the noticed Prehearing Conference was held before
21 Presiding Officer Kate Patterson, Attorney III of the Commission. Wood attended on behalf of
22 the Bureau. Pacheco appeared on Applicant's behalf.

23 8. On or about April 7, 2021, the Commission sent a Conclusion of Prehearing
24 Conference letter, via e-mail, to Pacheco and Wood.

25 9. The Commission heard this matter via Zoom video conference on Thursday, May 27,
26 2021. The Bureau was represented by Wood. Applicant was present with his Attorney Pacheco.

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Criminal History

10. The Bureau submitted into evidence documents obtained through Applicant's criminal background investigation. This reflects a felony conviction on December 4, 1990 for violating Health and Safety Code section 11351, possessing/purchasing for sale narcotics/controlled substance as well as a misdemeanor conviction for violating Vehicle Code section 23152, subdivision (b) driving under the influence. Applicant was placed on formal probation and no evidence was offered that this was not successfully completed.

11. On or about February 1, 1999, Applicant petitioned the Riverside County Superior Court to have the felony conviction set aside and dismissed. The conviction was dismissed pursuant to Penal Code (PC) section 1203.4. However, the motion to first reduce the felony conviction to a misdemeanor pursuant to PC section 17(b) was denied.

12. Applicant disclosed his criminal history on his Application and provided an explanation of the events surrounding the conviction. Applicant indicated he was asked to deliver a package of drugs to a party, but was unable to do so as he was first stopped for driving under the influence. The Bureau attempted to learn more about the conviction from the police report, however all documents related to Applicant's arrest and investigation have since been purged.

Applicant's Testimony and Work History in Controlled Gambling

13. Applicant testified on his own behalf at the hearing. Applicant testified consistent with his statements to the Bureau. He indicated that he worked at Table Mountain Casino for 17 and 1/2 years before working at Tachi Palace for 5 years. In total, he indicated he had around 23 years in the casino industry.

14. Applicant's employment at Table Mountain Casino appears to have ended as a result of a violation of company policy. Applicant indicated it was because the casino believed he had flipped off a guest. Applicant's current employer does not believe this is an area of concern.

15. In regards to his 1999 expungement, Applicant indicated that he was not represented by an attorney. Rather he had the assistance of representatives from Table Mountain Casino. He understood at that time that his felony conviction was reduced to a misdemeanor. He recalls being

1 told he was free and clear.

2 **Letters of Reference**

3 16. Applicant submitted three letters of reference in support of his Application.

- 4 a. Ted Thay is the Director of Cage Operations at Table Mountain Casino. He
5 indicated he has known Applicant for over two decades. Applicant was a
6 supervisor in three different departments at the casino, and in Thay's
7 interactions with Applicant, Applicant was always reliable, genuine, courteous,
8 calm, and industrious. Thay indicated applicant was a caring and effective
9 supervisor.
- 10 b. Mike Perches is Applicant's brother in law of 20 years. Perches indicated
11 Applicant is a trustworthy person who puts his family and wife before himself.
12 Perches stated Applicant has received awards and takes his job very seriously.
13 Perches believes Applicant is an asset to whomever he works for.
- 14 c. Garratt Codd is a Table Games Dual Rate Supervisor at Tachi Palace. He has
15 known Applicant for two and a half years. Codd feels confident in going to
16 Applicant with questions in their line of work. Codd believes that Applicant
17 has outstanding quality of guest service and work ethic. Applicant is admired
18 by peers and guests for his friendly and honest personality. Codd believes that
19 Applicant can rise to any challenge at work.
- 20 d. Dusty Mart is a Cardiac Specialist RN 3 and has known Applicant for 25 years.
21 Mart believes that Applicant is a great coworker and a dual rate supervisor.
22 Applicant was always fair and displayed incredible integrity, was liked by
23 employees and customers, and he was dependable. Mart believes that
24 Applicant is a great father, husband, and family man. Mart believes that
25 Applicant is an asset to any company that employs him and that his integrity
26 and dedication are second to none.

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Assessment of Applicant's Suitability for Licensure

17. Applicant's character letters from co-workers and family were individualized and candid. The content of the letters, and the lack of any serious derogatory employment-related issues while working at his places of employment, is persuasive that Applicant has demonstrated many positive attributes in his history in the casino industry, including being reliable, courteous, industrious, knowledgeable, dedicated, and honest. These characteristics reflect positively on Applicant's character, honesty, and integrity.

18. Applicant was honest and forthright in his communications to the Bureau and while testifying during the evidentiary hearing. The Commission does not find Applicant to have bad character, lack integrity, or otherwise pose a threat to the public or to the effective regulation of controlled gambling.

19. Notwithstanding the Commission's findings in Paragraph 18, Applicant is disqualified from licensure pursuant to California Business and Professions Code section 19859, subdivision (c) and the Commission must, without discretion, deny his Application.^{1,2}

20. All documentary and testimonial evidence submitted by the parties that is not specifically addressed in this Decision and Order was considered but not used by the Commission in making its determination on Applicant's Application for Finding of Suitability Tribal Key Employee.

21. The matter was submitted for Commission consideration on May 27, 2021.

LEGAL CONCLUSIONS

22. Every Gaming Employee shall obtain, and thereafter maintain current, a valid tribal gaming license provided that a Tribe will not employ or continue to employ, any person whose application to the State Gaming Agency for a determination of suitability has been denied. (Tribal-State Compact between the State of California and Santa Rosa Indian Community of the Santa Rosa Rancheria sections 6.4.4(a) & (b).)

¹ Section 19859, subdivision (d) provides in part that an applicant shall be disqualified for "conviction of the applicant for any misdemeanor involving dishonesty or moral turpitude within the 10-year period immediately preceding the submission of the application, unless the applicant has been granted relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code..."

² All section references are to the Business and Professions Code unless otherwise stated.

1 23. Investigation and disposition of applications for a determination of suitability shall be
2 governed entirely by State law, and the State Gaming Agency shall determine whether the
3 Applicant would be found suitable for licensure in a gambling establishment subject to the State
4 Gaming Agency's jurisdiction. (Tribal-State Compact between the State of California and Santa
5 Rosa Indian Community of the Santa Rosa Rancheria section 6.5.6.)

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

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

13 26. "Finding of suitability" means a finding that a person meets the qualification criteria
14 described in subdivisions (a) and (b) of Section 19857, and that the person would not be
15 disqualified from holding a state gambling license on any grounds specified in Section 19859.
16 (Business and Professions Code section 19805(j).)

17 27. 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 28. An "unqualified person" means a person who is found to be unqualified pursuant to
22 the criteria set forth in Section 19857, and "disqualified person" means a person found to be
23 disqualified pursuant to the criteria set forth in Section 19859. (Business and Professions Code
24 section 19823(b).)

25 29. The burden of proof is always on the applicant to prove his, her, or its qualifications to
26 receive any license or other approval under the Gambling Control Act. (CCR section 12060(i).)

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1 **Applicant is Disqualified from Receiving a Finding of Suitability Due to a Felony**
2 **Conviction**

3 30. Section 19859, subdivision (c)(1) requires the Commission to deny an application for
4 licensure if the applicant has been convicted of a felony. Unlike exceptions for misdemeanor
5 crimes of moral turpitude which occurred more than 10 years prior to submission of the
6 application or were dismissed under PC section 1203.4, there is no exception contained in the
7 GCA for felony convictions other than a very limited one relating to prior cannabis possession
8 convictions that are no longer charged as felonies under Section 19859(c)(2). Therefore an
9 applicant with a felony conviction not covered under Section 19859(c)(2) will remain ineligible
10 for a license unless they have their conviction reduced to a misdemeanor for all purposes pursuant
11 to PC section 17(b) and, depending on the nature and date of the resulting misdemeanor,
12 dismissed under PC section 1203.4. (*People v. Moreno* (2014) 231 Cal.App.4th 934, 940)

13 31. Pursuant to Section 7.5, a “conviction” means a judgment following a plea or verdict
14 of guilty or a plea of nolo contendere or finding of guilt. Applying the definition of conviction
15 contained in Section 7.5, Applicant was convicted of a felony on December 4, 1990.

16 **The Relief Granted to Applicant Does Not Nullify His Felony Conviction**

17 32. Applicant was able to have his felony conviction dismissed under PC section 1203.4
18 but his request to have it reduced first to a misdemeanor under PC section 17(b) was denied. As a
19 result the dismissal does not negate or erase the existence of Applicant’s felony conviction or
20 make it a legal nullity. (*In re Phillips* (1941) 17 Cal.2d 55, 61; *Los Angeles County Dept. of*
21 *Children & Family Services v. Superior Court* (2003) 112 Cal.App.4th 509, 518; *Meyer v.*
22 *Superior Court In and For Sacramento County* (1966) 247 Cal.App.2d 133, 140.)

23 33. Based on the foregoing, the Commission concludes that Applicant has a felony
24 conviction notwithstanding the relief granted by the court under PC section 1203.4 and is
25 therefore disqualified from licensure under the GCA and a finding of suitability.

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1 NOTICE OF APPLICANT'S APPEAL RIGHTS

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

3 CCR section 12064, subsections (a) and (b) provide, in part:

4 (a) After the Commission issues a decision following a GCA hearing conducted
5 pursuant to Section 12060, an applicant denied a license, permit, registration, or
6 finding of suitability, or whose license, permit, registration, or finding of
7 suitability has had conditions, restrictions, or limitations imposed upon it, may
8 request reconsideration by the Commission. A request for reconsideration must
9 be:

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

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

16 (b) A request for reconsideration must state the reasons for the request, which
17 must be based upon either:

18 (1) Newly discovered evidence or legal authorities that could not reasonably
19 have been presented before the Commission's issuance of the decision or at the
20 hearing on the matter; or,

21 (2) Other good cause which the Commission may decide, in its sole discretion,
22 merits reconsideration.

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

24 A decision of the commission denying a license or approval, or imposing any
25 condition or restriction on the grant of a license or approval may be reviewed by
26 petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5
27 of the Code of Civil Procedure shall not apply to any judicial proceeding described
28 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.

CCR section 12066, subsection (c) provides:

A decision of the Commission denying an application or imposing conditions on
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. Alan Erikson's Application for Finding of Suitability Tribal Key Employee is
DENIED.

2. No costs are awarded.

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

This Order is effective on August 23, 2021.

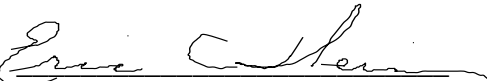
Dated: 7/22/21

Signature: 
Paula LaBrie, Chair

Dated: 7-22-21

Signature: 
Cathleen Galgiani, Commissioner

Dated: 07/22/2021

Signature: 
Eric Heins, Commissioner

Dated: 7/22/21

Signature: 
Edward Yee, Commissioner