

BEFORE THE  
CALIFORNIA GAMBLING CONTROL COMMISSION

CGCC Case No. GCADS-GEWP-002211

In the Matter of the Application for Approval  
of Initial Work Permit Regarding:

David Arts

Applicant.

**DEFAULT DECISION AND ORDER**

Hearing Date: May 12, 2016  
Time: 10:00 a.m.

1. This matter was scheduled for hearing before 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 Thursday, May 12, 2016.

2. David Arts (Applicant) failed to appear and was not represented at the hearing.

**FINDINGS OF FACT**

3. On or about October 3, 2014, the Bureau received an Initial Regular Work Permit/Temporary Work Permit Application from Applicant.

4. On or about September 4, 2015, the Bureau of Gambling Control (Bureau) issued its Work Permit Employee Background Investigation Report in which it concluded that Applicant was unqualified for licensure pursuant to Business and Professions Code section 19857 and disqualified for licensure pursuant to Business and Professions Code section 19859. The Bureau recommended that the Commission deny Applicant's application.

5. On or about September 25, 2015, the Commission's Executive Director referred Applicant's application to an evidentiary hearing pursuant to Title 4, CCR section 12060, subdivision (a).

6. Applicant received notice of Commission consideration of Applicant's application in two ways. First, Commission staff mailed an evidentiary hearing referral letter via certified mail to Applicant's address of record on September 25, 2015 which included a blank Notice of

1 Defense form with instructions to return it to the Commission within 15 days of receipt or else the  
2 Commission may issue a default decision. Commission staff received no response from  
3 Applicant including a Notice of Defense form or otherwise as of October 28, 2015. (Exhibit A)

4 7. Second, Applicant further received notice of the hearing through a hearing notice  
5 sent certified mail on March 29, 2016 to Applicant's address of record which included Exhibit A  
6 and stated that the hearing was set to occur on Thursday, May 12, 2016 at 10:00 a.m.

7 **DETERMINATION OF ISSUES**

8 8. An application to receive a license constitutes a request for a determination of the  
9 applicant's general character, integrity, and ability to participate in, engage in, or be associated  
10 with, controlled gambling. (Bus. & Prof. Code § 19856, subd. (b).)

11 9. In addition, the burden of proving Applicant's qualifications to receive any license  
12 from the Commission is on the applicant. (Bus. & Prof. Code § 19856, subd. (a).)

13 10. At an evidentiary hearing pursuant to Business and Professions Code sections  
14 19870 and 19871 and Title 4, CCR section 12060 the burden of proof rests with the applicant to  
15 demonstrate why a license or other approval should be issued. (Cal. Code Regs., tit. 4, § 12060,  
16 subd. (i).)

17 11. Title 4, CCR section 12052, subdivision (c), provides in pertinent part:

18 (c) An applicant for any license, permit, finding of suitability,  
19 renewal, or other approval shall be given notice of the meeting at which the  
20 application is scheduled to be heard. Notice shall be given pursuant to  
Section 12006.

21 \* \* \*

22 (2) If the application is to be scheduled at an evidentiary  
23 hearing, pursuant to subsections (a) or (b) of Section 12060, the notice  
of hearing shall inform the applicant of the following:

24 \* \* \*

25 (F) The waiver of an evidentiary hearing, or failure of  
26 the applicant to submit a Notice of Defense, or failure of an  
applicant to appear at an evidentiary hearing, may result in:

27 1. A default decision being issued by the  
28 Commission based upon the Bureau report, any  
supplemental reports by the Bureau and any other

documents or testimony already provided or which might  
be provided to the Commission . . . .

12. The Commission takes official notice of the Bureau report, any supplemental reports by the Bureau and any other documents or testimony already provided to it in this matter as required by Business and Professions Code section 19870, subdivision (a) and Title 4, CCR section 12052, subdivision (c)(2)(F)(1).

13. The Commission has jurisdiction to adjudicate this case by default.

14. The Commission may deny Applicant's application based upon the Bureau report, any supplemental reports by the Bureau and any other documents or testimony already provided to it, pursuant to CCR section 12052, subdivision (c)(2)(F)(1), and Business and Professions Code sections 19857 and 19859.

15. The Commission may further also deny Applicant's application based upon Applicant's failure to prove to the Commission Applicant is qualified to receive either a work permit, as required by Business and Professions Code section 19856(a) and Title 4, CCR section 12060, subdivision (i).

16. Therefore, as the Applicant failed to return a Notice of Defense form, did not attend the default hearing, and did not submit any information or evidence in favor of granting Applicant's Application, Applicant did not meet Applicant's burden of demonstrating why a work permit should be issued pursuant to Business and Professions Code section 19856(a) and Title 4, CCR section 12060(i). The Commission further finds that pursuant to California Code of Regulations, Title 4, section 12052, subdivision (c)(2)(F)(1), Applicant's Application is subject to denial.

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1 NOTICE OF APPLICANT'S APPEAL RIGHTS

2 Applicant has the following appeal rights available under state law:

3 Title 4, CCR section 12064, subsection (a) and (b) provide, in part:

4 (a) After the Commission issues a decision following a GCA hearing conducted  
5 pursuant to Section 12060, an applicant denied a license, permit, registration, or  
6 finding of suitability, or whose license, permit, registration, or finding of  
7 suitability has had conditions, restrictions, or limitations imposed upon it, may  
8 request reconsideration by the Commission within 30 calendar days of service of  
9 the decision, or before the effective date specified in the decision, whichever is  
10 later.

11 (b) A request for reconsideration shall be made in writing to the Commission,  
12 copied to the Bureau, and shall state the reasons for the request, which must be  
13 based upon either:

- 14 (1) Newly discovered evidence or legal authorities that could not  
15 reasonably have been presented before the Commission's issuance of the  
16 decision or at the hearing on the matter; or,  
17 (2) Other good cause which the Commission may decide, in its sole  
18 discretion, merits reconsideration.

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

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

27 Title 4, CCR section 12066, subsection (c) provides:

28 A decision of the Commission denying an application or imposing conditions on a  
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.

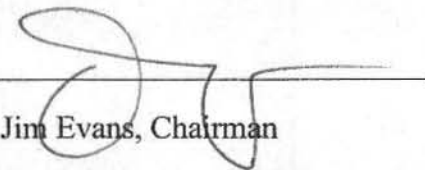
**ORDER**

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3 1. David Arts' application for Initial Regular Work Permit/Temporary Work Permit  
4 is DENIED.

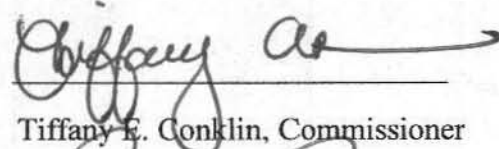
5 2. David Arts may not apply to the Commission or the Bureau for any type of  
6 license, registration or work permit for one (1) year after the effective date of this Order.

7  
8 This Order is effective on 6/13/16.

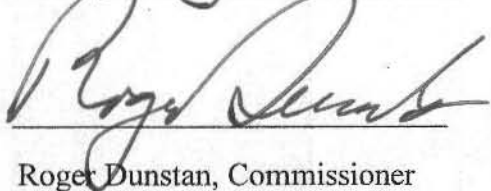
9  
10  
11 Dated: 5/12/16

Signature:   
Jim Evans, Chairman

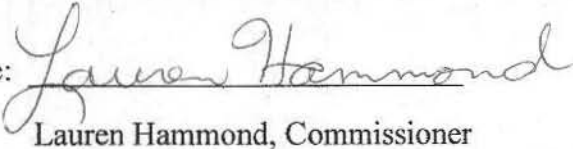
12  
13  
14 Dated: 5/12/2016

Signature:   
Tiffany E. Conklin, Commissioner


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17 Dated: 5/12/2016

Signature:   
Roger Dunstan, Commissioner

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20 Dated: 5/12/2016

Signature:   
Lauren Hammond, Commissioner

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23 Dated: 5/12/2016

Signature:   
Trang To, Commissioner

## DECLARATION OF FRED CASTANO

I, Fred Castano, declare as follows:

I am employed by the California Gambling Control Commission as an analyst in the Commission's Licensing Division. David Arts's case has been assigned to me for processing.

On September 25, 2015 I mailed a Gambling Control Act hearing referral letter to Mr. Arts at [REDACTED] by certified mail pursuant to California Code of Regulations (CCR) Title 4, Division 18, Chapter 1, section 12006. This letter provided notice to Mr. Arts that consideration of his application was being referred to a Gambling Control Act hearing pursuant to CCR, Title 4, Division 18, Chapter 1, section 12060(a). This letter included a Notice of Defense form (CGCC-ND-002) with instructions to return the Notice of Defense to the Commission within 15 days of receipt in order to preserve their right to an administrative hearing.

Today is October 28, 2015 and I have not received the Notice of Defense form or any communication from Mr. Arts regarding a request for a Gambling Control Act hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct.

Executed on October 28, 2015 in Sacramento, California.



Fred Castano