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CALIFORNIA GAMBLING CONTROL COMMISSION

10 **BEFORE THE**
11 **CALIFORNIA GAMBLING CONTROL COMMISSION**
12 **STATE OF CALIFORNIA**

14 **In the Matter of the Application for a Key
Employee License Regarding:**
15
16 **JAMES CRAIG TOBIASZ**
17 
18
19 **Applicant.**

BGC Case No.: BGC-HQ2013-00008AL
CGCC Case No.: 2013-0321-3

STATEMENT OF PARTICULARS

22 **PARTIES**

23 1. Wayne J. Quint, Jr., submits this Statement of Particulars solely in his official
24 capacity as the Chief of the California Department of Justice, Bureau of Gambling Control
25 (Bureau).
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27
28

1 (d) All proceedings at a meeting of the commission relating to a
2 license application shall be recorded stenographically or by audio or
3 video recording.

4 (e) A decision of the commission denying a license or approval,
5 or imposing any condition or restriction on the grant of a license or
6 approval may be reviewed by petition pursuant to Section 1085 of the
7 Code of Civil Procedure. Section 1094.5 of the Code of Civil
8 Procedure shall not apply to any judicial proceeding described in the
9 foregoing sentence, and the court may grant the petition only if the
10 court finds that the action of the commission was arbitrary and
11 capricious, or that the action exceeded the commission's jurisdiction.

12 10. Business and Professions Code section 19871 provides:

13 (a) The commission meeting described in Section 19870 shall be
14 conducted in accordance with regulations of the commission and as
15 follows:

16 (1) Oral evidence shall be taken only upon oath or affirmation.

17 (2) Each party shall have all of the following rights:

18 (A) To call and examine witnesses.

19 (B) To introduce exhibits relevant to the issues of the
20 case.

21 (C) To cross-examine opposing witnesses on any matters
22 relevant to the issues, even though the matter was not covered
23 on direct examination.

24 (D) To impeach any witness, regardless of which party
25 first called the witness to testify.

26 (E) To offer rebuttal evidence.

27 (3) If the applicant does not testify in his or her own behalf, he
28 or she may be called and examined as if under cross-examination.

(4) The meeting need not be conducted according to technical
rules relating to evidence and witnesses. Any relevant evidence
may be considered, and is sufficient in itself to support a finding, if
it is the sort of evidence on which responsible persons are
accustomed to rely in the conduct of serious affairs, regardless of
the existence of any common law or statutory rule that might make

1 improper the admission of that evidence over objection in a civil
2 action.

3 (b) Nothing in this section confers upon an applicant a right to
4 discovery of the department's¹ investigative reports or to require
5 disclosure of any document or information the disclosure of which is
6 otherwise prohibited by any other provision of this chapter.

7 SPECIFIC STATUTORY AND REGULATORY PROVISIONS

8 11. Business and Professions Code section 19856, subdivision (a) provides in part:

9 The burden of proving his or her qualifications to receive any
10 license is on the applicant.

11 12. Business and Professions Code section 19854, subdivision (b) provides:

12 No person may be issued a key employee license unless the
13 person would qualify for a state gambling license.

14 13. Business and Professions Code section 19857 provides:

15 No gambling license shall be issued unless, based on all the
16 information and documents submitted, the commission is satisfied
17 that the applicant is all of the following:

18 (a) A person of good character, honesty and integrity.

19 (b) A person whose prior activities, criminal record, if any,
20 reputation, habits, and associations do not pose a threat to the public
21 interest of this state, or to the effective regulation and control of
22 controlled gambling, or create or enhance the dangers of unsuitable,
23 unfair, or illegal practices, methods, and activities in the conduct of
24 controlled gambling or in the carrying on of the business and
25 financial arrangements incidental thereto.

26 (c) A person that is in all other respects qualified to be licensed
27 as provided in this chapter.

28

1 ¹ "Department" refers to the Department of Justice, Bureau of Gambling Control. (Bus. & Prof. Code, § 19805, subd. (h).)

1 LICENSURE CONSIDERATIONS

2 (Misdemeanor Criminal Conviction)

3 14. Applicant's 1993 misdemeanor conviction, and the information he provided and/or
4 failed to provide the Bureau about that conviction, presents a question whether Applicant is
5 qualified for licensure pursuant to the criteria set forth in Business and Professions Code section
6 19857. The circumstances are as follows:

7 a. On or about November 24, 1993, in the Town Court in New Hartford, New
8 York, Applicant was convicted of violating New York Penal Code section 155.25, petit larceny, a
9 misdemeanor. Applicant was conditionally discharged and ordered to pay a \$100 fine. Applicant
10 failed to pay the fine and a bench warrant was issued for his arrest. Applicant then paid the fine
11 and the warrant was cleared.

12 b. On or about November 21, 1993, Applicant provided a written document
13 entitled "Voluntary Statement" to the New Hartford Police Department. This document described
14 the facts leading to Applicant's above-described arrest and conviction, and was signed by
15 Applicant. Applicant's statement stated as follows:

16 I would like to say that on 11-20-93 I was at my place of
17 employment, J.C. Penney Department Store in New Hartford,
18 where I am a sales associate. At about 1:30 pm a freind [sic] of
19 mine by the name of Chris Romano came in to [sic] the Mens [sic]
20 Accessories department, where I was the cashier, and brought
21 over a Miami Hurricanes starter jacket, a pair of Levi Jeans and
22 some boxer shorts. Chris handed me his driver [sic] license. I
23 pretended that Chris's license was a credit card and proceeded to
24 punch the J.C. Penney credit card account #02779661984 into the
25 cash register. The above account number is one that I memorized
26 from a customer who came into the store about two weeks ago. I
27 figured I could use the number to obtain merchandise in the near
28 future. Once I punched in the account number I handed Chris the
receipt and said "here sign this" and Chris signed the name Frank
with a scribbled last name. Chris then left the store with \$203.31
worth of merchandise that had been charged on the above account
number.

I am not at all familiar with the person who has the J.C.
Penney credit card account number that we used accept [sic] when
the person came into J.C. Penney about two weeks ago. I did not
have authorization to use J.C. Penney account # 02779661984.

1 c. During the application process for a Gambling Establishment Key Employee
2 License, Applicant provided responses to questions on a form entitled "Key Employee
3 Supplemental Background Investigation Information BGC-APP. 016A (Rev. 08/09)." Section 6,
4 page 4, of this form asked questions regarding criminal convictions. Specifically, Applicant was
5 asked "Have you ever been convicted of a crime or pled guilty or pled nolo contendere (no
6 contest) to a crime? Include any convictions reduced or expunged unless the records have been
7 sealed pursuant to a court order. (Do not include vehicle code infractions). If yes, provide details
8 for each incident below." Applicant responded to these questions by checking the box entitled
9 "NO." On April 30, 2011, in section 12, page 8, of this form, Applicant declared the accuracy of
10 the information he provided under penalty of perjury.

11 d. On or about March 30, 2012, staff from the Bureau of Gambling Control sent
12 Applicant a letter via email that requested additional information. In question number 5, Bureau
13 staff made the following request for information from Applicant:

14 The Bureau's investigation revealed that in 1993, you were
15 convicted of larceny in New Hartford, New York. Provide the
16 following:

- 17 a. Explanation of the circumstances surrounding the
 conviction
- 18 b. Reason for not disclosing this conviction on your
 supplemental information form
- 19 c. Court documents related to this case, including the
 final disposition

20 e. In response to question number 5 above, Applicant provided Bureau staff with
21 the following response:

22
23 In 1993 when I was 19 years old I was convicted of larceny in
24 New Hartford, NY. I was at the scene and did not cooperate with
25 the store on who the thief was, since it was a childhood friend of
26 mine. Since I did not cooperate I was charged as well. I went to
27 court paid \$100 fine with no other sentence or fines to be paid. A
28 couple weeks after the court I received my pictures and fingerprints
in the mail. Since I received all this documentation back from the
court I thought the charges were dropped. After this I worked at a
State Bank (Albany Savings Bank/Albank), The Hartford Ins.
Company, and Rio hotel [sic] & Casino. I have never disclosed this

1 incident because I thought it was dropped from my record. Just
2 recently due to the Bureau of Gambling Control's investigation this
3 has been brought to my attention. Being very embarrassed of the
4 incident, I requested the final disposition from New Hartford town
5 court; as soon as this information is received it will be faxed over to
6 the attn. of Kristine Martin.

7 BUREAU RECOMMENDATION

8 15. On February 26, 2013, the Bureau issued a Cardroom Key Employee Background
9 Investigation Report, and based on its investigation, the Bureau recommended to the Commission
10 that Applicant's Application for Gambling Establishment Key Employee License be granted. The
11 Bureau's recommendation takes into account the following factors in mitigation:

12 a. Applicant has been employed in various capacities in the licensed gambling
13 industry in California and Nevada since January 2005. Such employment includes being
14 employed as a supervisor and dealer at the Rio Hotel & Casino located in Las Vegas, Nevada, and
15 as a floorman, floor supervisor, and poker room supervisor at the Aviator Casino located in
16 Delano, California. The latter two supervisor positions at the Aviator Casino are key employee
17 positions.² There is no history of any employment problems during the over nine years Applicant
18 has been employed in the licensed gambling industry; or any evidence that, as a result of
19 Applicant's employment, he posed a threat to the public's interest, or to the effective regulation
20 and control of controlled gambling, or created or enhanced the dangers of unsuitable, unfair, or
21 illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying
22 on of the business and financial arrangements incidental thereto.

23 b. While Applicant failed to originally disclose his misdemeanor conviction in New
24 Hartford, New York for violating New York Penal Code section 155.25, petit larceny, and then
25 provided inaccurate information to Bureau staff regarding the facts underlying this conviction, the
26 Bureau's recommendation takes into consideration that this conviction occurred over 20 years
27 ago.

28 _____
² Individuals, such as Applicant, who meet certain requirements, may work in a key
employee position for a licensed gambling establishment pending the Commission taking a final
action on that person's application for licensure. (Cal. Code. Regs., tit. 4, § 12354.)

1 c. There is no evidence of Applicant having a history of repeated violations of the
2 same or similar criminal offenses.

3 d. There is no evidence of Applicant having a history of violating any of the
4 provisions of the Gambling Control Act (Bus. & Prof. Code, § 19800 et seq.).

5 e. Applicant does not appear to pose a threat to the health, safety or welfare of the
6 public, and appears to now be a person of good character, honesty and integrity.

7 **CONCLUSION**

8 WHEREFORE, Bureau Chief Wayne J. Quint, Jr., consistent with the Bureau's
9 recommendation regarding Applicant, recommends that he be granted a key employee portable
10 personal license.

11
12 Dated: July 18TH, 2014



13 WAYNE J. QUINT, JR., Chief
14 Bureau of Gambling Control
15 California Department of Justice