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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Approval
of State Gambling License:

Robert Russell Harris

Applicant.

CGCC Case No. CGCC-2020-0827-5B
BGC Case No. BGC-HQ2020-00027SL

AMENDED DECISION AND ORDER

Hearing Date: Thursday, May 7, 2021
Time: 10:00 a.m.

1. 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 7, 2021.

2. Neil Houston, Deputy Attorney General, State of California (DAG Houston), represented complainant Stephanie Shimazu, Director of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

3. Attorney Tiffany Conklin-Lichtig (Attorney Lichtig) represented Applicant Robert Harris, Jr., (Harris), who also attended.

4. During the evidentiary hearing, Presiding Officer Russell Johnson (Presiding Officer) took official notice of the following: the Notice and Agenda of Commission Hearing; the Commission's Conclusion of Prehearing Conference letter; the Commission's Notice of Hearing with Harris' Application and the Bureau's Report as attachments; the Bureau's Statement of Reasons, and; Harris' signed Notice of Defense.

5. At the prehearing conference, the parties stipulated to four facts which the Presiding Officer read into the record at the start of the evidentiary hearing:

- a. Mr. Harris was convicted of violating Health and Safety Code section 11351, possession of cocaine with intent to distribute, a felony, on or about December 3, 1987.

- 1 b. The Orange County Superior Court granted an Order of Dismissal of Mr.
- 2 Harris's felony conviction pursuant to Penal Code section 1203.4 on or
- 3 about June 24, 2016.
- 4 c. The Orange County Superior Court granted a Certificate of Rehabilitation
- 5 to Mr. Harris on or about June 22, 2018.
- 6 d. Governor Edmund G. Brown, Jr. granted to Mr. Harris a full and
- 7 unconditional pardon for Mr. Harris's felony conviction on or about
- 8 December 24, 2018.

9 6. Pursuant to a stipulation between the parties, the Presiding Officer accepted into
 10 evidence Exhibits 1 through 7 offered by the Bureau, which contain bates numbering
 11 Complainant-001 to Complainant-159 with a Table of Contents that separately identifies each
 12 document.

13 7. Also pursuant to a stipulation between the parties, the Presiding Officer admitted
 14 into evidence Harris' Exhibits A to M,¹ which contain bates numbering RRH001 to RRH066 with
 15 a Table of Contents that separately identifies each document.

16 8. The record was closed and the matter was submitted on May 7, 2021.

FINDINGS OF FACT

Procedural History

19 9. On or about August 28, 2015, the Bureau received an initial Application for State
 20 Gambling License and Gambling Establishment Owner Applicant-Individual Supplemental
 21 Background Investigation Information for Harris (collectively referred to as "Application") as
 22 successor trustee and contingent beneficiary of the Commerce Trust, which holds 1.37 percent
 23 ownership interest in Commerce Casino.

24 10. On January 21, 2020, the Bureau issued an Initial Background Investigation
 25 Report, Level III (Report) with respect to Harris' Application. The Report recommended denial of
 26 the Application on the basis that Harris was convicted of a felony and is therefore disqualified

27 ¹ The Bureau stipulated to admission of Harris' Exhibit J, with the caveat that the stipulation was
 28 limited to the existence and content solely of the document, which is the text of California Assembly Bill
 1427, February 19, 2021.

1 from licensure.

2 11. At its August 27, 2020 meeting, the Commission referred consideration of Harris’
3 Application to an evidentiary hearing pursuant to CCR section 12054, subdivision (a)(2), to be
4 conducted as a Gambling Control Act (GCA) hearing under CCR section 12054(a)(2).

5 12. On or about September 22, 2020, Harris submitted a Notice of Defense signed by
6 his designated agent, Attorney Lichtig, requesting an evidentiary hearing on the merits of his
7 Application.

8 13. On or about December 24, 2020 the Commission sent a Notice of Hearing to
9 Attorney Lichtig and DAG Houston providing that a hearing was scheduled for May 7, 2021.

10 14. On or about March 22, 2021, the Bureau sent a Statement of Reasons to the
11 Commission and Harris. In the Statement of Reasons, the Bureau requests that the Commission
12 deny the Application on the basis that Harris was convicted of a felony and is therefore
13 disqualified from licensure.

14 15. The Commission heard this matter via Zoom video conference on May 7, 2021.
15 The Bureau was represented by DAG Houston. Harris attended the hearing and was represented
16 by Attorney Lichtig.

17 16. On July 20, 2021, the Commission issued a Decision and Order denying Harris’
18 application on the basis that he has a felony conviction that the Commission considered to be
19 disqualifying under Business and Professions Code section 19859(c).

20 17. Thereafter, Applicant filed a Petition for Writ of Mandate and Complaint for
21 Declaratory Relief in *Robert Russell Harris, JR v. California Gambling Control Commission*,
22 Sacramento Superior Court Case No. 34-2021-80003737.

23 18. On April 7, 2022, the Sacramento Superior Court issued a tentative ruling granting
24 the writ of mandate on the basis that the Governor’s pardon under Penal Code section 4853
25 reinstated Harris’ right to be considered for a state gambling license without automatic
26 disqualification pursuant to Business and Professions Code section 19859(c)(1) on the basis of his
27 now pardoned 1987 conviction.
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1 19. Neither party requested argument and the tentative ruling became the final ruling
2 of the court on April 8, 2022.

3 20. A judgment was issued in favor of Harris, and a Peremptory Writ of Mandate was
4 issued on April 22, 2022, commanding the Commission to set aside its decision of July 20, 2021,
5 and to take action in accordance with the Court’s ruling and file a return within 60 days after
6 issuance of the writ, setting forth what has been done to comply therewith (Judgment).

7 21. On May 17, 2022, Harris served on the Commission the Order on Harris’ Petition
8 for Peremptory Writ of Mandate and the Judgment Granting Harris’ Petition for Peremptory Writ
9 of Mandate.

10 22. The Commission reconsidered its July 20, 2021 Decision and Order, and in
11 accordance with the Judgment, the Commission issues this Amended Decision and Order
12 approving Harris’ Application.

13 **Harris’ Criminal History**

14 23. On December 3, 1987, Applicant was convicted of violating California Health and
15 Safety Code section 11351 (possession of cocaine, with intent to distribute), a felony.

16 24. The Orange County Superior Court granted an Order of Dismissal of Harris’s
17 felony conviction pursuant to Penal Code section 1203.4 on or about June 24, 2016.

18 25. The Orange County Superior Court granted a Certificate of Rehabilitation to
19 Harris on or about June 22, 2018.

20 26. Governor Edmund G. Brown, Jr. granted to Harris a full and unconditional pardon
21 for Harris’s felony conviction on or about December 24, 2018.

22 **Assessment of Suitability for Licensure on the Merits**

23 27. Conviction of a felony disqualifies an applicant from licensure under Business and
24 Professions Code section 19859(c). However, pursuant to the Judgment, Harris has been restored
25 of his right to be considered for a state gambling license on the merits, which right was removed
26 when he was convicted of a felony in 1987. Harris’ pardon serves to restore his right to be
27 considered on the merits of his qualifications. Therefore, Harris has met his burden of
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1 establishing that he is not disqualified from licensure under Business and Professions Code
2 section 19859(c).

3 28. A criminal conviction, and facts and circumstances of the incident leading to the
4 conviction, may lead to a determination that the applicant lacks good character, honesty, and
5 integrity or poses a risk to the public interest of the state or to the effective regulation and control
6 of controlled gambling, or creates or enhances the dangers of unsuitable or illegal practices in the
7 conduct of controlled gambling, which are disqualifying criteria under Business and Professions
8 Code section 19857.

9 29. The circumstances leading to Harris' conviction arose from an isolated incident
10 that occurred long ago in 1987. According to Harris' testimony, he has not had any additional
11 convictions or even a traffic ticket since his 1987 conviction.

12 30. Harris testified that he does not have substance abuse issues. Harris has a license
13 for drag racing, which he has been participating in since 1989. Harris must undergo a physical
14 exam every two years and annual drug testing in order to maintain his drag racing license and he
15 has never had any problems stemming from the annual tests.

16 31. The Bureau Report indicates no derogatory information regarding Harris other
17 than the aforementioned criminal conviction.

18 32. Additionally, Harris offered several character reference letters that were admitted
19 into evidence at the GCA hearing. Steve Williams, Chief Engineering Officer for K&N
20 Engineering and Harris' former boss, provided a character reference for Harris. Mr. Williams
21 wrote that he has known Harris since 1990 and Harris worked for him for more than 10 years
22 beginning in 2001. Mr. Williams was impressed with Harris' work ethic, his commitment to
23 learning, and his level of professionalism. Mr. Williams acknowledges that Harris made some
24 poor choices as a young man, but states that Harris began to reflect on what he was doing with his
25 life, gained employment, owned up to his errors, and put himself on the right path. Finally, Mr.
26 Williams wrote that Harris is an excellent husband, father, and friend.

27 33. A character reference letter by Rick Doll, General Manager of Champion Cooling
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1 Systems, was also admitted into evidence. Mr. Doll wrote that he has known Harris since hiring
2 him in November of 2013. Harris is a dedicated employee with an excellent work ethic. Harris is
3 a top producing sales person with stellar knowledge of the industry. Mr. Williams also wrote that
4 Harris is a kind and generous person and a committed husband and father.

5 34. A final letter of reference written by retired Police Chief Normal Hansen was
6 admitted into evidence. Mr. Hansen wrote that he has known Harris and his family since 1969.
7 Mr. Hansen is fully aware of the problems Harris had in his late teens and early twenties. Since
8 then, Harris grew up and matured and became a model citizen. Mr. Hansen wrote that Harris
9 works hard and is an excellent husband and father.

10 35. The character reference letters indicate that Harris is a dedicated and valued
11 employee in his current and past positions and has an excellent work ethic. Further, the authors of
12 the letters all indicate awareness of Harris' conviction, but believe that Harris had matured to
13 become an excellent employee, friend, father, and husband. The traits attested to in the character
14 reference letters reflect positively on Harris' character, honesty, and integrity and his ability to be
15 involved in controlled gambling.

16 36. Based on the foregoing factual findings, Harris' pardoned 1987 conviction does
17 not demonstrate that he lacks good character, honesty, or integrity, or that he poses a risk to the
18 public interest of this state or to the effective regulation and control of controlled gambling.
19 Additionally, the 1987 conviction does not create or enhance the dangers of unsuitable or illegal
20 practices or activities in the conduct of controlled gambling or the financial arrangements thereto.

21 37. All documentary and testimonial evidence submitted by the parties that is not
22 specifically addressed in this Decision and Order was considered but not used by the Commission
23 in making its determination on Harris' Application.

24 **LEGAL CONCLUSIONS**

25 38. Division 1.5 of the Business and Professions Code, the provisions of which govern
26 the denial of licenses on various grounds, does not apply to licensure decisions made by the
27 Commission under the GCA. Business and Professions Code section 476(a).

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1 39. Public trust that permissible gambling will not endanger public health, safety, or
2 welfare requires that comprehensive measures be enacted to ensure that gambling is free from
3 criminal and corruptive elements, that it is conducted honestly and competitively, and that it is
4 conducted in suitable locations. Business and Professions Code section 19810(g).

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

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

13 42. An “unqualified person” means a person who is found to be unqualified pursuant
14 to the criteria set forth in Section 19857, and “disqualified person” means a person found to be
15 disqualified pursuant to the criteria set forth in Section 19859. Business and Professions Code
16 section 19823(b).

17 43. At an evidentiary hearing pursuant to the GCA, the burden of proof rests with the
18 applicant to prove his or her qualifications to receive any license. Business and Professions Code
19 section 19856(a); CCR section 12060(i).

20 44. An application for a license will be denied if the Commission finds that any of the
21 provisions of Business and Professions Code section 19859 apply to the applicant. CCR section
22 12040(a)(2).

23 45. No gambling license shall be issued unless, based on all of the information and
24 documents submitted, the commission is satisfied that the applicant is a person of good character,
25 honesty, and integrity. Business and Professions Code section 19857(a); CCR section
26 12040(a)(1).

27 46. No gambling license shall be issued unless, based on all of the information and
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1 documents submitted, the Commission is satisfied that that applicant is a person whose prior
2 activities, criminal record, reputation, habits, and associations, do not pose a threat to the public
3 interest of this state, or to the effective regulation and control of controlled gambling, or create or
4 enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the
5 conduct of controlled gambling or in the carrying on of the business and financial arrangements
6 incidental thereto. Business and Professions Code section 19857(b); CCR section 12040(a)(1).

7 47. Harris has met his burden of demonstrating that he is not disqualified from
8 licensure pursuant to Business and Professions Code section 19859 and not subject to denial
9 pursuant to CCR section 12040(a)(2).

10 48. Harris met his burden of demonstrating that he is a person of good character,
11 honesty and integrity pursuant to Business and Professions Code section 19857(a). Therefore,
12 Harris is qualified to receive a State Gambling License pursuant to Business and Professions
13 Code section 19857(a) and not subject to denial pursuant to CCR section 12040(a)(1).

14 49. Harris has also met his burden of demonstrating that he is a person whose prior
15 activities, reputation, habits, and associations do not pose a threat to the public interest of this
16 state, or to the effective regulation and control of controlled gambling, or create or enhance the
17 dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of
18 controlled gambling or in the carrying on of the business and financial arrangements incidental
19 thereto. Therefore, Harris is qualified to receive a State Gambling License pursuant to Business
20 and Professions Code section 19857(b) and not subject to denial pursuant to CCR section
21 12040(a)(1).

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ORDER

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- 1. Robert Harris' Application for a State Gambling License is APPROVED.
- 2. No costs are awarded.
- 3. Each side to pay its own attorneys' fees.

This Order is effective on June 28, 2022.

Dated: 6/23/2022 Signature: 
DocuSigned by: 38D0AB38C651466...
 Paula LaBrie, Chair

Dated: 6/28/2022 Signature: 
DocuSigned by: 3D1DB086F9274AA...
 Cathleen Galgiani, Commissioner

Dated: 6/27/2022 Signature: 
DocuSigned by: 2B4CE9520F8845C...
 Eric Heins, Commissioner

Dated: 6/23/2022 Signature: 
DocuSigned by: 7722F4571120449...
 William Liu, Commissioner

Dated: 6/23/2022 Signature: 
DocuSigned by: 14B4AD3B90F8462...
 Edward Yee, Commissioner