

2015 AUG 14 AM 9: 48

1 KAMALA D. HARRIS
Attorney General of California
2 SARA J. DRAKE
Senior Assistant Attorney General
3 JAMES G. WAIAN
Deputy Attorney General
4 State Bar No. 152084
600 West Broadway, Suite 1800
5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2600
Fax: (619) 645-2012
7 E-mail: James.Waian@doj.ca.gov
Attorneys for Complainant
8

9
10 **BEFORE THE**
11 **CALIFORNIA GAMBLING CONTROL COMMISSION**
12 **STATE OF CALIFORNIA**
13

14 **In the Matter of the Statement of Reasons**
15 **Against:**

BGC Case No. BGC-HQ2015-00001SL
CGCC Case No. CGCC-2014-1211-12B

16 **MICHAEL FUSTON**
17 

STATEMENT OF REASONS

18
19 **Respondent.**
20

21 Complainant alleges as follows:

22 **PARTIES**

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

26 2. On or about July 11, 2013, Michael Fuston, also known as Michael Leroy Fuston,
27 (Respondent) submitted an Application for Gambling Establishment Key Employee License, and
28

1 a Supplemental Background Investigation Information form (collectively, application) to the
2 California Gambling Control Commission (Commission).

3 3. At its December 11, 2014, meeting, the Commission referred Respondent's
4 application to an evidentiary hearing.

5
6 **JURISDICTION**

7 4. Business and Professions Code, section 19811 provides, in part:

8 * * *

9 (b) Jurisdiction, including jurisdiction over operation and
10 concentration, and supervision over gambling establishments in this state
11 and over all persons or things having to do with the operations of
12 gambling establishments is vested in the commission.

13 5. Business and Professions Code, section 19823 provides:

14 (a) The responsibilities of the commission include, without
15 limitation, all of the following:

16 (1) Assuring that licenses, approvals, and permits are not
17 issued to, or held by, unqualified or disqualified persons, or by persons
18 whose operations are conducted in a manner that is inimical to the public
19 health, safety, or welfare.

20 (2) Assuring that there is no material involvement, directly
21 or indirectly, with a licensed gambling operation, or the ownership or
22 management thereof, by unqualified or disqualified persons, or by
23 persons whose operations are conducted in a manner that is inimical to
24 the public health, safety, or welfare.

25 (b) For the purposes of this section, "unqualified person" means a
26 person who is found to be unqualified pursuant to the criteria set forth in
27 Section 19857, and a "disqualified person" means a person who is found
28 to be disqualified pursuant to the criteria set forth in Section 19859.

6. Business and Professions Code, section 19824 provides, in part:

The commission shall have all powers necessary and proper to enable
it fully and effectually to carry out the policies and purposes of this

1 chapter,¹] including, without limitation, the power to do all of the
2 following:

3 * * *

4 (b) For any cause deemed reasonable by the commission, deny any
5 application for a license, permit, or approval provided for in this chapter or
6 regulations adopted pursuant to this chapter, limit, condition, or restrict any
license, permit, or approval, or impose any fine upon any person licensed or
approved.

7 * * *

8 (d) Take actions deemed to be reasonable to ensure that no
9 ineligible, unqualified, disqualified, or unsuitable persons are associated
10 with controlled gambling activities.

11 **SPECIFIC STATUTORY PROVISIONS**

12 7. Business and Professions Code, section 19854, subdivision (a), provides:

13 Every key employee shall apply for and obtain a key employee
14 license.

15 8. Business and Professions Code, section 19854, subdivision (b) provides:

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

18 9. Under Business and Professions Code, section 19856, subdivision (a), the burden of
19 proving his or her qualifications to receive any license is on the applicant.

20 10. Business and Professions Code, section 19857 provides, in part:

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

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

24 (b) A person whose prior activities, criminal record, if any,
25 reputation, habits, and associations do not pose a threat to the public
26 interest of this state, or to the effective regulation and control of
controlled gambling, or create or enhance the dangers of unsuitable,

27 ¹ Hereinafter, "chapter" refers to Business and Professions Code, division 8, chapter 5,
28 (commencing with section 19800), also known as the Gambling Control Act.

1 unfair, or illegal practices, methods, and activities in the conduct of
2 controlled gambling or in the carrying on of the business and financial
arrangements incidental thereto. . . .

3 11. Business and Professions Code, section 19859 provides, in part:

4 The commission shall deny a license to any applicant who is
5 disqualified for any of the following reasons:

6 * * *

7 (b) Failure of the applicant to provide information, documentation,
and assurances required by this chapter or requested by the chief,² or
8 failure of the applicant to reveal any fact material to qualification, or the
supplying of information that is untrue or misleading as to a material fact
9 pertaining to the qualification criteria.

10 (c) Conviction of a felony, including a conviction by a federal court
or a court in another state for a crime that would constitute a felony if
11 committed in California.

12 (d) Conviction of the applicant for any misdemeanor involving
dishonesty or moral turpitude within the 10-year period immediately
13 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
14 Penal Code; provided, however, that the granting of relief pursuant to
Section 1203.4, 1203.4a, or 1203.45 of the Penal Code shall not
15 constitute a limitation on the discretion of the commission under Section
16 19856 or affect the applicant's burden under Section 19857.

17 12. Business and Professions Code, section 19866 provides:

18 An applicant for licensing or for any approval or consent required
by this chapter, shall make full and true disclosure of all information
19 to the department and the commission as necessary to carry out the
policies of this state relating to licensing, registration, and control of
20 gambling.

21 13. Business and Professions Code, section 19870 provides:

22 (a) The commission, after considering the recommendation of
the [Bureau] chief and any other testimony and written comments as
23 may be presented at the meeting, or as may have been submitted in
writing to the commission prior to the meeting, may either deny the
24 application or grant a license to an applicant who it determines to be
25 qualified to hold the license.

26
27 ² "Chief" refers to the Chief of the Bureau. (Bus. & Prof. Code, § 19805, subd. (d).)
28

1 (b) When the commission grants an application for a license or
2 approval, the commission may limit or place restrictions thereon as it
3 may deem necessary in the public interest, consistent with the policies
described in this chapter.

4 (c) When an application is denied, the commission shall prepare
5 and file a detailed statement of its reasons for the denial.

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

8 (e) A decision of the commission denying a license or approval,
9 or imposing any condition or restriction on the grant of a license or
10 approval may be reviewed by petition pursuant to Section 1085 of the
11 Code of Civil Procedure. Section 1094.5 of the Code of Civil
12 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.

13 14. Business and Professions Code, section 19871 provides:

14 (a) The commission meeting described in Section 19870 shall be
15 conducted in accordance with regulations of the commission and as
16 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
on direct examination.

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

25 (E) To offer rebuttal evidence.

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

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

9 (b) Nothing in this section confers upon an applicant a right to
10 discovery of the department's³ investigative reports or to require
11 disclosure of any document or information the disclosure of which is
12 otherwise prohibited by any other provision of this chapter.

13 FIRST CAUSE FOR DENIAL

14 (Felony Conviction – Disqualification for Licensure)

15 15. Respondent's application is subject to mandatory denial pursuant to Business and
16 Professions Code, section 19859, subdivision (c), in that on or about September 24, 1981,
17 Respondent was convicted, upon a plea of guilty, of violating Penal Code, section 484,
18 subdivision (f)(2), forgery in connection with a credit card, a felony, in the case of *People v.*
19 *Michael Leroy Fuston* (Super. Ct. Sacramento County, 1981, No. 60826).

20 SECOND CAUSE FOR DENIAL

21 (Criminal Convictions)

22 16. Respondent's application is subject to denial pursuant to Business and Professions
23 Code, section 19857, and mandatory denial pursuant to Business and Professions Code, section
24 19859, subdivision (a), in that Respondent has demonstrated a lack of the requisite good general
25 character, honesty, and integrity. Respondent's prior activities, criminal record, habits, and
26 associations pose a threat to the public interest of this state, or to the effective regulation and
27 control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal
28 practices, methods, and activities in the conduct of controlled gambling. Respondent has engaged

³ "Department" refers to the Department of Justice, Bureau of Gambling Control. (Bus. & Prof. Code, § 19805, subd. (h).)

1 in repeated illegal behavior since 1981, demonstrating a pattern and practice of an inherent
2 willingness to violate the law and a conscious disregard for the health, safety, and welfare of
3 others. Respondent's convictions include:

4 a. On or about September 24, 1981, Respondent was convicted, upon a plea
5 of guilty, of violating Penal Code, section 484, subdivision (f)(2), forgery in connection
6 with a credit card, a felony, in the case of *People v. Michael Leroy Fuston* (Super. Ct.
7 Sacramento County, 1981, No. 60826).

8 b. On or about August 11, 1994, Respondent was convicted, upon a plea of
9 guilty, of violating Penal Code, section 245, subdivision (a)(1), assault with a deadly
10 weapon or instrument other than a firearm, a misdemeanor, in the case of *People v. Michael*
11 *Leroy Fuston* (Super. Ct. Sacramento County, 1994, No. 94FO4413), which is a conviction
12 of a crime of moral turpitude that is more than 10 years prior to the submission of the
13 application.

14 THIRD CAUSE FOR DENIAL

15 (Failure to Disclose)

16 17. Respondent's application is subject to denial pursuant to Business and Professions
17 Code, section 19857, subdivision (a), and section 19866, and mandatory denial pursuant to
18 Business and Professions Code, section 19859, subdivision (b), in that Respondent failed to
19 demonstrate that he is a person of good character, honesty, and integrity, failed to make full and
20 true disclosure of all information to the Bureau and the Commission as necessary to carry out the
21 policies of this state relating to licensing, registration, and control of gaming, and failed to
22 provide information, documentation, and assurances required by the Gambling Control Act or as
23 requested by the Chief, or failed to reveal facts material to his qualification, or the supplied
24 information is untrue or misleading as to a material fact pertaining to the qualification criteria.
25 More specifically, Respondent failed to disclose on his application that on or about August 11,
26 1994, Respondent was convicted, upon a plea of guilty, of violating Penal Code, section 245,
27 subdivision (a)(1), assault with a deadly weapon or instrument other than a firearm, a
28

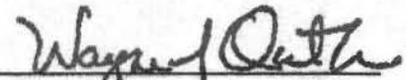
1 misdemeanor, in the case of *People v. Michael Leroy Fuston* (Super. Ct. Sacramento County,
2 1994, No. 94FO4413).

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Commission issue a decision:

- 6 1. Denying Respondent's application; and
7 2. Taking such other and further action as the Commission may deem appropriate.

8
9 Dated: August 10, 2015

10 

11 WAYNE J. QENT JR., Chief
12 Bureau of Gambling Control
13 California Department of Justice
14 Complainant
15
16
17
18
19
20
21
22
23
24
25
26
27
28