

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Statement of Reasons
Against:

Vicente Lopez

Key Employee License No.: GEKE-001938

Respondent.

BGC Case No. BGC-HQ2015-00001AC
CGCC Case No. CGCC-2015-1022-5¹

DECISION AND ORDER

Hearing Date: May 3, 2016
Time: 10:00 a.m.

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, on May 3, 2016.

Paras Modha (Modha), Deputy Attorney General, State of California, represented complainant Wayne J. Quint, Jr., Chief of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

Respondent Vicente Lopez (Lopez) appeared on his own behalf.

During the administrative hearing, Presiding Officer Jason Pope took official notice of the Notice of Hearing and Prehearing Conference, with enclosures, sent by the Commission to Lopez and Modha, on December 16, 2015.

During the administrative hearing, Presiding Officer Jason Pope accepted into evidence the following exhibits offered by the Bureau:

- (1) Statement of Reasons; Statement to Respondent; copies of Bus. & Prof. Code §§ 19870 & 19871; copy of Cal. Code. Regs., tit 4, § 12060; February 22, 2016, and Certificate of Service by Certified Mail Service, Bates Nos. BGC 0001-0022;
- (2) Notice of Defense dated October 30, 2015, Bates Nos. BGC 0023-0024;
- (3) CGCC Letter dated October 22, 2015 re Referral to Evidentiary Hearing,

¹ The Commission's case number (CGCC-2015-1022-5) is mistakenly listed as CGCC-2015-0730-6E on the Bureau's Statement of Reasons.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Bates Nos. BGC 0025-0027;
- (4) Commission Meeting Memorandum dated October 22, 2015, Bates Nos. BGC 0028-0029;
- (5) CGCC Letter dated October 9, 2015 re Notification of Scheduled Commission Meeting, Bates No. BGC 0030;
- (6) CGCC Letter dated September 16, 2015 re Notification of Cancellation of Interim Portable Personal Key Employee License, Bates Nos. BGC 0031-0032;
- (7) California Department of Justice, Bureau of Gambling Control, Cardroom Key Employee Background Investigation Report dated September 2015, Bates Nos. BGC 0033-0047;
- (8) E-mail correspondence for request for information from Alameda County district Attorney; No response provided, Bates Nos. BGC 0048-0052;
- (9) Livermore Police Department Arrest Report received June 22, 2015, Bates Nos. BGC 0053-0078;
- (10) Telephone contact sheets with responses for the following:
 - 1) Navy Office in Sacramento – Officer Betz dated 06/18/15 w/ record request;
 - 2) CHP, Modesto – Officer Dixon dated 06/10/15 w/ records request;
 - 3) DMV Law Enforcement Counter – Kathy dated 06/10/15;
 - 4) City of Pittsburg Police Department, Records Specialist, Brian Villanuevo dated 05/26/15 w/ e-mail response;
 - 5) Applicant – Vicente Lopez dated 05/26/15; and
 - 6) CA Post – Karen Lozito dated 05/22/15 w/ records request, Bates Nos. BGC 0079-0116;
- (11) Employment Verification with the City of Menlo Police Department, Notice of Intended Discipline dated May 22, 2015, Bates Nos. BGC 0117-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 0123;
- (12) BGC letter to Vicente Lopez requesting additional information dated May 22, 2015 w/ response, Bates Nos. BGC 0124-0131;
- (13) Employment verification with Cross Fit 580 dated May 21, 2015 w/ response, Bates Nos. BGC 0132-0141;
- (14) Application for Gambling Key Employee License signed January 15, 2014, Bates Nos. BGC 0142-0159;
- (15) Application for Interim Key Employee License signed December 18, 2013, Bates No. BGC 0160;
- (16) Facsimile from Alyson Brewer-Hay, San Francisco Air Force District (United States Air Force) to Jessica Soulle, Casino 580 re Vicente Lopez's Employee Information dated February 21, 2012, Bates Nos. BGC 0161-0164;
- (17) Job Description in re Fortiss-Security Manager at Park West Casino 580, Livermore, California, Bates Nos. BGC 0165-0168;
- (18) Casino 580 Job Description, Bates Nos. BGC 0169-0171;
- (19) Dr. John LaRocco California State University of Sacramento webpages, Bates Nos. BGC 0172-0184;
- (20) Miscellaneous E-mails between DAG Modha and Mr. Lopez, Bates Nos. BGC 0185-0191; and
- (21) Arbitration Award, Bates Nos. BGC 0192-0212.

During the administrative hearing, Presiding Officer Jason Pope accepted into evidence the following exhibits offered by Lopez:

- (A) Menlo Park Police Department end of probation evaluation;
- (B) Livermore Police Department crime report;
- (C) Transcription of recording conduct at scene of accident (admitted into evidence as administrative hearsay);

- 1 (D) Transcription of Officer Wes Morgan internal affairs interview (admitted
2 into evidence as administrative hearsay);
- 3 (E) Transcription of Officer Eveler and Sergeant Jacobs internal affairs
4 interview (admitted into evidence as administrative hearsay);
- 5 (F) Emails from Officer Eveler and Sergeant Jacobs to Sergeant Bacon
6 (admitted into evidence as administrative hearsay);
- 7 (G) California Highway Patrol accident report;
- 8 (H) Department of Motor Vehicles reinstatement letter;
- 9 (I) Pittsburg Police Department letter of rejection of probation; and
- 10 (J) Email string from Crossfit 580 owner, Markian Kaczaj, to Vicente Lopez.

11 The matter was submitted on May 3, 2016.

12 FINDINGS OF FACT

- 13 1. On or about December 18, 2013, Lopez submitted an Application for Interim Key
14 Employee License to the Bureau. Lopez was granted an Interim Portable Key Employee License.
- 15 2. On or about February 4, 2014, Lopez submitted an Application for Gambling
16 Establishment Key Employee License (Application) to the Bureau. As part of the Application,
17 Lopez submitted a Key Employee Supplemental Background Investigation Information form
18 (Supplemental) to the Bureau.
- 19 3. On or about September 16, 2015, the Commission served a Notice of Cancellation of
20 Interim Portable Personal Key Employee License on Lopez via certified mail. The Commission
21 cancelled Lopez' Interim Portable Key Employee License pursuant to CCR Section 12354(e)(5)
22 based upon the Bureau's recommendation that Lopez' Application be denied.
- 23 4. On or about October 9, 2015, the Commission served a letter on Lopez via certified
24 mail, notifying him that the Commission will consider his Application at the October 22, 2015
25 Commission meeting.
- 26 5. At the October 22, 2015 Commission meeting, the Commission voted to refer
27 consideration of Lopez' Application to a Gambling Control Act (GCA) evidentiary hearing.
28

1 6. On or about October 30, 2015, Lopez submitted a Notice of Defense to the
2 Commission requesting an evidentiary hearing on the consideration of his Application.

3 7. On or about December 16, 2015, the Commission served a Notice of Hearing and
4 Prehearing Conference on Lopez and Modha via certified mail.

5 8. On or about February 22, 2016, the Bureau filed a Statement of Reasons with the
6 Commission and served the Statement of Reasons on Lopez via certified mail. In its Statement of
7 Reasons, the Bureau recommends the denial of Lopez' Application.

8 9. On or about March 15, 2016, the noticed Prehearing Conference was held before
9 Presiding Officer Jason Pope, Attorney III of the Commission. Paras Modha, Deputy Attorney
10 General, attended on behalf of the Bureau. Vicente Lopez attended on his own behalf.

11 10. On or about March 16, 2016, the Commission served a Conclusion of Prehearing
12 Conference letter on Lopez and Modha.

13 11. The Commission heard Case No. CGCC-2015-1022-5 on May 3, 2016. The Bureau
14 was represented throughout the hearing by Deputy Attorney General Paras Modha. Respondent
15 Vicente Lopez represented himself throughout the hearing.

16 12. Section 6 on the Supplemental requires that the applicant disclose prior criminal
17 convictions, litigation and arbitration history.

18 13. Having reliable and accurate information regarding an applicant's litigation and
19 arbitration history is material to the Bureau's ability to make proper recommendations on state
20 gambling license applications and to the Commission's ability to make proper decisions regarding
21 whether to grant or deny state gambling license applications.

22 14. On Section 6 of the Supplemental, which was filled out by Lopez on or about January
23 15, 2014, Lopez checked the box marked "No" to the question "Have you ever been a party to
24 any litigation or arbitration?"

25 15. On or about May 25, 2010, Lopez was a party to binding arbitration related to his
26 appeal from his termination by the City of Menlo Park Police Department.

27 16. Lopez knew that he had been involved in an arbitration at the time he filled out the
28

1 Supplemental.

2 17. Lopez was dishonest when he checked the box marked “No” to the question “Have
3 you ever been a party to any litigation or arbitration?” on the Supplemental.

4 18. Lopez demonstrated a lack of good character, honesty and integrity by failing to
5 disclose his participation in binding arbitration related to his appeal from his termination by the
6 City of Menlo Park Police Department on his Supplemental.

7 19. Lopez was employed as a police officer by the City of Menlo Park from February
8 2008 to September 2009.

9 20. On or about April 7, 2009, Lopez was involved in an automobile collision in the City
10 of Livermore after consuming alcohol.

11 21. Officers from the Livermore Police Department responded and conducted an
12 investigation. Lopez refused to take any field sobriety tests at the scene of the collision. Lopez
13 was arrested and booked into jail for driving under the influence of alcohol. Lopez later
14 submitted to a blood test which revealed a blood alcohol level of 0.05%. All criminal charges
15 against Lopez were dropped.

16 22. On or about May 14, 2009, the City of Menlo Park Police Department conducted an
17 Internal Affairs investigation and determined that Lopez repeatedly lied about the facts and
18 circumstances surrounding his April 7, 2009 automobile collision.

19 23. The City of Menlo Park Police Department determined that based on Lopez’
20 statements and actions during the initial criminal investigation conducted by the Livermore Police
21 Department and the subsequent Internal Affairs investigation, Lopez was found to be in violation
22 of several departmental policies.

23 24. On or about July 20, 2009, the City of Menlo Park Police Department issued a Notice
24 of Intended Discipline – Termination to Lopez (Notice). The purpose of the Notice was to inform
25 Lopez of the recommendation to terminate Lopez from employment with the City of Menlo Park
26 based upon Lopez’ violation of the rules, regulations, and procedures of the City of Menlo Park
27 Police Department.

28

1 25. Lopez filed an appeal of his termination (Appeal). Lopez' Appeal was subject to
2 binding arbitration and heard by Arbitrator John B. LaRocco (LaRocco) on or about May 25,
3 2010.

4 26. LaRocco issued an Opinion and Award following the binding arbitration on Lopez'
5 Appeal on or about October 21, 2010.

6 27. As described in the Opinion and Award, LaRocco concluded as follows:

- 7 a. That Lopez intentionally misrepresented the number of beers that he had
8 consumed at Hooters Restaurant prior to the automobile collision; that the lie
9 was intentional and devious; and that Lopez was dishonest when he
10 misrepresented to the Livermore Police officers that he had consumed two
11 beers;
- 12 b. That Lopez lied during his Internal Affairs interview when he claimed that he
13 never denied drinking to the Livermore Police officers; and
- 14 c. That Lopez was dishonest during his Internal Affairs investigation when he
15 asserted that he informed the Livermore Police officers that he was refusing
16 the field sobriety and PAS tests because he was uncomfortable and
17 embarrassed to take the tests in the presence of his family.

18 28. In the summary of the arbitration Opinion and Award, LaRocco states that Lopez'
19 multiple dishonest statements forever destroyed the trust between the City of Menlo Park Police
20 Department and Lopez; that neither the public nor the City of Menlo Park Police Department will
21 know if they can ever trust him again in any important situation; and that if Lopez resorts to lying
22 at an accident scene, then he probably will be unable to exercise integrity in more stressful
23 situations.

24 29. LaRocco ultimately found that the City of Menlo Park had just cause to terminate
25 Lopez as a police officer.

26 30. Lopez' multiple dishonest statements regarding the facts and circumstances
27 surrounding the April 7, 2009 automobile collision and May 14, 2009 Internal Affairs
28

1 investigation demonstrates a lack of good character, honesty and integrity.

2 31. Lopez' multiple dishonest statements and failure to disclose his arbitration on his
3 Supplemental demonstrates a lack of ability to participate in, engage in, or be associated with,
4 controlled gambling.

5 32. Lopez' testimony during this evidentiary hearing regarding the facts and
6 circumstances surrounding the April 7, 2009 automobile collision and May 14, 2009 Internal
7 Affairs investigation was not credible and insufficient to challenge the findings of LaRocco in the
8 October 21, 2010 arbitration Opinion and Award.

9 33. During the hearing, three witnesses testified as to Lopez' character:

- 10 a. Bernard Dalay (Dalay), an employee at Casino 580, testified that Lopez is
11 hard-working, fair, cooperative with law enforcement, and would not be a
12 danger to the public if Lopez was to receive his key employee license. Dalay's
13 testimony is partially discounted because Lopez was Dalay's immediate
14 supervisor and likely would be again if Lopez resumed work as a Security
15 Manager at Casino 580.
- 16 b. Alicia Fields (Fields), a former patron of Crossfit 580 where Lopez used to
17 work, testified that Lopez was a fair and fun fitness coach; that Lopez has a
18 great sense of humor; that Lopez is a good friend with sound character and
19 good moral conduct; and that she would trust him with the keys to her home
20 and business.
- 21 c. Amo Virk (Virk), a retired federal law enforcement officer who runs a private
22 investigation firm, testified that Lopez is ethical and detail-oriented, a hard
23 worker, has integrity and good character, and tells the truth even when it is not
24 something that Virk wants to hear.

25 34. The testimony of Dalay, Fields, and Virk is favorable to Lopez' character and in
26 support of his Application. However, the generalized positive testimony of Dalay, Fields, and
27 Virk regarding Lopez' honesty is not persuasive that Lopez is a person of honesty given his prior
28

1 dishonest acts regarding the facts and circumstances surrounding the April 7, 2009 automobile
2 collision and May 14, 2009 Internal Affairs investigation.

3 35. All documentary and testimonial evidence submitted by the parties that is not
4 specifically addressed in this Decision and Order was considered but not used by the Commission
5 in making its determination on Lopez' Application.

6 36. The matter was submitted for Commission consideration on May 3, 2016.

7 LEGAL CONCLUSIONS

8 37. Division 1.5 of the Business and Professions Code, the provisions of which govern the
9 denial of licenses on various grounds, does not apply to licensure decisions made by the
10 Commission under the Gambling Control Act. Business and Professions Code section 476(a).

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

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

19 40. An "unqualified person" means a person who is found to be unqualified pursuant to
20 the criteria set forth in Section 19857. Business and Professions Code section 19823(b).

21 41. The Commission has the power to deny any application for a license, permit, or
22 approval for any cause deemed reasonable by the Commission. Business and Professions Code
23 section 19824(b).

24 42. The burden of proving his or her qualifications to receive any license from the
25 Commission is on the applicant. Business and Professions Code section 19856(a).

26 43. An application to receive a license constitutes a request for a determination of the
27 applicant's general character, integrity, and ability to participate in, engage in, or be associated
28

1 with, controlled gambling. Business and Professions Code section 19856(b).

2 44. In reviewing an application for any license, the commission shall consider whether
3 issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the
4 license will undermine public trust that the gambling operations with respect to which the license
5 would be issued are free from criminal and dishonest elements and would be conducted honestly.
6 Business and Professions Code section 19856(c).

7 45. At an evidentiary hearing pursuant to Business and Professions Code sections 19870
8 and 19871 and CCR section 12060(b), the burden of proof rests with the applicant to prove his or
9 her qualifications to receive any license under the Gambling Control Act. CCR section 12060(i).

10 46. 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 a person of good character,
12 honesty, and integrity. Business and Professions Code section 19857(a).

13 47. An application for a portable personal key employee license shall be denied by the
14 Commission if the Commission finds that the applicant is ineligible, unqualified, disqualified, or
15 unsuitable pursuant to the criteria set forth in the Act or other applicable law, or that granting the
16 license would be inimical to public health, safety, welfare, or would undermine the public trust
17 that the gambling operations are free from criminal or dishonest elements. CCR section
18 12355(a)(1).

19 48. Lopez failed to demonstrate that his general character and integrity supports a
20 determination that he has the ability to participate in, engage in, or be associated with, controlled
21 gambling. As a result, Lopez did not meet his burden of proving his qualifications to receive a
22 key employee license pursuant to Business and Professions Code section 19856(a) and CCR
23 section 12060(i).

24 49. Lopez has failed to meet his burden of demonstrating that he is a person of good
25 character, honesty, and integrity. Therefore, Lopez is unqualified for the issuance of a state
26 gambling license pursuant to Business and Professions Code section 19857(a) and CCR section
27 12355(a)(1).

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF APPLICANT’S APPEAL RIGHTS

Lopez has the following appeal rights available under state law:

CCR section 12064, subsections (a) and (b) provide, in part:

An applicant denied a license, permit, registration, or finding of suitability, or whose license, permit, registration, or finding of suitability has had conditions, restrictions, or limitations imposed upon it, may request reconsideration by the Commission within 30 calendar days of service of the decision, or before the effective date specified in the decision, whichever is later. The request shall be made in writing to the Commission, copied to the Bureau, and shall state the reasons for the request, which must be based upon either newly discovered evidence or legal authorities that could not reasonably have been presented before the Commission’s issuance of the decision or at the hearing on the matter, or upon other good cause which the Commission may decide, in its sole discretion, merits reconsideration.

Business and Professions Code section 19870, subdivision (e) provides:

A decision of the commission denying a license or approval, or imposing any condition or restriction on the grant of a license or approval may be reviewed by petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5 of the Code of Civil 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.

CCR section 12066, subsection (c) provides:

A decision of the Commission denying an application or imposing conditions on license shall be subject to judicial review as provided in Business and Professions Code section 19870, subdivision (e). Neither the right to petition for judicial review nor the time for filing the petition shall be affected by failure to seek reconsideration.

ORDER

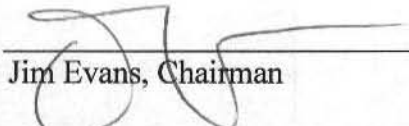
1
2 1. Vicente Lopez' Application for Gambling Establishment Key Employee License is
3 DENIED.

4 2. No costs are to be awarded.

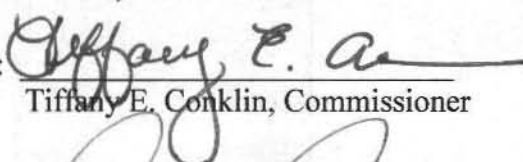
5 3. Each side to pay its own attorneys' fees.

6 This Order is effective on 6-23-16.

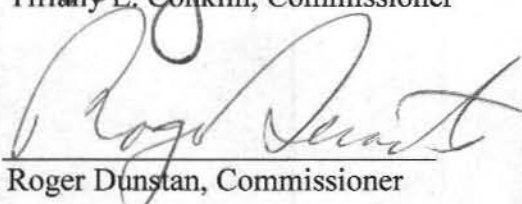
7
8 Dated: 5/24/16

Signature: 
Jim Evans, Chairman

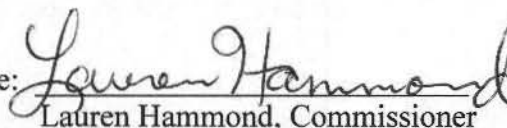
9
10 Dated: may 24, 2016

Signature: 
Tiffany E. Conklin, Commissioner

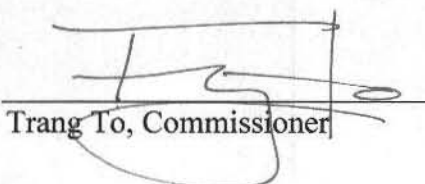
11
12 Dated: 5/24/16

Signature: 
Roger Dunstan, Commissioner

13
14 Dated: 5/24/16

Signature: 
Lauren Hammond, Commissioner

15
16 Dated: 5/24/16

Signature: 
Trang To, Commissioner