

ORIGINAL

XAVIER BECERRA
Attorney General of California
SARA J. DRAKE
Senior Assistant Attorney General
JAMES G. WAIAN
Deputy Attorney General
State Bar No. 152084
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9335
Fax: (619) 645-2012
E-mail: James.Waian@doj.ca.gov
Attorneys for the Bureau of Gambling Control



BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

In the Matter of the Statement of Reasons for Denial of Application for a Third-Party Proposition Player Services License for:

JOSUE BRIAN BARRIENTOS

Registration number TPPL-019209

Respondent.

BGC Case No. BGC-HQ2017-0021SL
CGCC Case No. CGCC-2017-0907-10A

STATEMENT OF REASONS

1 Complainant alleges as follows:

2 **PARTIES**

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

6 2. On or about February 27, 2017, the California Gambling Control Commission
7 (Commission) issued third-party proposition player services registration, number TPPL-019209,
8 to Josue Brian Barrientos (Respondent) to allow for his employment as a third-party proposition
9 player for Knighted Ventures, LLC, a registered third-party proposition player services provider,
10 registration number TPPP-000109.

11 3. On or about March 22, 2017, Respondent submitted an Application for Third-Party
12 Proposition Player Services License for Supervisor, Player or Other Employee, together with a
13 Level I Supplemental Information form (collectively, Application), to the Bureau.¹

14 4. On or about July 24, 2017, the Bureau submitted a Third-Party Player Background
15 Investigation Report to the Commission recommending that Respondent's Application be
16 approved. The Bureau has since changed its recommendation from approval to denial.

17 5. At its September 7, 2017 meeting, the Commission referred consideration of
18 Respondent's Application to an evidentiary hearing to be conducted pursuant to Business and
19 Professions Code sections 19870 and 19871, and California Code of Regulations, title 4, section
20 12056, subdivision (a).² (Cal. Code Regs., tit. 4, § 12060, subd. (a).)

21 6. On or about September 22, 2017, the Commission notified Respondent of the
22 Commission's decision to refer the matter to an evidentiary hearing. (Cal. Code Regs., tit. 4, §
23 12060, subd. (b).) Included with that written notice was a Notice of Defense form for Respondent

24 _____
25 ¹ Respondent was required to convert his registration to a license and submit an
26 application for such licensure pursuant to California Code of Regulations, title 4, sections
27 12205.1 and 12218, because Knighted Ventures, LLC, was summoned on February 1, 2013, to
28 submit an application to convert its registration to a license.

² The statutes and regulations applicable to this Statement of Reasons are quoted in
pertinent part in Appendix A.

1 to complete and return. On or about October 27, 2017, the Commission received Respondent's
2 completed Notice of Defense form.³

3 **BURDEN OF PROOF**

4 7. Respondent has the burden of proving his qualifications to receive a license.
5 (Bus. & Prof. Code, § 19856, subd. (a).)

6 **FIRST CAUSE FOR DENIAL**

7 **(Prior Activities and Criminal Record)**

8 8. Respondent's Application is subject to denial and his registration subject to
9 revocation or cancellation in that Respondent has engaged in illegal behavior, demonstrating an
10 inherent willingness to violate the law and a conscious disregard for the health, safety, and
11 welfare of others. On or about February 11, 2013, Respondent was convicted, upon a plea of
12 guilty, of violating Penal Code section 415, subdivision (2), disturbing the peace, a misdemeanor,
13 in the case of *People v. Josue Brian Barrientos* (Super. Ct. Los Angeles County, 2013, No.
14 2EA09361). Respondent's conviction resulted from a domestic disturbance involving his former
15 female companion, where she suffered injuries to her face. Respondent was arrested and
16 originally charged with violating Penal Code section 236, misdemeanor false imprisonment, and
17 Penal Code section 243, subdivision (e)(1), domestic battery, a misdemeanor.
18 (Bus. & Prof. Code, §§ 19856, subd. (b), 19857, subds. (a) & (b); Cal. Code. Regs., tit. 4, §§
19 12200.18, subds. (a) & (b), 12218.11, subds. (e) [mandatory denial], (f) [mandatory denial], & (j)
20 [mandatory denial].)

21 **SECOND CAUSE FOR DENIAL**

22 **(Failure and/or Refusal to Accurately and Honestly Disclose
23 Requested and Required Information)**

24 9. The allegations in paragraph eight, above, are incorporated here by this reference.

25 10. Respondent's Application is subject to denial and his registration subject to

26 _____
27 ³ Respondent's Notice of Defense form was submitted after the requisite due date
28 specified on the Notice of Defense form. However, the Bureau is not seeking the denial of
Respondent's Application by way of a default.

1 revocation or cancellation because Respondent, under penalty of perjury, failed and/or refused to
2 accurately and honestly disclose in response to the Bureau's inquiry, the circumstances leading to
3 his conviction as alleged in paragraph eight, above. Respondent's statement to the Bureau
4 describing the circumstances leading to his conviction does not match the statement he gave to
5 law enforcement officers at the time of Respondent's arrest.

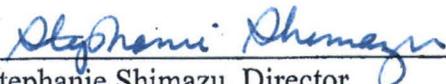
6 (Bus. & Prof. Code, §§ 19856, subd. (b), 19857, subds. (a) & (b), 19859, subds. (a) [mandatory
7 denial] & (b) [mandatory denial], 19866; Cal. Code. Regs., tit. 4, §§ 12200.18, subds. (a), (b), &
8 (f), 12218.11, subds. (e) [mandatory denial], (f) [mandatory denial], & (j) [mandatory denial].)

9 **PRAYER**

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

- 12 1. Denying Respondent's Application for Third-Party Proposition Player Services
13 License;
- 14 2. Cancelling or revoking Respondent's registration, number TPPL-019209; and
- 15 3. Taking such other and further action as the Commission may deem appropriate.

16
17 Dated: March 7, 2018


Stephanie Shimazu, Director
Bureau of Gambling Control
California Department of Justice

1 disqualified, or unsuitable persons are associated with controlled gambling activities.

2 4. Business and Professions Code, section 19853, subdivision (a), provides:

3 The commission, by regulation or order, may require that the following persons
4 register with the commission, apply for a finding of suitability as defined in
5 subdivision (i) of 19805, or apply for a gambling license:

6 * * *

7 (3) Any person who does business on the premises of a licensed gambling
8 establishment.

9 5. Business and Professions Code, section 19870 provides:

10 (a) The commission, after considering the recommendation of the chief⁵ and any
11 other testimony and written comments as may be presented at the meeting, or as may
12 have been submitted in writing to the commission prior to the meeting, may either
13 deny the application or grant a license to an applicant who it determines to be
14 qualified to hold the license.

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

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

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

22 (e) A decision of the commission denying a license or approval, or imposing any
23 condition or restriction on the grant of a license or approval may be reviewed by
24 petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5 of
25 the Code of Civil Procedure shall not apply to any judicial proceeding described in
26 the foregoing sentence, and the court may grant the petition only if the court finds that
27 the action of the commission was arbitrary and capricious, or that the action exceeded
28 the commission's jurisdiction.

6. Business and Professions Code, section 19871 provides:

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

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

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

(A) To call and examine witnesses.

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

⁵ "Chief" refers to the Director of the Bureau. (Bus. & Prof. Code, § 19805, subd. (d).)

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

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

5 (E) To offer rebuttal evidence.

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

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

14 (b) Nothing in this section confers upon an applicant a right to discovery of the
15 department's⁶ investigative reports or to require disclosure of any document or
16 information the disclosure of which is otherwise prohibited by any other provision of
17 this chapter.

18 7. California Code of Regulations, title 4, section 12056, subdivision (a) provides, in
19 part:

20 If the Commission elects to hold an evidentiary hearing, the hearing will be
21 conducted as a GCA hearing under Section 12060, unless the Executive Director or
22 the Commission determines the hearing should be conducted as an APA hearing
23 under Section 12058 . . .

24 8. California Code of Regulations, title 4, section 12060 provides, in part:

25 (a) If the Executive Director determines it is appropriate, he or she may set an
26 application for consideration at a GCA hearing in advance of a meeting pursuant to
27 Section 12054. The Executive Director shall give notice to the applicant, pursuant to
28 paragraph (2) subsection (c) of Section 12052, to the Office of the Attorney General,
and to the Bureau no later than 90 calendar days in advance of the GCA hearing. The
Executive Director's determination will be based on information contained in the
Bureau's report or other appropriate sources including, without limitation, a request
from the Bureau or applicant as well as the Commission's operational considerations.
The Commission retains the authority to refer the matter to an APA hearing pursuant
to subsection (a) of Section 12056 or hear the matter at a Section 12054 meeting if the
Commission deems it appropriate.

(b) When the Commission has elected to hold a GCA hearing, the Executive
Director shall give notice to the applicant, pursuant to paragraph (2) subsection (c) of

6 "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd.
(h).)

1 Section 12052, to the Office of the Attorney General, and to the Bureau no later than
2 60 calendar days in advance of the GCA hearing.

3 **SPECIFIC STATUTORY PROVISIONS**

4 9. Business and Professions Code section 19856 provides, in part:

5 (a) The burden of proving his or her qualifications to receive any license is on the
6 applicant.

7 (b) An application to receive a license constitutes a request for a determination of
8 the applicant's general character, integrity, and ability to participate in, engage in, or
be associated with, controlled gambling.

9 10. Business and Professions Code, section 19857 provides:

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

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

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

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

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

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

23 (a) Failure of the applicant to clearly establish eligibility and qualification in
24 accordance with this chapter.

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

12. Business and Professions Code section 19866 provides:

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

1.
2. 13. California Code of Regulations, title 4, section 12205 provides:

3. (a) Any regular registration issued in accordance with this chapter^[7] shall be
4. subject to cancellation pursuant to this section. A registration shall be cancelled if the
5. Commission determines after a noticed hearing that the registrant is ineligible for
6. registration, has failed in the application for registration to reveal any fact material to
7. the holder's qualification for registration, or has supplied information in the
8. registration application that is untrue or misleading as to a material fact pertaining to
9. the criteria for issuance of registration.

10. (b) If the Commission finds that any of the circumstances set forth in subsection
11. (a) apply, then the Executive Director shall immediately do all of the following:

12. (1) Provide written notice to the registrant and the Bureau of the
13. cancellation of the registration and the grounds thereof, and provide written notice of
14. the cancellation to the owner, if the registrant is a supervisor, player, or other
15. employee and to any gambling establishment in which the registrant provides
16. proposition player services.

17. (2) Notify the registrant, if an individual, that he or she is required to
18. surrender the registrant's badge to the Commission not more than ten days following
19. the date that the notice of the cancellation was mailed or such greater time as is
20. authorized by the Executive Director.

21. THIRD-PARTY PROPOSITION PLAYER PROVISIONS

22. 14. Business and Professions Code section 19984, subdivision (b), provides, in part:

23. The commission shall establish reasonable criteria for, and require the licensure and
24. registration of, any person or entity that provides proposition player services to
25. gambling establishments pursuant to this section, including owners, supervisors, and
26. players . . . The commission may impose licensing requirements, disclosures,
27. approvals, conditions, or limitations as it deems necessary to protect the integrity of
28. controlled gambling in this state . . .

15. California Code of Regulations, title 4, section 12200.3, subdivision (g), provides:

Registrations, licenses, and badges are specific to the primary owner. Third party
proposition player services cannot be provided without first applying for and
obtaining a registration, license, or badge.

16. California Code of Regulations, title 4, section 12200.7, subdivisions (b)(8) and
(b)(9), provide:

(b) . . .

⁷ "Chapter" refers to California Code of Regulations, title 4, division 18, chapter 2.1,
section 12200 et seq.

1 * * *

2 (8) That proposition player services shall be provided in the gambling
3 establishment only in compliance with laws and regulations pertaining to controlled
4 gambling.

5 (9) That proposition player services may be provided only by authorized
6 players with current registration or licensing under this chapter.

- 7 17. California Code of Regulations, title 4, section 12200.18, subdivisions (a), (b), and
8 (f), provide:

9 The Commission may revoke a registration or license, upon any of the
10 following grounds, after a hearing conducted pursuant to the same procedures
11 applicable to the revocation of a gambling establishment license:

12 (a) The registrant or licensee committed, attempted to commit, or conspired to
13 commit any acts prohibited by the Act^[8] or this chapter.

14 (b) Any act or omission by the registrant that would disqualify the registrant from
15 obtaining registration under this chapter. Any act or omission by the licensee that
16 would disqualify the licensee from obtaining licensing under this chapter.

17 (f) The registrant or licensee concealed or refused to disclose any material fact in
18 any inquiry by the Bureau or the Commission.

- 19 18. California Code of Regulations, title 4, section 12218.11, provides, in part:

20 A requester shall be ineligible for licensing for any of the following causes:

21 * * *

22 (e) The requester has failed to meet the requirements of Business and Professions
23 Code sections 19856 or 19857.

24 (f) The requester would be ineligible for a state gambling license under any of the
25 criteria set forth in Business and Professions Code section 19859, subdivisions (b),
26 (e), or (f).

27 * * *

28 (i) The requester has failed to comply with one or more of the requirements set
forth in paragraphs (8), (9), (15), (16), (17), (18) or (21) of subsection (b) of Section
12200.7 or in paragraph (2) of subsection (c) of Section 12200.7.

(j) The applicant is ineligible based on any other provision of law.

⁸ "Act" refers to the "Gambling Control Act." (Bus. & Prof. Code, § 19800 et seq.)