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8
9 **BEFORE THE**
10 **CALIFORNIA GAMBLING CONTROL COMMISSION**
11 **STATE OF CALIFORNIA**

12
13 **In the Matter of the Statement of Reasons for**
14 **Denial of Application for a Key Employee**
15 **License:**

BGC Case No. BGC-HQ2018-00003SL

CGCC Case No: CGCC-2017-1207-5F

16 **DANNY LIV**
17 [REDACTED]

STATEMENT OF REASONS

18
19 **Respondent.**

20 Complainant alleges as follows:

21 **PARTIES**

22 1. Stephanie Shimazu (Complainant) brings this Statement of Reasons for a denial of an
23 application for a key employee license solely in her official capacity as the Director of the
24 California Department of Justice, Bureau of Gambling Control (Bureau).

25 2. On May 23, 2016, the Bureau received an interim key employee license application
26 from Respondent. On May 26, 2016, the California Gambling Control Commission (Commission)
27 issued an interim key employee license, number GEKE-002205, to Danny Liv (Respondent) with
28 an expiration date of May 31, 2018. This interim key employee license application allowed for

1 Respondent's employment as a key employee at Parkwest Casino 580, a licensed gambling
2 establishment in Livermore, California, while his application for an initial key employee license
3 was being processed.

4 3. On or about June 2, 2016, the Bureau received an Application for Gambling
5 Establishment Key Employee License and a Key Employee Supplemental Background
6 Investigation Information, with attached schedules, dated May 31 2016 (collectively, Application),
7 from Respondent.

8 4. On or about October 25, 2017, the Bureau submitted a Cardroom Key Employee
9 Background Investigation Report to the Commission recommending Respondent's Application be
10 denied.

11 5. On or about November 16, 2017, Respondent's interim key employee license was
12 cancelled by the Commission pursuant to California Code of Regulations, title 4, section 12354,
13 subdivision (e)(5),¹ because, as alleged above, the Bureau recommends denial of Respondent's
14 Application.²

15 6. On December 20, 2017, pursuant to California Code of Regulations, title 4, section
16 12054, subdivision (a)(2), the Commission referred consideration of Respondent's Application to
17 an evidentiary hearing to be held under the provisions of California Code of Regulations, title 4,
18 section 12060.

19 7. On or about January 8, 2018, Respondent submitted a Notice of Defense, dated
20 January 2, 2018.

21 **BURDEN OF PROOF**

22 8. Respondent has the burden of proving he is qualified to receive a key employee
23 license. (Bus. & Prof. Code, § 19856, subd. (a).)

24 _____
25 ¹ The statutes and regulations applicable to this Statement of Reasons are quoted in
pertinent part in Appendix A.

26 ² In its letter to Respondent dated November 16, 2017, the Commission notified
27 Respondent that "[n]otwithstanding the cancellation of your Interim Key Employee License, the
28 Commission will consider your application for an Initial Key Employee License at a future
Commission meeting."

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Unqualified For Licensure – Criminal Convictions)**

3 9. Respondent’s Application is subject to denial³ because Respondent was convicted of
4 the following:

5 a. On or about April 7, 2011, Respondent was convicted of violating Vehicle Code
6 section 14601.2, subdivision (a), driving without a valid driver’s license, a misdemeanor, in the
7 case of *People v. Danny Liv* (Super. Ct. Tuolumne County, 2011, No. CRM34748).

8 b. On or about February 16, 2011, Respondent was convicted of violating Vehicle Code
9 section 14601.5, subdivision (a), driving without a valid driver’s license with knowledge of
10 suspension or revocation of the driver’s license, a misdemeanor, in the case of *People v. Danny*
11 *Liv People v. Danny Liv* (Super. Ct. Tuolumne County, 2011, No. CRM34426)

12 c. On or about May 28, 2010, Respondent was convicted of violating Vehicle Code
13 section 23152, subdivision (b), driving without a valid driver’s license, a misdemeanor, in the case
14 of *People v. Danny Liv* (Super. Ct. Stanislaus County, 2010, No. 1408874)
15 (Bus. & Prof. Code, §§ 19856, 19857, subds. (a) & (b) & 19859; Cal. Code. Regs., tit. 4, §§
16 12355, subds. (a)(1), (b)(2)(A), & (c), & 12568, subds. (c)(3) & (c)(4).)

17 **SECOND CAUSE FOR DENIAL OF APPLICATION**

18 **(Failure to Disclose – Criminal Convictions)**

19 10. Respondent’s Application is subject to denial⁴ because Respondent, under penalty of
20 perjury, falsely stated on his Application, that he had never been convicted of a misdemeanor.

21 Respondent failed to disclose the following three criminal convictions on his Application:
22
23

24 _____
25 ³ Respondent’s application is subject to mandatory denial if Respondent is found to be
26 unqualified or disqualified for licensure under any of the criteria found in Business and
27 Professions Code sections 19857, subdivisions (a) or (b), or 19859. (Cal. Code. Regs., tit. 4, §
28 12355, subd. (a)(1); see also, Bus. & Prof. Code, § 19823, Cal. Code. Regs., tit. 4, § 12568, subds.
(c)(3) & (c)(4).)

⁴ See footnote 3, *supra*.

1 a. Respondent failed to disclose that on or about April 7, 2011, he suffered a
2 misdemeanor conviction in the case of *People v. Danny Liv* (Super. Ct. Tuolumne County, 2011,
3 No. CRM34748).

4 b. Respondent failed to disclose that on or about February 16, 2011, he suffered a
5 misdemeanor conviction in the case of *People v. Danny Liv* (Super. Ct. Tuolumne County, 2011,
6 No. CRM34426).

7 c. Respondent failed to disclose that on or about May 28, 2010, he suffered a
8 misdemeanor conviction in the case of *People v. Danny Liv* (Super. Ct. Stanislaus County, 2010,
9 No. 1408874).
10 (Bus. & Prof. Code, §§ 19856, 19857, 19859, subds. (a), 19866, and/or (b), & 19866, & Cal. Code
11 Regs., tit. 4, § 12355, subds. (a), (b)(2)(A), and/or (c)

12 **THIRD CAUSE FOR DENIAL OF APPLICATION**

13 **(Failure to Disclose Foreclosure and Termination)**

14 11. Respondent's Application is subject to denial⁵ in that he failed to disclose the
15 following on his Application:

16 a. He failed to disclose that he was a party to a foreclosure action in 2008; and

17 b. He failed to disclose that he was terminated from employment at Black Oak Casino.
18 (Bus. & Prof. Code, §§ 19856, subd. (c), 19857, subds. (a) & (b) and 19859, subd. (b); Cal. Code
19 Regs., tit. 4, §§ 12355, subds. (a)(1), (b)(2)(A), & (c), & 12568, subds. (c)(3) & (c)(4).)

20 **PRAYER**

21 WHEREFORE, Complainant requests that following the hearing to be held on the matters
22 herein alleged, the Commission issue a decision:

23 1. Denying Respondent's Application for Gambling Establishment Key Employee
24 License; and

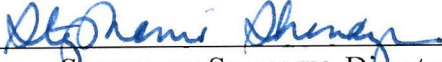
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27 _____
28 ⁵ See footnote 3, *supra*.

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2. Taking such other and further action as the Commission may deem appropriate.

Dated: April 27, 2018


STEPHANIE SHIMAZU, Director
Bureau of Gambling Control
California Department of Justice
Complainant

1 person licensed or approved. The commission may condition, restrict,
2 discipline, or take action against the license of an individual owner
3 endorsed on the license certificate of the gambling enterprise whether
4 or not the commission takes action against the license of the gambling
5 enterprise.

6 * * *

7 (d) Take actions deemed to be reasonable to ensure that no
8 ineligible, unqualified, disqualified, or unsuitable persons are
9 associated with controlled gambling activities.

10 4. Business and Professions Code section 19854, subdivisions (a) and (b) provide:

11 (a) Every key employee shall apply for and obtain a key
12 employee license.

13 (b) No person may be issued a key employee license unless the
14 person would qualify for a state gambling license.

15 5. Business and Professions Code section 19870 provides:

16 (a) The commission, after considering the recommendation of
17 the chief and any other testimony and written comments as may be
18 presented at the meeting, or as may have been submitted in writing to
19 the commission prior to the meeting, may either deny the application or
20 grant a license to an applicant who it determines to be qualified to hold
21 the license.

22 (b) When the commission grants an application for a license or
23 approval, the commission may limit or place restrictions thereon as it
24 may deem necessary in the public interest, consistent with the policies
25 described in this chapter.

26 (c) When an application is denied, the commission shall prepare
27 and file a detailed statement of its reasons for the denial.

28 (d) All proceedings at a meeting of the commission relating to a
license application shall be recorded stenographically or by audio or
video recording.

(e) 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

1 court finds that the action of the commission was arbitrary and
2 capricious, or that the action exceeded the commission's jurisdiction.

3 6. Business and Professions Code section 19871 provides:

4 (a) The commission meeting described in Section 19870 shall
5 be conducted in accordance with regulations of the commission and as
6 follows:

7 (1) Oral evidence shall be taken only upon oath or
8 affirmation.

9 (2) Each party shall have all of the following rights:

10 (A) To call and examine witnesses.

11 (B) To introduce exhibits relevant to the issues of
12 the case.

13 (C) To cross-examine opposing witnesses on any
14 matters relevant to the issues, even though the matter was
15 not covered on direct examination.

16 (D) To impeach any witness, regardless of which
17 party first called the witness to testify.

18 (E) To offer rebuttal evidence.

19 (3) If the applicant does not testify in his or her own
20 behalf, he or she may be called and examined as if under cross-
21 examination.

22 (4) The meeting need not be conducted according to
23 technical rules relating to evidence and witnesses. Any relevant
24 evidence may be considered, and is sufficient in itself to support a
25 finding, if it is the sort of evidence on which responsible persons
26 are accustomed to rely in the conduct of serious affairs, regardless
27 of the existence of any common law or statutory rule that might
28 make improper the admission of that evidence over objection in a
civil action.

(b) Nothing in this section confers upon an applicant a right to
discovery of the department's⁶ investigative reports or to require

⁶ Hereinafter, "department" refers to the Department of Justice, Bureau of Gambling Control. (Bus. & Prof. Code, § 19805, subd. (h).)

1 disclosure of any document or information the disclosure of which is
2 otherwise prohibited by any other provision of this chapter.

3 **SPECIFIC STATUTORY AND REGULATORY PROVISIONS**

4 7. Business and Professions Code section 19856, subdivision (a) provides in part:

5 The burden of proving his or her qualifications to receive any
6 license is on the applicant.

7 8. Business and Professions Code section 19857 provides in part:

8 No gambling license shall be issued unless, based on all the
9 information and documents submitted, the commission is satisfied that
10 the applicant is all of the following:

11 (a) A person of good character, honesty and integrity.

12 (b) A person whose prior activities, criminal record, if any,
13 reputation, habits, and associations do not pose a threat to the public
14 interest of this state, or to the effective regulation and control of
15 controlled gambling, or create or enhance the dangers of unsuitable,
16 unfair, or illegal practices, methods, and activities in the conduct of
17 controlled gambling or in the carrying on of the business and financial
18 arrangements incidental thereto.

19 9. Business and Professions Code section 19859 provides in part:

20 The commission shall deny a license to any applicant who is
21 disqualified for any of the following reasons:

22 (a) Failure of the applicant to clearly establish eligibility and
23 qualification in accordance with this chapter.

24 (b) Failure of the applicant to provide information,
25 documentation, and assurances required by the chapter or requested by
26 the chief, or failure of the applicant to reveal any fact material to
27 qualification, or the supplying of information that is untrue or
28 misleading to a material fact pertaining to the qualification criteria.

10 California Code of Regulations, title 4, section 12054, subdivision (a), provides:

(a) At a non-evidentiary hearing meeting, the Commission may
take, but is not limited to taking, one of the following actions:

(1) Issue a license, temporary license, interim license,
registration, permit, finding of suitability, renewal or other
approval.

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(2) Elect to hold an evidentiary hearing in accordance with Section 12056 and, when for a renewal application, issue an interim renewal license pursuant to Section 12035. The Commission shall identify those issues for which it requires additional information or consideration related to the applicant’s suitability.

(3) Table or continue an item for consideration at a subsequent meeting, for any purpose, including obtaining new or additional information from the applicant, Bureau or Commission staff, provided however in the case of renewals, the Commission must act on the application before the license expires.

(4) Extend a license for up to 180 calendar days as necessary, as provided in Business and Professions Code section 19876, subdivision (c).

(5) Approve or deny a request for withdrawal pursuant to Section 12015.

(6) Make a finding of abandonment pursuant to subsection (c) of Section 12017.

(7) If the Bureau has filed an accusatory pleading with the Commission pursuant to Business and Professions Code section 19930 prior to Commission action on a renewal application, the Commission shall issue an interim renewal license pursuant to Section 12035.

11. California Code of Regulations, title 4, section 12060, provides:

(a) If the Executive Director determines it is appropriate, he or she may set an application for consideration at a GCA hearing in advance of a meeting pursuant to Section 12054. The Executive Director shall give notice to the applicant, pursuant to paragraph (2) subsection (c) of Section 12052, to the Office of the Attorney General, and to the Bureau no later than 90 calendar days in advance of the GCA hearing. The Executive Director’s determination will be based on information contained in the Bureau’s report or other appropriate sources including, without limitation, a request from the Bureau or applicant as well as the Commission’s operational considerations. The Commission retains the authority to refer the matter to an APA hearing pursuant to subsection (a) of Section 12056 or hear the matter at a Section 12054 meeting if the Commission deems it appropriate.

(b) When the Commission has elected to hold a GCA hearing, the Executive Director shall give notice to the applicant, pursuant to

1 paragraph (2) subsection (c) of Section 12052, to the Office of the
2 Attorney General, and to the Bureau no later than 60 calendar days in
3 advance of the GCA hearing.

4 (c) The presiding officer shall have no communication with the
5 Commission or Commission staff upon the merits, or upon information
6 or documents related to the application prior to the evidentiary hearing.
7 The Executive Director shall designate a presiding officer which shall
8 be:

- 9 (1) A member of the Commission's legal staff; or,
- 10 (2) An Administrative Law Judge.

11 (d) The applicant or the complainant, or the applicant and the
12 complainant, may request a continuance in writing to the Executive
13 Director stating the reason for the continuance and any proposed future
14 hearing dates. The Executive Director or Commission may approve the
15 request.

16 (e) The complainant shall provide to the applicant, at least 45
17 calendar days prior to the GCA hearing, and the applicant shall provide
18 to the complainant, at least 30 calendar days prior to the GCA hearing,
19 the following items:

- 20 (1) A list of potential witnesses with the general subject
21 of the testimony of each witness;
- 22 (2) Copies of all documentary evidence intended to be
23 introduced at the hearing and not previously provided;
- 24 (3) Reports or statements of parties and witnesses, if
25 available; and
- 26 (4) All other written comments or writings containing
27 relevant evidence.

28 (f) A presiding officer shall rule on the admissibility of
evidence and on any objections raised except for objections raised
under subsection (g). A ruling by the presiding officer shall be final.

(1) In advance of the GCA hearing, upon a motion of a
party or by order of the presiding officer, the presiding officer
may conduct a pre-hearing conference, either in person, via
teleconference, or by email exchange, subject to the presiding
officer's availability and shall issue a prehearing order if
appropriate or requested by either party. The prehearing
conference and order may address the following:

- (A) Evidentiary issues;

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(B) Witness and exhibit lists;

(C) Alterations in the Bureau recommendation;

(D) Stipulation for undisputed facts including the admission of the Bureau’s report; and

(E) Other issues that may be deemed appropriate to promote the orderly and prompt conduct of the hearing.

(2) The GCA hearing need not be conducted according to technical rules of evidence. Any relevant evidence may be considered, and is sufficient in itself to support findings if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of that evidence over objection in a civil action.

(g) The Commission may, at any time upon a showing of prejudice by the objecting party:

(1) Prohibit the testimony of any witness or the introduction of any documentary evidence that has not been disclosed pursuant to subsection (e); or

(2) Continue any meeting or hearing as necessary to mitigate any prejudice.

(h) The complainant shall present all facts and information in the Bureau report, if any, and the results of the Bureau’s background investigation, and the basis for any recommendation, if the Bureau filed one with the Commission according to Business and Professions Code section 19868, to enable the Commission to make an informed decision on whether the applicant has met his, her, or its burden of proof. The complainant may but is not required to recommend or seek any particular outcome during the evidentiary hearing, unless it so chooses.

(i) The burden of proof is on the applicant at all times to prove his, her, or its qualifications to receive any license or other approval under the Act.

(j) The applicant may choose to represent himself, herself, or itself, or may retain an attorney or lay representative.

(k) Except as otherwise provided in subsection (g), the complainant and applicant shall have the right to call and examine witnesses under oath; to introduce relevant exhibits and documentary evidence; to cross-examine opposing witnesses on any relevant matter, even if the matter was not covered in direct examination; to impeach

1 any witness, regardless of which party first called the witness to testify;
2 and to offer rebuttal evidence. If the applicant does not testify on his,
3 her or its own behalf, the applicant may be called and examined, under
oath, as if under cross-examination.

4 (l) Oral evidence shall be taken upon oath or affirmation,
5 which may be administered by the Executive Director, a member of the
Commission, or the presiding officer, if an Administrative Law Judge.

6 (m) At the conclusion of the evidentiary hearing, the members
7 of the Commission shall take the matter under submission, may discuss
8 the matter in a closed session meeting, and may schedule future closed
session meetings for deliberation.

9 12. California Code of Regulations, title 4, section 12354, subdivision (e)(5), provides:

10 (e) With ten day's advance written notice to the interim key
11 employee and to the gambling enterprise, the Executive Director shall
cancel the interim key employee license based upon the following.

12 * * *

13 (5) A Bureau recommendation of denial of the
14 applicant's key employee application.

15 13. California Code of Regulations, title 4, section 12355, subs. (a)(1), (b)(2)(A), and (c),
16 provide:

17 (a) An application for a portable personal key employee license
18 shall be denied by the Commission if any of the following applies.

19 (1) The Commission finds that the applicant is ineligible,
20 unqualified, disqualified, or unsuitable pursuant to the criteria set
21 forth in the Act or other applicable law or that granting the license
would be inimical to public health, safety, welfare, or would
22 undermine the public trust that gambling operations are free from
criminal or dishonest elements.

23 (b) An application for a key employee license may be denied if:

24 (2) The Commission finds that the applicant's past
25 behavior calls into question the applicant's qualification
26 requirements and considerations outlined in Business and
Professions Code section 19856. Examples of past behavior that
may be considered include, but are not limited to:

27 (A) Convictions which demonstrate a pattern of
28 disregard for the law.

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(c) The grounds for denial set forth in this section apply in addition to any grounds prescribed by statute or any grounds that would support revocation under chapter 10 of these regulations.

14. California Code of Regulations, title 4, section 12568, subs. (c)(3) and (c)(4), provide:

(c) A state gambling license, finding of suitability, or approval granted by the Commission, other than a work permit, and an owner license for a gambling establishment if the owner licensee has committed a separate violation from any violations committed by the gambling establishment shall be subject to revocation by the Commission on any of the following grounds:

* * *

(3) If the Commission finds the holder no longer meets any criterion for eligibility, qualification, suitability or continued operation, including those set forth in Business and Professions Code sections 19857, 19858, or 19880, as applicable, or

(4) If the Commission finds the holder currently meets any of the criteria for mandatory denial of an application set forth in Business and Professions Code sections 19859 or 19860.