

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Third-Party
Proposition Player Services Player License for:

Raymond H. Smith, Jr.

Registration No. 018751

Applicant.

CGCC Case No. GCCC-2018-0111-11B

DEFAULT DECISION AND ORDER

Hearing Date: October 12, 2018
Time: 1:30 p.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 section 12060, in Sacramento, California, on October 12, 2018.

2. The Bureau of Gambling Control (Bureau) was represented by Deputy Attorney James Waian with the Indian and Gaming Law Section, Department of Justice Attorney General's Office.

3. Raymond Smith (Applicant) failed to appear and was not represented at the hearing.

4. During the administrative hearing, Presiding Officer Jason Pope took official notice of the following:

(a) Notice of Hearing and Prehearing Conference with enclosures including Applicant's Application and the November 2017 Bureau Report, served by certified mail, return receipt requested;

(b) Applicant's Notice of Defense;

(c) Bureau's Statement of Reasons;

(d) Conclusion of Prehearing Conference letter dated August 23, 2018.

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

1 1) Statement of Reasons; Statement to Respondent; copies of Bus. & Prof. Code
2 §§ 19870 & 19871; copy of Cal. Code. Regs., tit. 4, § 12060; and May 23, 2018 Certificate of
3 Service by Overnight Mail Service, Bates Nos. 001-020;

4 2) January 31, 2018, Executed Notice of Defense form for Raymond
5 Hernando Smith, Jr., Bates Nos. 021-023;

6 3) Notices from the California Gambling Control Commission:

7 a. March 7, 2018, Notice of Hearing (with enclosures), Bates 025-036;

8 b. January 16, 2018, Referral of Application for Third-Party Proposition
9 Player Services License to an Evidentiary Hearing, Bates Nos. 037-038;

10 c. December 29, 2017, Notice of Scheduled Commission Meeting (with
11 Licensing Division Memorandum enclosed), Bates Nos. 039-043;

12 d. December 9, 2016, Approval of Third-Party Proposition Player
13 Services Registration, Bates Nos. 044;

14 4) November 13, 2017, Third-Party Player Background Investigation Report,
15 Level III, Bureau of Gambling Control, for Raymond Hernando Smith, Jr., Bates Nos. 045-051;

16 5) July 28, 2017, Letter from Brian Gilleland, Manager, Third-Party
17 Provider Unit, Bureau of Gambling Control, to Michelle Fernandez, Blackstone Gaming, LLC,
18 with a copy to Raymond Hernando Smith, Jr.(without enclosure), Bates Nos. 052-054;

19 6) July 7, 2017, Email message from Gregory Donkerbrook, Bureau of
20 Gambling Control to Raymond Hernando Smith, Jr., with a copy to
21 Michelle Fernandez of Blackstone Gaming, including follow up email exchange between Mr.
22 Donkerbrook and Ms. Fernandez, Bates Nos. 055-058;

23 7) June 23, 2017, Handwritten note from Raymond Hernando Smith, Jr. to the
24 Bureau of Gambling Control, including enclosures, Bates Nos. 059-067;

25 8) June 13, 2017, Letter from Brian Gilleland, Manager, Third-Party Provider
26 Unit, Bureau of Gambling Control, to Michelle Fernandez, Blackstone Gaming, LLC, with a copy
27 to Raymond Hernando Smith, Jr., Bates Nos. 068-070;

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1 9) May 22, 2017, Application for Third-Party Proposition Player Services License
2 for Supervisor, Player or Other Employee, for Raymond Hernando Smith, Jr., signed March 17,
3 2017 (including Level I Supplemental Information form), Bates Nos. 071-083;

4 10) April 20, 2017, Letter from Lisa Wardall, Third-Party Provider Unit, Bureau
5 of Gambling Control, to Tuan Thai, Blackstone Gaming, LLC Regarding Summons to Apply for
6 License, Bates Nos. 084-087;

7 11) March 17, 2017, Appointment of Designated Agent for Owners and
8 Proposition Players, for Raymond Hernando Smith, Jr., signed March 17, 2017, Bates Nos. 088-
9 089;

10 12) Certified copy of the court records regarding Raymond Hernando Smith, Jr.'s
11 misdemeanor conviction for violation of Vehicle Code section 12500, subdivision (a), driving
12 without a license, a misdemeanor, in the case of People v. Raymond Smith (Super. Ct. Los
13 Angeles County, 2011, No. 1LT07129), Bates Nos. 090-095.

14 6. The matter was submitted on October 12, 2018

15 **FINDINGS OF FACT**

16 7. On or about May 22, 2017, the Bureau received an application for Third-Party
17 Proposition Player Services License for Supervisor, Player or Other Employee and a Level I
18 Supplemental Information forms (collectively, Application) from Applicant to allow for his
19 employment as a third-party proposition player for Blackstone Gaming, LLC.

20 8. On or about December 9, 2016, The Commission issued Applicant a registration,
21 number TPPL-018751, as a proposition player.

22 9. On or about November 13, 2017, the Bureau submitted a Third Party Player
23 Background Investigation Report in which it concluded that Applicant was unqualified for
24 licensure pursuant to Business and Professions Code section 19856, subdivision (a), section
25 19859, subdivision (b), and California Code of Regulations, title 4, section 12218.11,
26 subdivisions (e) and (f). The Bureau recommended that the Commission deny Applicant's
27 application.
28

1 10. At the January 11, 2018 Commission meeting, the Commission referred
2 consideration of Applicant’s Application to an evidentiary hearing pursuant to California Code of
3 Regulations, title 4, section 12060.

4 11. Commission staff received a signed Notice of Defense form from Applicant on
5 January 31, 2018 requesting an evidentiary hearing. (Exhibit A).

6 12. Commission staff mailed a Notice of Hearing sent certified mail on March 7, 2018
7 to Applicant’s address of record which included Exhibit A and stated that the hearing was set to
8 occur on October 12, 2018 at 1:30 p.m. Commission staff received a confirmation receipt
9 showing the letter was signed for and accepted at Applicant’s address.

10 13. On August 22, 2018, Jason Pope, Presiding Officer for the forthcoming hearing,
11 conducted a pre-hearing conference with Deputy Attorney General James Waian in attendance.
12 Applicant was not present and no one appeared on his behalf. On March 7, 2018, a letter
13 confirming this conference was mailed out to the parties.

14 14. At the October 12, 2018 hearing, Applicant was not present, and submitted no
15 evidence on behalf of his application.

16 **DETERMINATION OF ISSUES**

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

20 16. In addition, the burden of proving Applicant’s qualifications to receive any license
21 from the Commission is on the applicant. (Bus. & Prof. Code § 19856, subd. (a).)

22 17. At an evidentiary hearing pursuant to Business and Professions Code sections
23 19870 and 19871 and Title 4, CCR section 12060 the burden of proof rests with the applicant to
24 demonstrate why a license or other approval should be issued. (Cal. Code Regs., tit. 4, § 12060,
25 subd. (i).)

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

27 (c) An applicant for any license, permit, finding of suitability,
28 renewal, or other approval shall be given notice of the meeting at

1 which the application is scheduled to be heard. Notice shall be given
pursuant to Section 12006.

2 * * *

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

5 * * *

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

8 1. A default decision being issued by the
9 Commission based upon the Bureau report, any supplemental reports
by the Bureau and any other documents or testimony already
10 provided or which might be provided to the Commission

11 19. Title 4, CCR section 12205, subdivision (a) states in pertinent part:

12 Any regular registration issued in accordance with this chapter shall be
subject to cancellation pursuant this this section. A registration shall
13 be cancelled if the Commission determines after a noticed hearing that
the registration is ineligible for registration...

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

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

18 * * *

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

21 * * *

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

24 1. A default decision being issued by the
25 Commission based upon the Bureau report, any
supplemental reports by the Bureau and any other
26 documents or testimony already provided or which might
be provided to the Commission

27 21. The Commission took official notice of the items identified under paragraph 4, and
28 received into evidence Bureau Exhibits 1-12 identified under paragraph 5 which were provided to

1 it in this matter pursuant to Business and Professions Code section 19870, subdivision (a) and
2 Title 4, CCR section 12052, subdivision (c)(2)(F)(1).

3 22. The Commission has jurisdiction to adjudicate this case by default.

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

8 24. The Commission may further also deny Applicant's application based upon
9 Applicant's failure to prove to the Commission Applicant is qualified to receive a license or other
10 approval as required by Business and Profession Code section 19856, subdivision (a) and Title 4,
11 CCR section 12060(i).

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

18 26. In addition, as Applicant's application is subject to denial, Applicant would no
19 longer be eligible for a registration under Title 4, CCR section 12204, subdivision (d) and
20 Applicant's current registration is subject to cancellation pursuant to Title 4, CCR section 12205,
21 subdivision (a).

22
23 NOTICE OF APPLICANT'S APPEAL RIGHTS

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

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

26 (a) After the Commission issues a decision following a GCA hearing conducted
27 pursuant to Section 12060, an applicant denied a license, permit, registration, or
28 finding of suitability, or whose license, permit, registration, or finding of
suitability has had conditions, restrictions, or limitations imposed upon it, may

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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.

(b) A request for reconsideration 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:

- (1) 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,
- (2) 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 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.

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ORDER

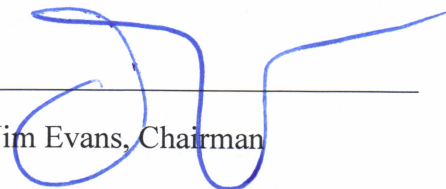
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2 1. Raymond Hernando Smith, Jr.'s Application for Approval of Initial Third-Party
3 Proposition Player Services License is DENIED.

4 2. Raymond Hernando Smith, Jr.'s Third-Party Player Registration, No. TPPL-
5 018751 is cancelled.


6 3. Raymond Hernando Smith, Jr. may not apply to the Commission or the Bureau for
7 any type of license, registration or work permit for one (1) year after the effective date of this
8 Order.

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10 This Order is effective on October 18, 2018.


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13 Dated: 10/18/18

Signature: 
Jim Evans, Chairman


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15
16 Dated: 10/18/18

Signature: 
Paula LaBrie, Commissioner

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19 Dated: 10/18/18

Signature: 
Gareth Lacy, Commissioner

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22 Dated: 10/18/18

Signature: 
Trang To, Commissioner