

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for a Key
Employee License Regarding:

MICHAEL MARCELLO LOPEZ

Applicant.

CGCC Case No. CGCC-2018- 0510-Eii
BGC Case No. BGC-HQ2018-00026SL

DECISION AND ORDER

Hearing Date: January 25, 2019
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(b), in Sacramento, California, on January 25, 2019.

Neil Houston, Supervising Deputy Attorney General, State of California, represented complainant Stephanie Shimazu, Chief of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

Michael Lopez (Applicant) was present and represented himself during the hearing.

During the administrative hearing, Presiding Officer Jason Pope took official notice of the following: (1) Notice of Evidentiary Hearing and attachments; (2) the Bureau's Statement of Reasons; (3) Applicant's Notice of Defense; and (4) the Conclusion of Prehearing Conference Letter.

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; Excerpts from the California Business and Professions Code and the CCR; November 15, 2018, Declaration of Service; and Notice of Defense, Bates Nos. 001-026;

(2) Commission Memorandum, Notices and Letters:

a. August 9, 2016, Interim Key Employee License, Bates Nos. 027-028;

b. March 21, 2018, Notice of Cancellation of Interim Key Employee License,

1 Bates Nos. 029;

2 c. April 24, 2018, Commission Licensing Division Memorandum, Bates Nos. 030-
3 038;

4 d. May 11, 2018, Referral to an Evidentiary Hearing, Bates Nos. 039-040;

5 e. July 31, 2018, Notice of Hearing, with attachments, Bates Nos. 041-063;

6 f. October 31, 2018, Conclusion of Prehearing Conference, Bates Nos. 064-068;

7 (3) Redacted copy of Application for Interim Key Employee License, dated July 19, 2016;
8 redacted copy of Application for Gambling Establishment Key Employee License, dated August
9 15, 2016; redacted copy of Key Employee Supplemental Background Investigation Information,
10 dated July 19, 2016, Bates Nos. 069-085;

11 (4) A copy of the Bureau's March 14, 2018, Cardroom Key Employee Background
12 Investigation Report, with Attachments A - D, Bates Nos. 086-102;

13 (5) Copies of correspondence between the Bureau and Applicant, from June 19, 2017 to
14 October 30, 2017, Bates Nos. 103-160;

15 (6) Copies of Division of Law Enforcement Telephone Contact Sheets, dated July 25,
16 2017 to March 1, 2018, Bates Nos. 161-162;

17 (7) Copies of employment verification queries and responses, dated October 6, 2019 to
18 July 10, 2017, Bates Nos. 163-176;

19 (8) Copies of Work Permits and associated verifications, Bates Nos. 177-185;

20 (9) Documents concerning Security Guard license, Bates Nos. 186-187;

21 (10) Correspondence between Bureau and Scott Greer dated March 1, 2018, Bates Nos.
22 188.

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

25 (A) Letter of Reference by Richard Shindle dated December 12, 2018;

26 (B) Letter of Reference by James Mullins dated December 12, 2018.

27 The hearing concluded on Friday, January 25, 2019, but the record was left open by
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1 Presiding Officer Pope until March 4, 2019. The Commission instructed the parties to attempt to
2 identify and contact two security guards who were allegedly present witnesses to Applicant's
3 termination from the Cameo Club. On March 1, 2019, the parties provided the Commission with
4 a letter stating that they identified and interviewed one of the security guards, but he could not
5 recall the incident in question. The other security guard could not be identified. The record was
6 closed and the matter submitted on March 4, 2019.

7 FINDINGS OF FACT

8 Background

9 1. Applicant was employed by both the Delta Casino and Kings Card Club as a cage
10 cashier. On or about June 17, 2016, Applicant was offered a promotion to cage supervisor.
11 Applicant accepted the position and began to prepare applications for an Interim Key Employee
12 License and an Initial Portable Key Employee License.

13 2. On July 25, 2016, the Bureau received Applicant's application for an Interim Key
14 Employee License. The application was signed by Applicant on July 19, 2016.

15 3. On August 9, 2016, Applicant was issued an Interim Key Employee License valid
16 through August 31, 2018. In the letter enclosing his interim license, the Commission notified
17 Applicant that he must submit an application for an Initial Portable Key Employee License to the
18 Bureau within 30 days of assuming a key employee position.

19 4. On August 23, 2016, the Bureau received Applicant's Application for Gambling
20 Establishment Key Employee License and Supplemental Background Investigation Information
21 form (collectively "Application"). Applicant's submission was incomplete and did not include
22 page 2 of the Application.

23 5. On September 20, 2016, the Bureau received the missing page from Applicant's
24 Application. The page was signed by Applicant on August 15, 2016, which is the same date that
25 the other Application documents received by the Bureau on August 23, 2016 were signed.

26 6. On the Application, Applicant identified that he previously worked for the Cameo
27 Club as a Floor Manager from February 2009 through May 2011. Applicant identified his reason
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1 for leaving his employment at Cameo Club as “laid off.”

2 7. In the course of the Bureau’s background investigation, it was determined that
3 Applicant failed to disclose that he was terminated from Cameo Club, failed to disclose that he
4 previously worked at two Pizza Factory locations and Secrets, a retail store, and failed to disclose
5 prior employment and licensure as a security guard. The Bureau also concluded that Applicant
6 did not timely submit his key employee Application.

7 8. On March 14, 2018, the Bureau issued its Level III Cardroom Key Employee
8 Background Investigation Report, which recommended that Applicant's Application be denied.

9 9. On the basis of the Bureau’s denial recommendation and pursuant to CCR section
10 12354, subdivision (e)(5), Applicant's Interim Key Employee License was cancelled effective
11 March 21, 2018.

12 10. On May 10, 2018, the Commission referred consideration of Applicant's Application
13 to an evidentiary hearing to be held under the provisions of CCR section 12060.

14 11. On or about May 20, 2018, Applicant submitted a signed Notice of Defense form
15 requesting an evidentiary hearing.

16 12. On or about November 16, 2018, the Bureau filed its Statement of Reasons. The
17 document alleges three causes for denial of Applicant’s Application for failure to disclose
18 information, providing false or misleading information, and failure to timely submit a key
19 employee application.

20 Applicant’s Failure to Disclose Prior Employment

21 13. In the course of the Bureau’s background investigation, it was determined that
22 Applicant failed to disclose prior employment and licensure as a security guard and failed to
23 disclose past work at Pizza Factory and Secrets, a retail store.

24 14. Applicant’s testimony at the hearing was consistent with his written statements that he
25 inadvertently failed to disclose these positions because he forgot about his short tenure as a
26 security guard and forgot the dates that he worked at Pizza Factory and Secrets. Further, when the
27 Bureau asked Applicant about this employment, he provided accurate and truthful information.

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1 Additionally, Applicant disclosed to the Bureau on a prior application that he was previously
2 employed at Pizza Factory and Secrets, which further indicates that he did not intend to conceal
3 the information.

4 Applicant's Termination from Cameo Club

5 15. In the course of the Bureau's background investigation, it obtained an employment
6 verification form signed by the General Manger of the Cameo Club, Richard McCaulley.
7 According to the form, Applicant was not eligible for rehire because he made a decision contrary
8 to Department of Justice (DOJ) approved games rules resulting in Cameo Club expending "tens
9 of thousands of dollars to correct the situation."

10 16. Andrea Farris, Manager I, testified that when the Bureau's analyst first called the
11 Cameo Club to verify Applicant's employment history, the analyst was told that Applicant was
12 not eligible for rehire.

13 17. According to the Telephone Contact Sheets, the Bureau's Associate Analyst spoke
14 with Mr. McCaulley on July 27, 2017, March 1, 2018, and April 19, 2018. Mr. McCaulley told
15 the Bureau's analyst that Applicant did not follow approved game rules when he made an
16 incorrect decision on how to pay out patrons in a Blackjack game ("Blackjack incident").
17 According to Mr. McCaulley, the DOJ investigated the Blackjack incident and concluded that
18 Applicant violated game rules and found that cardroom owed money to some of the patrons as a
19 result of Applicant's mistake. According to Mr. McCaulley, a written report was not issued by
20 DOJ regarding the Blackjack incident. Mr. McCaulley stated that Applicant was terminated
21 "immediately after" the Blackjack incident.

22 18. Ms. Farris testified that based on her understanding of information contained in the
23 Telephone Contact Sheet from a phone call between the Bureau's analyst and the DOJ Games
24 Unit, the judgment call made by Applicant in relation to the Blackjack incident was consistent
25 with the DOJ game rules.

26 19. Ms. Farris testified that the Bureau attempted to confirm whether DOJ conducted an
27 investigation was done into the Blackjack incident. The Bureau found that there was no record of
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1 such an investigation.

2 20. The Bureau admitted documents into evidence showing that numerous emails were
3 exchanged between the Bureau and Applicant between June 2017 and April 2018 regarding
4 Applicant's termination from Cameo Club. Throughout his email correspondence with the
5 Bureau, Applicant consistently described the circumstances leading to his termination from the
6 Cameo Club. Applicant was also consistent in explaining the reasons why he believed that he was
7 laid off rather than terminated.

8 21. Applicant's testimony at the hearing was also consistent with his written statements to
9 the Bureau. The Blackjack incident occurred in December 2010 while Applicant was working as
10 a Floor Manager. Applicant was called to a table to resolve a dispute between a dealer and
11 patrons. The patron's collectively won more money than the maximum payout permitted by the
12 third party provider, which would result in some players not being paid.

13 22. Applicant testified that there were no written policies or procedures at Cameo Club
14 that would have assisted him in determining how to handle the Blackjack incident. Applicant
15 handled the situation the way he was taught, and he believes it was the correct choice.

16 23. Applicant testified that two of the players were upset by the outcome and complained
17 to the Cameo Club's manager. However, Applicant has no knowledge of the complaining patrons
18 being paid at a later date or of the DOJ conducting an investigation.

19 24. During his testimony and in his written statements, Applicant consistently alleged that
20 the judgment call he made during the Blackjack incident was consistent with game rules.
21 Applicant stated that at the time of the Blackjack incident, his manager was supportive of his
22 decision and told Applicant that he handled the situation correctly. Applicant was not disciplined
23 or admonished at the time of the Blackjack incident.

24 25. Applicant testified that in May 2011, soon after Applicant finished training two
25 employees who were personal friends of Mr. McCaulley's, Applicant was called to McCaulley's
26 office and told that he was being "let go" due to the Blackjack incident. Mr. McCaulley told
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1 Applicant that he would be able to file for unemployment insurance benefits.¹

2 26. Applicant testified that Mr. McCaulley did not tell him that he was terminated or that
3 he would not be eligible for rehire. Applicant interpreted the situation to mean that he was “laid
4 off” so that Mr. McCaulley’s friend could take over Applicant’s position. Applicant considered
5 this a “lay off” which in his mind meant there was no more work available to Applicant.

6 27. When Applicant filed for unemployment insurance benefits he indicated that he was
7 “laid off.” Applicant believes that the Unemployment Insurance Commission called Cameo Club
8 to verify this information and thereafter his unemployment insurance benefits were immediately
9 approved. The fact that Cameo Club did not contest Applicant’s eligibility for benefits furthered
10 Applicant’s understanding that he was laid off.

11 28. Richard Shindle, one of the owners of Applicant’s current employer, Kings Card
12 Room, testified that he is an owner of Delta Club. Delta Club recently purchased the Cameo Club
13 as part of an asset only purchase.

14 29. Mr. Shindle testified that he spoke with Mr. McCaulley about Applicant during the
15 acquisition process and Mr. McCaulley did not mention the Blackjack incident. Applicant also
16 admitted a letter of reference written by Mr. Shindle into evidence. In the letter, Mr. Shindle
17 states that when Applicant applied for a cage position in October 2015, he called Mr. McCaulley
18 for a reference. Mr. McCaulley told Mr. Shindle that that Applicant “was a good employee and
19 was laid off by the club due to overstaffing.”

20 30. Mr. Shindle’s testimony that Mr. McCaulley gave Applicant a favorable employment
21 reference was corroborated by a letter of reference written by James Mullins, an owner of King
22 Card Club and West Lane Card Room. Mr. Mullins wrote that Applicant began working for him
23 with an excellent reference from Cameo Card Club approximately three years ago.

24 31. There appears to be a number of irregularities and inconsistencies in the manner in
25 which Applicant was terminated from Cameo Club: The Applicant was terminated after training a

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27 ¹ Applicant testified that two security guards were present when he was told that he was “laid
28 off.” However, as previously stated, the parties were unable to verify this information.

1 personal friend of the manager's to replace Applicant; Applicant continued working as a
2 supervisor without any discipline or admonishment for approximately five months before he was
3 terminated; Additionally, Mr. McCaulley's statement to the Bureau's analyst that Applicant was
4 *immediately* terminated after the Blackjack incident inconsistent with the evidence; Further, Mr.
5 McCaulley's contention that the DOJ investigated the Blackjack incident and the result of that
6 investigation was for Cameo Club to make a payment to patrons is inconsistent with Ms. Farris'
7 testimony that the DOJ has no record of such an investigation; Additionally, it is also irregular for
8 a manager to use the term "laid off" when severing an employment relationship and to suggest
9 that the employee will receive unemployment insurance benefits in the case of a serious policy
10 violation that resulted in a large monetary loss and a DOJ investigation.

11 32. The aforementioned irregularities and inconsistencies decrease the weight that the
12 Commission gives to the Employment Verification Form and Telephone Contact Sheets
13 containing statements by Mr. McCaulley.

14 33. Given all the circumstances, Applicant's testimony that he considered his separation
15 from employment to be a "lay off" rather than a termination is credible.

16 Timely Submission of Applicant's Application

17 34. Ms. Farris testified that Applicant's interim application was received on July 25, 2016
18 and his Application was received on August 25, 2016, which would make both applications
19 untimely if Applicant assumed key employee duties on June 17, 2016.

20 35. On July 6, 2017, the Bureau's Associate Analyst clarified Applicant's start date at
21 King Card Club with the Human Resource Manager, Chue Lee. Chue Lee responded by email
22 that Applicant was hired as a cage cashier on September 18, 2015 and on June 17, 2016 "we
23 asked Michael [if he] was interested in a supervisor role in the cage." Ms. Lee apologized in the
24 email if her prior response was confusing. The email from Chue Lee is persuasive evidence that
25 Applicant did not begin performing the duties of a key employee on June 17, rather that was the
26 date that Applicant was asked if he was interested in a key employee position.

27 36. Applicant testified at the hearing that he does not recall the exact date that he filled out
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1 the Application or started performing key employee duties. He believes the started the duties
2 approximately one month before he mailed his Application. Applicant testified that he mailed the
3 Application close to the due date because he had a difficult time obtaining the documentation he
4 needed because he was going through a divorce and his ex-wife had his documents.

5 37. The Commission is unable to conclude the exact date on which Applicant assumed a
6 key employee position or the date that he mailed the applications to the Bureau. Based on the
7 record of the present case, the Commission finds that the potentially late submission of
8 Applicants applications is insufficient to support a finding that Applicant is ineligible or
9 disqualified from licensure.

10 Applicant's Eligibility for Licensure

11 38. Applicant should have checked the box stating "termination" on the Application
12 regarding his employment with Cameo Club. However, applicant's failure to do so was based on
13 a genuine belief that he was laid off and not done to mislead or conceal information from the
14 Bureau. Applicant testified that he understands that he should have indicated that he was
15 terminated from Cameo Club on the Application.

16 39. James Mullins, an owner of King Card Club and West Lane Card Room, submitted a
17 letter of reference on Applicant's behalf stating that Applicant began working for him with an
18 excellent reference from Cameo Card Club approximately three years ago. The letter states that
19 Applicant is a capable and valued Cage Supervisor. According to the letter, Applicant created a
20 Standard Operating Procedure booklet and has personally trained all new hires and Applicant is
21 self-motivated, has a strong work ethic, and is trusted by the cardroom owners.

22 40. Richard Shindle, owner of King Card Club and Westlane Card Room also submitted a
23 written letter of reference and testified on Applicant's behalf. In the reference letter, Mr. Shindle
24 states that Applicant has been an excellent employee, helped create the Standard Operating
25 Procedures Manual for the cages at both clubs, supervises and trains all employees, and is highly
26 regarded.

27 41. Mr. Shindle testified that Applicant has done a "superb job" with record keeping and
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1 following policies to prevent money laundering. Mr. Shindle also testified that Applicant is
2 responsible for training personnel and will spend as much time as necessary to do the job right.
3 Applicant is also helpful and will assume other duties as needed when employees call out.

4 42. The character reference letters by Mr. Mullins and Mr. Shindle, as well as Mr.
5 Shindle's testimony are persuasive that Applicant is an excellent employee who was very
6 successful in his work in controlled gambling.

7 43. Applicant previously worked at Parkwest Casino Lodi between October 2013 and
8 September 2015. According to the employment verification submitted to the Bureau by Parkwest
9 Casino Lodi, Applicant is eligible for re-hire and no derogatory information was revealed.

10 44. Based on the foregoing, Applicant has met his burden of proving that he is a person of
11 good character, honesty, and integrity.

12 45. All documentary and testimonial evidence submitted by the parties that is not
13 specifically addressed in this Decision and Order was considered but not used by the Commission
14 in making its determination on Applicant's Application.

15 LEGAL CONCLUSIONS

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

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

23 3. At an evidentiary hearing pursuant to Business and Professions Code sections 19870
24 and 19871 and Title 4, CCR section 12060(b), the burden of proof rests with the applicant to
25 prove his or her qualifications to receive any license under the Gambling Control Act. Title 4,
26 CCR section 12060(i). Business and Professions Code section 19856(a).

27 4. An application to receive a license constitutes a request for a determination of the
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1 applicant's general character, integrity, and ability to participate in, engage in, or be associated
2 with, controlled gambling. Business and Professions Code section 19856(b).

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

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

12 7. An "unqualified person" means a person who is found to be unqualified pursuant to
13 the criteria set forth in Business and Professions Code section 19857, and "disqualified person"
14 means a person who is found to be disqualified pursuant to the criteria set forth in Business and
15 Professions Code section 19859. Business and Professions Code section 19823(b).

16 8. The Commission has the power to deny any application for a license, permit, or
17 approval for any cause deemed reasonable by the Commission. Business and Professions Code
18 section 19824(b).

19 9. No gambling license shall be issued unless, based on all of the information and
20 documents submitted, the commission is satisfied that the applicant is a person of good character,
21 honesty and integrity. Business and Professions Code section 19857(a).

22 10. An application for a Key Employee License shall be denied by the Commission if the
23 applicant is found unqualified pursuant to the criteria set forth in subdivisions (a) or (b) of
24 Business and Professions Code section 19857.

25 11. Applicant met his burden of demonstrating that he is a person of honesty and integrity.
26 Therefore, Applicant is qualified for the issuance of a Key Employee License pursuant to
27 Business and Professions Code section 19857(a).

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NOTICE OF APPLICANT’S APPEAL RIGHTS

Applicant has the following appeal rights available under state law:

Title 4, 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.

Title 4, 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

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2 1. Applicant Michael Lopez's Application for a Key Employee License is
3 GRANTED.

4 2. Each side to pay its own attorneys' fees.

5 This Order is effective on March 28, 2019.

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7 Dated: 3-28-2019

Signature: 

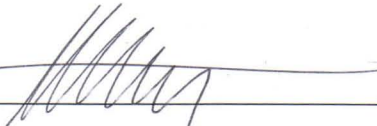
8 Jim Evans, Chairman

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10 Dated: 3/28/2019

Signature: 


11 Paula LaBrie, Commissioner

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13 Dated: 3/28/2019

Signature: 

14 Gareth Lacy, Commissioner

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16 Dated: 3/28/2019

Signature: 

17 Trang To, Commissioner