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8
9 **BEFORE THE**
10 **CALIFORNIA GAMBLING CONTROL COMMISSION**
11 **STATE OF CALIFORNIA**

13 **In the Matter of the Statement of Reasons**
14 **Re:**

BGC Case No. BGC-HQ2017-0019SL

CGCC Case No. CGCC-2017-0921-17E

15 **GARY STEVE KIRBY**
16 [REDACTED]
17 [REDACTED]

STATEMENT OF REASONS

18
19 **Respondent.**

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Complainant alleges as follows:

PARTIES

1. Stephanie Shimazu (Complainant) brings this Statement of Reasons solely in her official capacity as the Director of the California Department of Justice, Bureau of Gambling Control (Bureau).

2. On or about October 28, 2015, Gary Steve Kirby (Respondent) submitted an Application for a Finding of Suitability Tribal Key Employee (Application) to the California

1 Gambling Control Commission (Commission), along with the supplemental background
2 information form.¹

3 3. Respondent's Tribal Key Employee license will expire on May 4, 2019, unless the
4 tribal gaming authority issues a renewal license to Respondent on or before that date.²

5 4. At its September 21, 2017, the Commission referred Respondent's Application to an
6 evidentiary hearing and the matter was set for a hearing before the Commission.

7 5. On or about October 3, 2017, Respondent signed a Notice of Defense form
8 confirming his request for an evidentiary hearing before the Commission and, on an unknown
9 date, he submitted his Notice of Defense form to the Commission.

10 6. On or about December 19, 2017, the Commission set the matter for a hearing to be
11 conducted pursuant to Business and Professions Code section 19870, California Code of
12 Regulations, title 4, section 12056, subdivision (a), and section 12060, subdivision (b).³

13 **FIRST CAUSE FOR DENIAL⁴**

14 **(Criminal Convictions – Character, Honesty, Integrity)**

15 7. Respondent's Application is subject to denial pursuant to Business and Professions
16 Code sections 19805, subdivision (j); 19854, subdivision (b); and 19857, subdivisions (a) and (b),
17 and California Code of Regulations, title 4, section 12346, subdivision (a)(1).
18

19 ¹ At the time of his Application, Respondent was employed as a Dual Rate Dealer at the
20 Graton Resort and Casino in Rohnert Park, California. Because this gambling establishment is
21 operated by the Federated Indians of Graton Rancheria pursuant to a tribal-state compact,
22 Respondent's tribal key employee license, TRKE-016725, was issued by the tribal gaming
authority. Accordingly, the Commission is required to make a Finding of Suitability for licensure
under the California Gambling Control Act. (See Tribal-State Compact Between the State of
California and the Federated Indians of Graton Rancheria, § 6.5.6.)

23 ² On or about May 22, 2017, Respondent submitted a second Application for a Finding on
24 Suitability Tribal Key Employee, which indicates that the tribal gaming authority, the Graton
25 Gaming Commission, renewed his tribal key employee license which was previously set to expire
on October 7, 2017.

26 ³ The statutes and regulations applicable to this Statement of Reasons are quoted in
pertinent part in Appendix A.

27 ⁴ The Bureau has changed its recommendation from approval of Respondent's Application
28 to denial.

1 a. Respondent was convicted of a crime, the facts and circumstances of which
2 involved moral turpitude in that Respondent was convicted of battery of a person with whom he
3 had a close personal relationship. Specifically, on or about November 1, 1982, Respondent was
4 convicted of a violation of California Penal Code section 242, misdemeanor battery, in the case of
5 *People v. Gary Steve Kirby* (Muni. Ct. Sonoma County, 1982, No. uncertain).⁵

6 b. On or about May 5, 1992, Respondent was convicted of a violation of
7 California Penal Code section 240, misdemeanor assault, in the case of *People v. Gary Steve*
8 *Kirby* (Muni. Ct. Sonoma County, 1992, No. MCR-188657).

9 c. Respondent was convicted of a crime, the facts and circumstances of which
10 involved moral turpitude in that Respondent was convicted of willful infliction of corporal injury
11 upon a person with whom he had a close personal relationship. Specifically, on or about June 15,
12 1993, Respondent was convicted of a violation of California Penal Code section 273.5,
13 subdivision (a), misdemeanor willful infliction of corporal injury upon a spouse or former spouse,
14 in the case of *People v. Gary Steve Kirby* (Super./Muni. Ct. Sonoma County, 1993, Nos. SCR-
15 20477 and MCR-210080).⁶ In the same criminal proceedings, Respondent was convicted of two
16 counts of violating California Penal Code section 273.6, subdivision (a), misdemeanor intentional
17 and knowing violation of a court order to prevent harassment.

18 **SECOND CAUSE FOR DENIAL**

19 **(Failure to Make Full and True Disclosure of Information –**
20 **Providing Misleading Information)**

21 8. Respondent's Application is subject to denial pursuant to Business and Professions
22 Code sections 19805, subdivision (j); 19854, subdivision (b); 19857, subdivisions (a) and (c);
23 19859, subdivision (b); and 19866, and California Code of Regulations, title 4, section 12346,

24 _____
25 ⁵ Although Respondent's 1982 conviction was for a crime involving moral turpitude, the
26 conviction occurred more than 10 years prior to the date the Application was submitted and thus
is not a basis for mandatory denial.

27 ⁶ Although Respondent's 1993 conviction was for a crime involving moral turpitude, the
28 conviction occurred more than 10 years prior to the date the Application was submitted and thus
is not a basis for mandatory denial.

1 subdivision (a)(1), because he failed to provide full, true and accurate information to the Bureau
2 in connection with his Application, and he provided untrue or misleading material information.

3 a. Respondent failed to provide full, true and accurate information to the Bureau
4 about his 1982, 1992, and 1993 criminal convictions as described in the First Cause for Denial.
5 Respondent failed to disclose his 1982 misdemeanor battery conviction and his 1992
6 misdemeanor assault conviction in his Application. Respondent failed to provide full, true and
7 accurate information in his Application about his 1993 misdemeanor convictions. Respondent
8 provided untrue or misleading information to the Bureau about his 1993 misdemeanor
9 convictions when asked by the Bureau to explain the circumstances leading to those convictions.

10 b. Respondent failed to provide full, true and accurate information to the Bureau on
11 his Application in that he represented that his "1988" discharge from the National Guard was
12 "honorable" when in fact he received a general discharge "under honorable conditions" in 1990.

13 **PRAYER**

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

- 16 1. Denying Respondent's Application for a Finding of Suitability Tribal Key Employee;
17 2. Taking such other and further action as the Commission may deem appropriate.

18
19 Dated: March 21, 2018

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21 STEPHANIE SHIMAZU, Director
22 Bureau of Gambling Control
23 California Department of Justice
24 Complainant

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APPENDIX
JURISDICTION

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

* * *

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

2. Business and Professions Code section 19823 provides:

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

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

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

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

3. 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 chapter,^[7] including, without limitation, the power to do all of the following:

* * *

(b) For any cause deemed reasonable by the commission, deny any application for a license, permit, or approval provided for in this chapter

⁷ Hereinafter, “chapter” refers to Business and Professions Code, division 8, chapter 5, (commencing with section 19800), also known as the Gambling Control Act.

1 or regulations adopted pursuant to this chapter, limit, condition, or restrict
2 any license, permit, or approval, or impose any fine upon any person
3 licensed or approved.

4 * * *

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

8 4. Section 6.5.6, subdivision (d), of the Tribal-State Compact Between the State of
9 California and the Federated Indians of Graton Rancheria provides, in part:

10 Investigation and disposition of applications for a determination of
11 suitability shall be governed entirely by State law, and the State Gaming
12 Agency shall determine whether the Applicant would be found suitable
13 for licensure in a gambling establishment subject to the State Gaming
14 Agency's jurisdiction.

15 **SPECIFIC STATUTORY PROVISIONS**

16 5. Business and Professions Code section 19805, subdivision (j), provides:

17 "Finding of Suitability" means a finding that a person meets the
18 qualification criteria described in subdivisions (a) and (b) of Section
19 19857, and that the person would not be disqualified from holding a state
20 gambling license on any of the grounds specified in Section 19859.

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

23 7. Business and Professions Code section 19854, subdivision (b), provides:

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

26 8. Business and Professions Code section 19857 provides:

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

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

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

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
3 arrangements incidental thereto.

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

- 6 9. Business and Professions Code section 19859 provides, in part:

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

9 * * *

10 (b) Failure of the applicant to provide information, documentation,
11 and assurances required by this chapter or requested by the chief,^[8] or
12 failure of the applicant to reveal any fact material to qualification, or the
13 supplying of information that is untrue or misleading as to a material fact
14 pertaining to the qualification criteria.

- 15 10. Business and Professions Code section 19866 provides:

16 An applicant for licensing or for any approval or consent required
17 by this chapter, shall make full and true disclosure of all information
18 to the department^[9] and the commission as necessary to carry out the
19 policies of this state relating to licensing, registration, and control of
20 gambling.

- 21 11. California Code of Regulations, title 4, section 12346, subdivision (a)(1) provides:

22 (a) An application for a gambling license shall be denied by the
23 Commission if any of the following apply:

24 (1) The Commission finds that the applicant is ineligible,
25 unqualified, disqualified, or unsuitable pursuant to the criteria set
26 forth in the Act or other applicable law or that granting the license
27 would be inimical to public health, safety, welfare, or would
28 undermine the public trust that gambling operations are free from
criminal or dishonest elements.

12. Business and Professions Code section 19870 provides:

25 ⁸ "Chief" refers to the Chief [Director] of the Bureau. (Bus. & Prof. Code, § 19805, subd.
26 (d).)

27 ⁹ "Department" refers to the Department of Justice, Bureau of Gambling Control. (Bus. &
28 Prof. Code, § 19805, subd. (h).)

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

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

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

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

12 (e) A decision of the commission denying a license or approval,
13 or imposing any condition or restriction on the grant of a license or
14 approval may be reviewed by petition pursuant to Section 1085 of the
15 Code of Civil Procedure. Section 1094.5 of the Code of Civil
16 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.

17 13. Business and Professions Code section 19871 provides:

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

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

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

22 (A) To call and examine witnesses.

23 (B) To introduce exhibits relevant to the issues of the
24 case.

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

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

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(E) To offer rebuttal evidence.

(3) If the applicant does not testify in his or her own behalf, he 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 improper the admission of that evidence over objection in a civil action.

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