

BEFORE THE  
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Third-Party  
Proposition Player Services License for  
Supervisor, Player or Other Employee for:  
  
FABIAN TORRES  
Registration No. TPPL-016816  
  
Respondent.

CGCC Case No. CGCC-2017-1218-17D  
BGC Case No. BGC-HQ2018-00005SL

**DECISION AND ORDER**

Hearing Date: May 23, 2018  
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 May 23, 2018.

Ronald Diedrich, Deputy Attorney General, State of California, represented complainant Stephanie Shimazu, Director of the Bureau of Gambling Control (Bureau), Department of Justice, State of California (Complainant).

Fabian Torres (Respondent) was present at the hearing on his own behalf without representation.

During the evidentiary hearing, Presiding Officer Jason Pope took official notice of the Notice of Hearing and attachments, the signed Notice of Defense, and the Conclusion of Prehearing conference letter.

During the administrative hearing, Presiding Officer Jason Pope accepted into evidence the following exhibits offered by the Complainant as identified in their table of contents:

1) Statement of Reasons; Statement to Respondent; copies of excerpts from the California Business and Professions Code and California Code of Regulations; January 23, 2018, Declaration of Service; and Notice of Defense, Bates Nos.001-025;

2) Commission Memorandum, Notices and Letters: (a) November 29, 2017, Licensing Division Memorandum, Bates Nos. 026-040; (b) December 21, 2017, Referral of Initial Third-Party Proposition Player Services License Application to an Evidentiary Hearing, Bates Nos. 041-

1 042; (c) February 20, 2018, Notice of Hearing with attachments, Bates Nos. 043-057; (d) April  
2 10, 2018, Conclusion of Prehearing Conference letter, Bates Nos. 058-062;

3 3) April 20, 2016, letter from the Commission to Respondent notifying him that his Third-  
4 Party Proposition Player Service registration was approved, Bates Nos. 063;

5 4) Redacted copies of Respondent's Application for Third Party Proposition Player  
6 Services License for Supervisor, Player or Other Employee and Level I Supplemental Information  
7 (collectively, Application), Bates Nos. 064-075;

8 5) A redacted copy of the Bureau's October 24, 2017, Third-Party Player Background  
9 Investigation Report regarding Respondent, Bates Nos. 076-084;

10 6) Certified copy of the court records for the Illinois case of *People of the State of Illinois*  
11 *v. Fabian Torres* (Ill., Cir. Ct. Cook County, 2013, No.13CR0327101, Bates Nos. 085-088;

12 7) Redacted, certified copies of the court records for Wisconsin the case of *People v.*  
13 *Fabian Torres* (Wis., Village of Greendale Mun. Ct., 2013, Citation No, 426104332), Bates Nos.  
14 089-092;

15 8) Redacted copy of the Glendale [Wisconsin] Police Department Incident Report  
16 regarding the events that led to Respondent's conviction in the case of *People v. Fabian Torres*  
17 (Wis., Village of Greendale Mun. Ct., 2013, Citation No. 426104332), Bates Nos. 093-096;

18 9) Copy of February 26, 2018, email from Village of Glendale Municipal Court Clerk  
19 Claire Stelloh to Breanne Munar regarding the statute that Respondent was convicted of in the  
20 case of *People v. Fabian Torres* (Wis., Village of Greendale Mun. Ct., 2013, Citation No.  
21 426104332), Bates Nos. 097-098;

22 10) Wisconsin State Statutes, Bates Nos. 099-102;

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 Alan Casas dated April 25, 2018;

26 B) Letter of Reference by Jesse Reynoso;

27 C) Letter of Reference by Cary Cauley dated May 10, 2018.

28

1 FINDINGS OF FACT

2 1. On or about September 5, 2013, Respondent was cited in the state of Wisconsin for  
3 violating Village of Greendale Ordinance 9.943.501, retail theft, for stealing a candy bar valued at  
4 \$3.25 in the case of *People v. Torres* (Wis., Village of Greendale Mun. Ct., 2013, Citation No.  
5 426104332). This incident and the resulting citation is hereinafter referred to as the “shoplifting  
6 incident”).

7 2. On or about March 22, 2016, the Bureau received Respondent’s Application to allow  
8 for his employment as a third-party proposition player for L.E. Gaming, Inc.

9 3. On Respondent’s Application he stated that he had not been convicted of a  
10 misdemeanor within the last 10 years or engaged in any act involving dishonesty or moral  
11 turpitude that was charged or chargeable as a criminal offense.

12 4. The Application was signed by Respondent under penalty of perjury on March 16,  
13 2016.

14 5. On or about April 20, 2016, the Commission issued Respondent a third-party  
15 proposition player services registration, number TPPL-016816.

16 6. On December 23, 2016, in response to an inquiry from the Bureau, Respondent  
17 provided a statement explaining the circumstances surrounding the shoplifting incident.  
18 Respondent stated that while visiting family in Milwaukee, a younger family member gave him a  
19 candy bar. Respondent began to eat the candy bar as he left the store and was approached by a  
20 loss prevention officer. According to Respondent, he told the loss prevention officer that he didn’t  
21 realize the candy bar was not purchased and that he would pay for it. The loss prevention officer  
22 told Respondent it was too late and he was going to be arrested.

23 7. In the December 2016 statement, Respondent stated that he failed to report the  
24 shoplifting incident on his Application because he forgot that it occurred due to the personal  
25 events of moving to California for his wife’s military orders and the passing of his first child.

26 8. On July 6, 2017, Respondent provided a second statement regarding the shoplifting  
27 incident in response to an additional request from the Bureau. Respondent advised that his  
28

1 previous statement regarding the shoplifting incident was accurate and truthful to the best of his  
2 memory. Respondent again identified personal reasons that may have contributed to his failure to  
3 disclose the shoplifting incident on his Application. Respondent also stated that he did not see a  
4 report regarding the incident prior to filling out his Application.

5 9. On or about October 10, 2017, the Bureau issued a Third-Party Player Background  
6 Investigation Report, recommending that Respondent's Application be denied.

7 10. On December 18, 2017, pursuant to CCR section 12054(a)(2), the Commission voted  
8 to refer consideration of Respondent's Application to an evidentiary hearing to be held under the  
9 provisions of CCR section 12060(b).

10 11. On or about December 11, 2017, Respondent signed and sent a Notice of Defense to  
11 the Commission requesting an evidentiary hearing on his Application.

12 12. On or about March 8, 2018, the Bureau, as Complainant, filed a statement of reasons  
13 with the Commission recommending the denial of Respondent's Application and the cancellation  
14 of his registration as a third-party proposition player.

15 13. The Commission heard Case No. CGCC-2017-1218-17D on Wednesday, May 23,  
16 2018. The Complainant was represented throughout the pendency of the hearing by Deputy  
17 Attorney General Ronald Diedrich. Respondent was present on his own behalf without  
18 representation.

19 14. Respondent testified that he understood the questions on the Application and that he  
20 should have checked "yes" on questions regarding his criminal history to disclose the shoplifting  
21 incident.

22 15. Respondent testified under oath in regards to the shoplifting incident. Respondent's  
23 testimony was consistent with his December 2016 and July 2017 written statements to the  
24 Bureau.

25 16. Respondent testified that the shoplifting incident occurred while he was visiting family  
26 in Wisconsin. Respondent and his cousins were in a store when a younger cousin handed him a  
27 candy bar and said that Respondent's older cousin would pay for it.  
28

1           17. Respondent testified that a loss prevention officer approached and accused him of  
2 stealing the candy bar. Respondent testified that he tried to explain to the officer that he did not  
3 intend to steal the candy bar and that he and his older cousin asked if they could pay for it.  
4 Respondent recalled being separated from his cousins and detained in a room by the loss  
5 prevention officer until police arrived.

6           18. Respondent testified that he was arrested and taken from the store to the police station.  
7 Respondent's older cousin picked him up from the police station and paid a fine on Respondent's  
8 behalf. Respondent received a ticket that did not require him to appear in court.

9           19. Respondent testified that he never appeared in court or discussed his case with an  
10 attorney or before a judge. Respondent stated that he did not consider payment of the ticket to be  
11 a misdemeanor conviction.

12           20. Respondent testified that the shoplifting incident was "blurry" to him because so many  
13 big events occurred in his life afterwards, such as getting married, moving to San Diego for his  
14 wife to serve in the Navy, the death of his daughter, and the birth of a son.

15           21. Respondent testified that at the time he filled out the Application, he had not seen the  
16 police report or court documents admitted into evidence by the Bureau. Respondent testified that  
17 he did the best that he could to truthfully answer the questions on the Application.

18           22. The Verification of the Court Disposition from the Village of Greendale Municipal  
19 Court refers to the citation issued against Respondent as a non-criminal offense. Respondent's  
20 plea is identified as "no contest by stipulation." The records show that a fine<sup>1</sup> of \$366 was paid on  
21 August 6, 2013. Respondent was issued a Wisconsin Non Traffic Citation and Complaint that  
22 identified a court date of September 5, 2013 at 5:30PM with no appearance required. The  
23 Verification of Court Disposition document also indicates that the case was considered to be  
24 closed on September 5, 2013.

25           23. Throughout his testimony Respondent accepted the Bureau's conclusion that the  
26 shoplifting incident was a misdemeanor or criminal offense that he should have disclosed on his

27 \_\_\_\_\_  
28 <sup>1</sup> The Citation Court Records, Bates 091, refers to the type of payment as a "fine."

1 Application. Respondent accepted responsibility for failing to disclose the shoplifting incident  
2 while also explaining the reasons that he did not disclose it; namely, that he did not think it was a  
3 misdemeanor and he did not recall the incident when he was filling out the Application.

4 24. Respondent's testimony that he believed his cousin would pay for the candy bar and  
5 did not intend to steal it was credible; as was his testimony that he never considered the citation  
6 he received as a result of the shoplifting incident to be a misdemeanor conviction.

7 25. Respondent's testimony that he did not recall the shoplifting incident at the time he  
8 filled out the Application was also credible. It is logical that Respondent would not think of the  
9 shoplifting incident while filling out the criminal history section of the Application because he  
10 did not intend to steal the candy bar and he did not consider the citation he received to be  
11 equivalent to a misdemeanor conviction.

12 26. The Commission finds that Respondent was issued a citation for the shoplifting  
13 incident, and not charged or convicted of a misdemeanor. The Verification of Court Disposition  
14 from Village of Greendale Municipal Court identifies the shoplifting incident as a "non-criminal"  
15 "citation."

16 27. Respondent admitted letters of reference from two supervisors and the Office  
17 Administrator/Designated Agent for L.E. Gaming. The references indicate that Respondent is a  
18 capable and reliable employee and is considered to be honest and trustworthy.

19 28. There was no evidence presented that Respondent is ineligible for licensing as a third-  
20 party proposition player for any of the reasons provided in CCR section 12218.11.

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

24 30. The matter was submitted for Commission consideration on May 23, 2018.

## 25 LEGAL CONCLUSIONS

26 1. Division 1.5 of the Business and Professions Code, the provisions of which govern the  
27 denial of licenses on various grounds, does not apply to licensure decisions made by the  
28

1 Commission under the Gambling Control Act. Business and Professions Code section 476(a).

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

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

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

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

17 6. An "unqualified person" means a person who is found to be unqualified pursuant to  
18 the criteria set forth in Business and Professions Code section 19857, and "disqualified person"  
19 means a person who is found to be disqualified pursuant to the criteria set forth in Business and  
20 Professions Code section 19859. Business and Professions Code section 19823(b).

21 7. 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 8. No gambling license shall be issued unless, based on all of the information and  
25 documents submitted, the commission is satisfied that the applicant is a person of good character,  
26 honesty and integrity. Business and Professions Code section 19857(a).

27 9. No gambling license shall be issued unless, based on all of the information and  
28

1 documents submitted, the commission is satisfied that the applicant is a person whose prior  
2 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the  
3 public interest of this state, or to the effective regulation and control of controlled gambling, or  
4 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in  
5 the conduct of controlled gambling or in the carrying on of the business and financial  
6 arrangements incidental thereto. Business and Professions Code section 19857(b).

7 10. The commission shall deny a license to any applicant who is disqualified for failure of  
8 the applicant to provide information, documentation, and assurances required by this chapter or  
9 requested by the chief, or failure of the applicant to reveal any fact material to qualification, or the  
10 supplying of information that is untrue or misleading as to a material fact pertaining to the  
11 qualification criteria. Business and Professions Code section 19859(b).

12 11. A requester shall be ineligible for licensing [as a third party proposition player] if the  
13 requester has failed to meet the requirements of Business and Professions Code sections 19856 or  
14 19857. CCR section 12218.11(e).

15 12. Respondent has met his burden of proving that he is a person of good character,  
16 honesty, and integrity. Therefore, Respondent is qualified to receive a third party proposition  
17 player license pursuant to Business and Professions Code section 19857(a). As a result,  
18 Respondent is not ineligible to receive a third party proposition player license pursuant to CCR  
19 section 12218.11(e).

20 13. Respondent has met his burden of proving that he is a person whose prior activities,  
21 criminal record, if any, reputation, habits, and associations do not pose a threat to the public  
22 interest of this state, or to the effective regulation and control of controlled gambling, or create or  
23 enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the  
24 conduct of controlled gambling or in the carrying on of the business and financial arrangements  
25 incidental thereto. Therefore, Respondent is qualified to receive a third party proposition player  
26 license pursuant to Business and Professions Code section 19857(b). As a result, Respondent is  
27 not ineligible to receive a third party proposition player license pursuant to CCR section  
28



1 12218.11(e).

2 14. Respondent has met his burden of proving that he is not disqualified from  
3 licensure pursuant to Business and Professions Code section 19859 nor ineligible for licensing as  
4 a third party proposition player pursuant to CCR section 12218.11.

5 NOTICE OF APPLICANT'S APPEAL RIGHTS

6 Respondent has the following appeal rights available under state law:

7 Title 4, CCR section 12064, subsections (a) and (b) provide, in part:

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

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

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

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

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

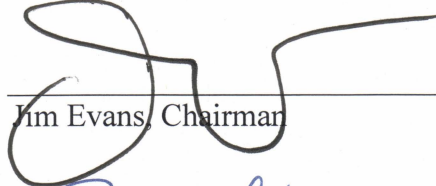
1  
2 1. Fabian Torres' Application for a Third-Party Proposition Player Services  
3 License for Supervisor, Player or Other Employee is APPROVED.

4 2. No costs are to be awarded.

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

6 This Order is effective on June 20, 2018.

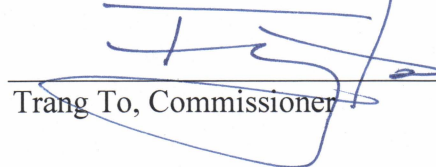
7  
8 Dated: 6/20/18

Signature:   
Jim Evans, Chairman

9  
10 Dated: 6/20/18

Signature:   
Paula LaBrie, Commissioner

11  
12 Dated: 6/20/18

Signature:   
Trang To, Commissioner

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28