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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Statement of Reasons for
Denial of License Application:

Donald Eugene Harte

Respondent.

BGC Case No. BGC-HQ2015-00008SL
CGCC Case No. GCADS-GEWP-00213

DECISION AND ORDER

Hearing Date: November 4, 2015
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 November 4, 2015.

Ronald L. Diedrich (Diedrich), 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 Donald Eugene Harte (Harte) failed to appear and was not represented at the hearing.

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 Harte and the Bureau on June 12, 2015.

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

- (1) Copies of the Statement of Reasons; Statement to Respondent; Business and Professions Code §§ 19870 & 19871; CCR section 12060; and Certificate of Service by Certified Mail Service, with signed Return Receipt, Bates Nos. 001-018;
- (2) Copy of the Notice of Defense, Bates Nos. 019-020;
- (3) Copies of the following correspondence and notices:

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- a. December 18, 2014, Approval of Temporary Work Permit (GEWP-002013), Bates No. 021;
- b. January 15, 2015, Work Permit Employee Background Investigation Report, with Attachment A, Bates Nos. 022-030;
- c. February 12, 2015, Notice of Cancellation of Temporary Work Permit, with enclosure, Bates Nos. 031-032;
- d. March 2, 2015, letter from Katherine Ellis notifying the parties that the hearing for this matter will be held pursuant to Cal. Code. Regs., tit. 4, 12060, Bates Nos. 033-034;
- e. June 12, 2015, Notice of Hearing and Prehearing Conference, sans attachments, with Proof of Service, Bates Nos. 035-038;
- f. September 2, 2015, Updated Notice of Hearing and Prehearing Conference, Bates Nos. 039-040; and
- g. September 17, 2015, Conclusion of Prehearing Conference, Bates Nos. 041-042;

(4) Redacted copy of Donald Harte's, August 9, 2013, Application for Initial Work Permit/Temporary Work permit BGC-021 (Rev. 04/13), dated July 25, 2013, redacted copy of his Work Permit Questionnaire, dated July 6, 2013, and redacted copy of his Request for Live Scan, dated August 20, 2013, Bates Nos. 043-049;

(5) Copies of the following:

- a. Certified copy of the court records regarding Donald Harte's March 20, 2006, misdemeanor convictions for violating Title 47, Oklahoma Statutes, § 1151, subd. (A)(2) (equivalent to Cal. Veh. Code § 4463), Title 63, Oklahoma Statutes, § 2-402 (equivalent to Cal. Health & Saf. Code, § 11357), Title 21, Oklahoma Statutes, § 1289.13 (equivalent to Cal. Code, § 26100), and Title 21, Oklahoma Statutes, § 1220

1 (equivalent to Cal. Veh. Code, § 23223) in the case of *The State of*
2 *Oklahoma v. Donald Eugene Harte* (Dist. Ct. Pottawatomie County,
3 2005, No. CM-2005-771.), Bates Nos. 050-078; and

4 b. Copies of Title 21, Oklahoma Statutes, §§ 1220 & 1289.13; Title 47,
5 Oklahoma Statutes, § 1151, and Title 63, Oklahoma Statutes, § 2-402,
6 Bates Nos. 079-086;

7 (6) Redacted copy of arrest and conviction information received by the
8 Department of Justice pursuant to Donald Harte's fingerprint submission,
9 disclosing his:

10 a. February 1, 1980, conviction for violating Unemployment Insurance
11 Code section 2101, providing false information to obtain benefits, a
12 misdemeanor and crime of moral turpitude, in the case of *People v.*
13 *Donald Eugene Harte* (Super. Ct. Santa Clara County, 1980, No.
14 C8010322);

15 b. November 19, 1979, conviction for violating Penal Code section 314.1,
16 indecent exposure, a misdemeanor and crime of moral turpitude, in the
17 case of *People v. Donald Eugene Harte* (Super. Ct. Santa Clara County,
18 1979, No. C7901777);

19 c. March 28, 1974, convictions for violating Penal Code sections 12031
20 and 12025, carrying a loaded firearm in a public place and carrying a
21 concealed weapon, misdemeanors, in the case of *People v. Donald*
22 *Eugene Harte* (Super. Ct. San Mateo County, 1974, No. DC64758);

23 d. March 15, 1972, convictions for violating Vehicle Code sections 40508
24 and 21658, subdivision (A), failure to appear, a misdemeanor and
25 unsafe lane change, an infraction, in the case of *People v. Donald*
26 *Eugene Harte* (Super. Ct. San Mateo County, 1972, No. 570792);

27 e. April 2, 1971, conviction for violating Penal Code section 415,
28

1 recommends the denial of Harte's Application.

2 4. On or about February 12, 2015, the Commission cancelled Harte's temporary work
3 permit pursuant to CCR section 12128(b)(2).

4 5. On or about March 2, 2015, the Executive Director of the Commission referred
5 consideration of Harte's Application to an evidentiary hearing pursuant to CCR section 12060(a).

6 6. On or about March 5, 2015, Harte submitted a Notice of Defense to the Commission
7 requesting an evidentiary hearing on the consideration of his Application.

8 7. On or about June 12, 2015, the Commission served a Notice of Hearing and
9 Prehearing Conference on Harte and the Bureau.

10 8. On or about August 20, 2015, the Bureau filed a Statement of Reasons with the
11 Commission and served the Statement of Reasons on Harte via certified mail. In its Statement of
12 Reasons, the Bureau recommends the denial of Harte's Application.

13 9. On or about September 2, 2015, the Commission served an Updated Notice of Hearing
14 and Prehearing Conference on Harte and Diedrich.

15 10. On or about September 16, 2015, the noticed Prehearing Conference was held before
16 Presiding Officer Jason Pope, Attorney III of the Commission. Deputy Attorney General Ronald
17 Diedrich attended on behalf of the Bureau. Respondent Donald Harte attended without
18 representation.

19 11. On or about September 17, 2015, the Commission served a Conclusion of Prehearing
20 Conference letter on Harte and Diedrich.

21 12. The Commission heard Case No. GCADS-GEWP-00213 on November 4, 2015. The
22 Bureau was represented throughout the hearing by Deputy Attorney General Ronald Diedrich.
23 Respondent Donald Harte failed to appear and was not represented at the hearing.

24 13. On or about September 28, 1970, Harte was convicted of petty theft. He was
25 sentenced to two days in jail.

26 14. On or about January 15, 1971, Harte was convicted of violating California Penal Code
27 section 487.2, grand theft, a misdemeanor, in the case of *People v. Donald Eugene Harte* (Super.
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1 Ct. San Francisco County, 1971, No. F-74896). Harte was sentenced to three years of probation
2 and ordered to pay a fine.

3 15. On or about April 2, 1971, Harte was convicted of violating California Penal Code
4 section 415, disturbing the peace, a misdemeanor, in the case of *People v. Donald Eugene Harte*
5 (Super. Ct. San Mateo County, 1971, No. DC4143). Harte was sentenced to two years of
6 probation and ordered to pay a fine.

7 16. On or about March 15, 1972, Harte was convicted of violating California Vehicle
8 Code sections 40508, failure to appear, a misdemeanor, and 21658(A), unsafe lane change, an
9 infraction, in the case of *People v. Donald Eugene Harte* (Super. Ct. San Mateo County, 1972,
10 No. 570792). Harte was sentenced to 5 days in jail for the failure to appear and two days in jail
11 for the infraction.

12 17. On or about March 28, 1974, Harte was convicted of violating California Penal Code
13 sections 12031, carrying a loaded firearm in a public place, a misdemeanor, and 12025, carrying a
14 concealed weapon, a misdemeanor, in the case of *People v. Donald Eugene Harte* (Super. Ct. San
15 Mateo County, 1974, No. DC64758). Harte was sentenced to six months of probation and
16 ordered to pay a fine.

17 18. On or about November 19, 1979, Harte was convicted of violating California Penal
18 Code section 314.1, indecent exposure, a misdemeanor, in the case of *People v. Donald Eugene*
19 *Harte* (Super. Ct. Santa Clara County, 1979, No. C7901777). Harte was sentenced to 30 days in
20 jail, two years of probation, and work detail in lieu of a fine.

21 19. On or about February 1, 1980, Harte was convicted of violating California
22 Unemployment Insurance Code section 2101, providing false information to obtain benefits, a
23 misdemeanor, in the case of *People v. Donald Eugene Harte* (Super. Ct. Santa Clara County,
24 1980, No. C8010322). Harte was sentenced to six months of probation and ordered to pay a fine.

25 20. Harte did not have any criminal convictions from February 1, 1980 to March 20, 2006,
26 a period of 26 years.

27 21. On or about March 20, 2006, Harte was convicted of the following: (1) Title 47
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1 Oklahoma Statutes section 1151(A)(2), altering or changing a license plate, a misdemeanor; (2)
2 Title 63 Oklahoma Statutes section 2-402, possession of marijuana, a misdemeanor; (3) Title 21
3 Oklahoma Statutes section 1289.13, transporting a loaded firearm, a misdemeanor; and (4) Title
4 21 Oklahoma Statutes section 1220, transporting an intoxicating beverage, a misdemeanor, in the
5 case of *The State of Oklahoma v. Donald Eugene Harte* (Dist. Ct. Pottawatomie County, 2005,
6 No. CM-2005-771). Harte was placed on probation, and ordered to obtain a drug and alcohol
7 assessment, complete 50 hours of community service, and pay court fees.

8 22. On or about October 20, 2014, Harte sent an email to Patricia Tajima, Analyst with the
9 Bureau, in response to her request for additional information related to his criminal convictions.
10 In his email, Harte states that he “has been approved for a permit to work 8 times in California
11 poker rooms [and] three casinos in three states.”

12 23. During the hearing, there was no evidence presented that the Commission has ever
13 issued a regular work permit to Harte.

14 24. In his Application, Harte listed that he has applied for, and received, seven gambling
15 establishment employee permits, badges or licenses. Two of the seven approvals were from out-
16 of-state agencies.¹ The remaining five approvals were from agencies located within the State of
17 California, and did not include the Commission.

18 25. The information contained on Harte’s Application regarding his prior gambling
19 establishment employee permits, badges, and licenses is inconsistent with his statement to the
20 Bureau that he “has been approved for a permit to work 8 times in California poker rooms [and]
21 three casinos in three states.”

22 26. In his Application, Harte disclosed his March 20, 2006 convictions. Harte also wrote
23 that all of his March 20, 2006 convictions had been dismissed.

24 27. During the hearing, the Bureau produced a certified copy of Harte’s March 20, 2006
25 convictions. According to these court documents, Harte’s March 20, 2006 convictions have not
26 been dismissed. Given that the evidence does not support Harte’s statement that all of his March

27 ¹ One approval was from the City of Las Vegas, Nevada, and the other approval was from the Kansas State
28 Gaming Commission.

1 20, 2006 convictions have been dismissed, Harte was not forthcoming on his Application
2 regarding the disposition of his March 20, 2006 convictions.

3 28. Harte did not attend the administrative hearing, or submit any information or evidence
4 in favor of granting his Application.

5 29. All documentary and testimonial evidence submitted by the parties that is not
6 specifically addressed in this Decision and Order was considered but not used by the Commission
7 in making its determination on Harte's Application.

8 30. The matter was submitted for Commission consideration on November 4, 2015.

9
10 LEGAL CONCLUSIONS

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

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

18 33. The failure of an applicant to attend the hearing on his or her application may affect
19 the applicant's ability to apply for and/or receive a work permit, registration or license from the
20 Commission and/or other jurisdictions.

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

24 35. The Commission has the power to deny any application for a license, permit, or
25 approval for any cause deemed reasonable by the Commission. Business and Professions Code
26 section 19824(b).

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

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

4 38. No gambling license shall be issued unless, based on all of the information and
5 documents submitted, the commission is satisfied that the applicant is a person whose prior
6 activities and criminal record, if any, reputation, habits, and associations do not pose a threat to
7 the public interest of this state, or to the effective regulation and control of controlled gambling,
8 or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities
9 in the conduct of controlled gambling or in the carrying on of the business and financial
10 arrangements incidental thereto. Business and Professions Code section 19857(b).

11 39. No gambling license shall be issued unless, based on all of the information and
12 documents submitted, the commission is satisfied that the applicant is a person that is in all other
13 respects qualified to be licensed as provided in this chapter. Business and Professions Code
14 section 19857(c).

15 40. Harte did not attend the administrative hearing, or submit any information or evidence
16 in favor of granting his Application. As a result, Harte did not meet his burden of demonstrating
17 why a work permit should be issued pursuant to Business and Professions Code section 19856(a)
18 and CCR section 12060(i).

19 NOTICE OF APPLICANT'S APPEAL RIGHTS

20 Harte has the following appeal rights available under state law:

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

22 An applicant denied a license, permit, registration, or finding of suitability, or whose
23 license, permit, registration, or finding of suitability has had conditions, restrictions,
24 or limitations imposed upon it, may request reconsideration by the Commission
25 within 30 calendar days of service of the decision, or before the effective date
26 specified in the decision, whichever is later. The request shall be made in writing to
27 the Commission, copied to the Bureau, and shall state the reasons for the request,
28 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.

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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:

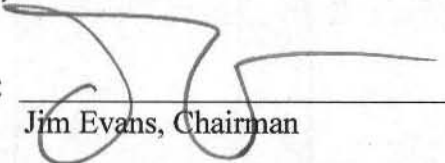
A decision of the Commission denying an application or imposing conditions on license shall be subject to judicial review as provided in Business and Professions Code section 19870, subdivision (e). Neither the right to petition for judicial review nor the time for filing the petition shall be affected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

ORDER

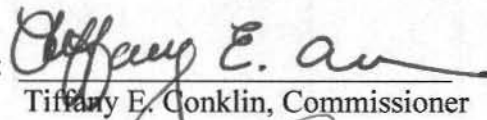
1. Donald Eugene Harte's Application for Initial Regular Work Permit is DENIED.²
2. Donald Eugene Harte may not apply to the Commission or Bureau for any type of license, registration or work permit for one (1) year after the effective date of this Order.
3. No costs are to be awarded.
4. Each side to pay its own attorneys' fees.

This Order is effective on December 13, 2015.

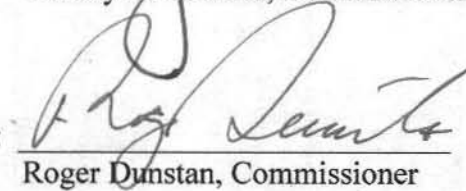
Dated: 11/17/15

Signature: 
Jim Evans, Chairman

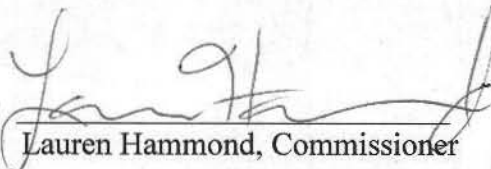
Dated: Nov. 17, 2015

Signature: 
Tiffany E. Conklin, Commissioner

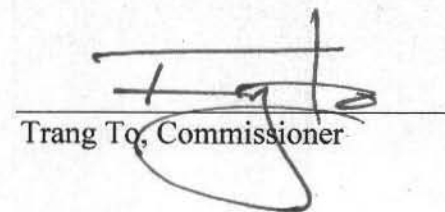
Dated: 11/17/15

Signature: 
Roger Dunstan, Commissioner

Dated: 11/17/2015

Signature: 
Lauren Hammond, Commissioner

Dated: 11/17/15

Signature: 
Trang To, Commissioner

² Pursuant to CCR section 12128(b)(2), the Commission cancelled Harte's temporary work permit.