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10
11 **BEFORE THE**
12 **CALIFORNIA GAMBLING CONTROL COMMISSION**
13 **STATE OF CALIFORNIA**

14
15 In the Matter of the Statement of Reasons for
16 Denial of Application for Third-Party
17 Proposition Player Services License for:

18 **VICTOR DENNIS ESPINOZA-DOWNEY**
19 [REDACTED]

20 Registration Number TPPL-024823,

21
22 **Respondent.**
23

BGC Case No. BGC-HQ2021-00036SL
CGCC Case No. GCADS-TPPL-024823

STATEMENT OF REASONS

1 Complainant alleges as follows:

2 **PARTIES**

3 1. Yolanda Morrow (Complainant) brings this Statement of Reasons for Denial of
4 Application for Third-Party Proposition Player Services License solely in her official capacity as
5 the Acting Director of the California Department of Justice, Bureau of Gambling Control
6 (Bureau).

7 2. On or about January 24, 2020, the California Gambling Control Commission
8 (Commission) issued third-party proposition player services registration number TPPL-024823 to
9 Victor Dennis Espinoza-Downey (Respondent) to allow for his employment as a third-party
10 proposition player for 2 Kings Gaming, Inc., a registered third-party proposition player services
11 provider, registration number TPPP-000148.

12 **THE APPLICATION AND THIS PROCEEDING**

13 3. On or about March 2, 2020, Respondent submitted an initial Application for Third-
14 Party Proposition Player Services License for Supervisor, Player or Other Employee, together
15 with a Level I Supplemental Information form (collectively, Application), to the Bureau.

16 4. On or about May 28, 2021, the Bureau submitted a Third-Party Player Initial
17 Background Investigation Report to the Commission recommending that Respondent's
18 Application be denied.

19 5. On July 16, 2021, the Commission notified Respondent of the decision of the
20 Commission's Executive Director to refer consideration of Respondent's Application to an
21 evidentiary hearing to be conducted pursuant to Business and Professions Code sections 19870
22 and 19871, and California Code of Regulations, title 4, section 12056, subdivision (a).¹ Included
23 with that written notice was a Notice of Defense form for Respondent to complete and return.

24 6. On or about August 4, 2021, the Commission received Respondent's completed
25 Notice of Defense form.

26
27 ¹ The statutes and regulations applicable to this Statement of Reasons are quoted in
28 pertinent part in Appendix A.

1 **BURDEN OF PROOF**

2 7. Respondent has the burden of proving his qualifications to receive a license.
3 (Bus. & Prof. Code, § 19856, subd. (a).)

4 **FIRST CAUSE FOR DENIAL**

5 **(Misdemeanor Conviction - Unsuitable for Licensure - Mandatory Denial)**

6 8. Respondent's Application is subject to denial and his registration is subject to being
7 voided² because Respondent has engaged in illegal behavior, demonstrating a willingness to
8 violate the law and a conscious disregard for the health, safety, and welfare of others.

9 Specifically, on or about January 22, 2020, Respondent was convicted of violating Vehicle Code
10 section 20001, subdivision (b)(1), hit and run resulting in injury, a misdemeanor crime of moral
11 turpitude, in the case of *The People of the State of California v. Victor Dennis Espinoza-Downey*
12 (Super. Ct. Merced County, 2020, Case No. 19CR-05880).

13 (Bus. & Prof. Code, §§ 19856, 19857, 19859, subds. (a), (b) & (d) [mandatory denial]; Cal. Code.
14 Regs., tit. 4, §§ 12122, subd. (d), 12130, subd. (d).)

15 **SECOND CAUSE FOR DENIAL**

16 **(Failure to Accurately and Honestly Disclose Required Material Information)**

17 9. Respondent's Application is subject to denial and his registration is subject to being
18 voided because Respondent, under penalty of perjury, failed to disclose on his Application the
19 details of his misdemeanor conviction alleged in paragraph 8 above. By not disclosing the details
20 of his misdemeanor conviction, Respondent failed to disclose required information that is
21 material to his Application.

22 (Bus. & Prof. Code, §§ 19856, 19857, 19859, subds. (a) & (b) [mandatory denial], 19866; Cal.
23 Code. Regs., tit. 4, §§ 12122, subd. (d), 12130, subd. (d).)

24 _____
25 ² Respondent applied for and was issued a third-party proposition player services
26 registration under regulations in effect when he applied. Those regulations were repealed and
27 replaced with a temporary licensing program, effective January 1, 2021. Pursuant to California
28 Code of Regulations, title 4, section 12130, subdivision (d), a previously issued third-party
proposition player services registration is subject to the same conditions as a temporary license,
thus making the registration void upon denial of the license application by the Commission,
pursuant to California Code of Regulations, title 4, section 12122, subdivision (d).


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PRAYER

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

- 1. Denying Respondent’s Application for Third-Party Proposition Player Services License;
- 2. Voiding Respondent’s registration number TPPL-024823; and
- 3. Taking such other and further action as the Commission may deem appropriate.

Dated: March 24, 2022



Yolanda Morrow, Acting Director
Bureau of Gambling Control
California Department of Justice

1 **APPENDIX A – STATUTORY AND REGULATORY PROVISIONS**

2 **STATUTES**

- 3 1. Business and Professions Code section 19811, subdivision (b), provides:

4 Jurisdiction, including jurisdiction over operation and concentration, and supervision
5 over gambling establishments in this state and over all persons or things having to do
6 with the operation of gambling establishments is vested in the commission.

- 6 2. Business and Professions Code, section 19823 provides:

7 (a) The responsibilities of the commission include, without limitation, all of the
8 following:

9 (1) Assuring that licenses, approvals, and permits are not issued to, or held
10 by, unqualified or disqualified persons, or by persons are conducted in a manner that
11 is inimical to the public health, safety, or welfare.

11 (2) Assuring that there is no material involvement, directly or indirectly,
12 with a licensed gambling operation, or the ownership or management thereof, by
13 unqualified or disqualified persons, or by persons whose operations are conducted in
14 a manner that is inimical to the public health, safety, or welfare.

13 (b) For the purposes of this section, “unqualified person” means a person who is
14 found to be unqualified pursuant to the criteria set forth in Section 19857, and
15 “disqualified person” means a person who is found to be disqualified pursuant to the
16 criteria set forth in Section 19859.

- 16 3. Business and Professions Code, section 19824 provides, in part:

17 The commission shall have all powers necessary and proper to enable it fully and
18 effectually to carry out the policies and purposes of this chapter,^[3] including, without
19 limitation, the power to do all of the following:

19 * * *

20 (b) For any cause deemed reasonable by the commission, deny any application for
21 a license, permit, or approval provided for in this chapter or regulations adopted
22 pursuant to this chapter, limit, condition, or restrict any license, permit, or approval,
23 or impose any fine upon any person licensed or approved. The commission may
24 condition, restrict, discipline, or take action against the license of an individual owner
25 endorsed on the license certificate of the gambling enterprise whether or not the
26 commission takes action against the license of the gambling enterprise.

24 * * *

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

27 ³ “Chapter” refers to Business and Professions Code, division 8, chapter 5, (commencing
28 with section 19800), also known as the Gambling Control Act.

1 4. Business and Professions Code, section 19853, subdivision (a), provides:

2 The commission, by regulation or order, may require that the following persons
3 register with the commission, apply for a finding of suitability as defined in
subdivision (i) of 19805, or apply for a gambling license:

4 * * *

5 (3) Any person who does business on the premises of a licensed gambling
6 establishment.

7 5. Business and Professions Code section 19856 provides, in part:

8 (a) The burden of proving his or her qualifications to receive any license is on the
applicant.

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

11 6. Business and Professions Code, section 19857 provides:

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

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

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

19 (c) A person that is in all other respects qualified to be licensed as provided in this
chapter.

20 7. Business and Professions Code section 19859 provides, in part:

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

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

24 (b) Failure of the applicant to provide information, documentation, and assurances
25 required by this chapter or requested by the chief,⁴ or failure of the applicant to
26 reveal any fact material to qualification, or the supplying of information that is untrue
or misleading as to a material fact pertaining to the qualification criteria.

27 _____
28 ⁴ "Chief" refers to the Director of the Bureau. (Bus. & Prof. Code, § 19805, subd. (d).)

(d) Conviction of the applicant for any misdemeanor involving dishonesty or moral turpitude within the 10-year period immediately preceding the submission of the application, unless the applicant has been granted relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code; provided, however, that the granting of relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code shall not constitute a limitation on the discretion of the commission under Section 19856 or affect the applicant’s burden under Section 19857.

8. Business and Professions Code section 19866 provides:

An applicant for licensing or for any approval or consent required by this chapter, shall make full and true disclosure of all information to the department⁵ and the commission as necessary to carry out the policies of this state relating to licensing, registration, and control of gambling.

9. Business and Professions Code, section 19870 provides:

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

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

(c) If, during a meeting, the commission denies an application, denies approval, or approves with limits, restrictions, or conditions, the action shall be stayed for a period of 30 days after the meeting, during which the applicant may request an evidentiary hearing. If the applicant does not file a request for an evidentiary hearing within 30 days, the action of the commission taken at the meeting is final. If the applicant waives the right to hearing and assents to the action of the commission in writing, upon receipt of the waiver by the commission, the action shall no longer be stayed. If the applicant files a timely request for an evidentiary hearing, the action shall be vacated and the application shall be reviewed de novo at the evidentiary hearing.

(d) When an application is denied after an evidentiary hearing, the commission shall prepare and file a detailed statement of its reasons for the denial.

(e) All proceedings relating to an application at a meeting of the commission or at an evidentiary hearing shall be recorded stenographically or by audio or video recording.

(f) A decision of the commission after an evidentiary hearing, 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 does not apply to any

⁵ “Department” refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd. (h).)

1 judicial proceeding held to consider that petition, and the court may grant the petition
2 only if the court finds that the action of the commission was arbitrary and capricious,
or that the action exceeded the commission's jurisdiction.

3 10. Business and Professions Code, section 19871 provides:

4 (a) An evidentiary hearing described in Section 19870 shall be conducted in
5 accordance with regulations of the commission and as follows:

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

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

8 (A) To call and examine witnesses.

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

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

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

13 (E) To offer rebuttal evidence.

14 (3) If the applicant does not testify on their own behalf, the applicant may
be called and examined as if under cross-examination.

15 (4) The hearing need not be conducted according to technical rules
16 relating to evidence and witnesses. Any relevant evidence may be considered,
17 and is sufficient in itself to support a finding, if it is the sort of evidence on
18 which responsible 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.

19 (b) This section does not confer upon an applicant a right to discovery of the
20 department's investigative reports or to require disclosure of any document or
21 information the disclosure of which is otherwise prohibited by any other provision of
this chapter.

22 11. Business and Professions Code section 19984, subdivision (b), provides, in part:

23 The commission shall establish reasonable criteria for, and require the licensure and
24 registration of, any person or entity that provides proposition player services at
gambling establishments pursuant to this section, including owners, supervisors, and
25 players. The commission may impose licensing requirements, disclosures, approvals,
conditions, or limitations as it deems necessary to protect the integrity of controlled
gambling in this state . . .

26 **REGULATIONS**

27 12. California Code of Regulations, title 4, section 12040 provides, in part:
28

1 (a) An application for an initial or renewal license:

2 (1) Will be denied if the Commission finds that the applicant has not
3 satisfied the requirements of Business and Professions Code section 19857;
or,

4 (2) Will be denied if the Commission finds that any of the provisions of
5 Business and Professions Code section 19859 apply to the applicant.

6 13. California Code of Regulations, title 4, section 12056, subdivision (a) provides, in
part:

7 If the Commission elects to hold an evidentiary hearing, . . . the hearing will be
8 conducted as a GCA hearing under Section 12060, unless the Executive Director or
the Commission determines the hearing should be conducted as an APA hearing
9 under Section 12058.

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

11 (a) If the Executive Director determines it is appropriate, he or she may set an
12 application for consideration at a GCA hearing in advance of a meeting pursuant to
13 Section 12054. The Executive Director will give notice to the applicant, pursuant to
14 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
15 from the Bureau or applicant as well as the Commission's operational considerations.

16 (b) When a GCA hearing is elected pursuant to Section 12056, subsection (a), the
Executive Director will give notice to the applicant, pursuant to paragraph (2)
17 subsection (c) of Section 12052, to the Office of the Attorney General, and to the
Bureau no later than 60 calendar days in advance of the GCA hearing.

18 (c) An applicant may request that his, her, or its GCA hearing be held at a
Southern California location instead of the Commission's principal office in
19 Sacramento, by completing the appropriate section on the Notice of Defense, CGCC-
CH1-03 (Rev. 08/21). The request must be made on the initial Notice of Defense
20 form submitted to the Commission and Bureau within the timeframes specified on the
form.

21 (1) The Executive Director will approve a Southern California GCA
22 hearing, if the request is timely made on the initial Notice of Defense form
and meets all of the following criteria:

23 (A) The GCA hearing is estimated by Commission staff to last no
24 longer than four hours.

25 (B) The primary residence of the applicant is located in one of the
following counties: Imperial, Kern, Los Angeles, Orange, Riverside, San
26 Diego, San Luis Obispo, San Bernardino, Santa Barbara, or Ventura.

27 (C) A GCA hearing will be noticed for a Southern California
28 location only when it is in the best public interest, promotes judicial
economy, and comports with the Commission's availability.

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(2) If at any time before the hearing, the Executive Director determines that the criteria in subparagraphs (A) through (C) of paragraph (1) are no longer met, Commission staff may cancel the Southern California GCA hearing and issue a new notice for a hearing at the Commission's principal office in Sacramento.

(d) The presiding officer and her or his support staff will have no communication with the Commission or Commission staff upon the merits of an application prior to the evidentiary hearing. The Executive Director will designate a presiding officer which will be:

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

(e) The applicant or the complainant, or the applicant and the complainant, may request a continuance in writing to the Executive Director stating the reason for the continuance and any proposed future hearing dates. The Executive Director or Commission may approve the request. For a Southern California GCA hearing, if a continuance is granted, the hearing may be scheduled in Sacramento or Southern California based on the criteria specified in subparagraphs (A) through (C) of paragraph (1) of subsection (c).

(f) The complainant will provide to the applicant, subject to subsection (b) of Section 12056, at least 45 calendar days prior to the GCA hearing, and the applicant must provide to the complainant, at least 30 calendar days prior to the GCA hearing, the following items:

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

(g) A presiding officer will rule on the admissibility of evidence and on any objections raised except for objections raised under subsection (h). A ruling by the presiding officer is 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 will issue a pre-hearing order if appropriate or requested by either party. The pre-hearing conference and order may address the following:

- (A) Evidentiary issues;
- (B) Witness and exhibit lists;

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(C) Alterations in the Bureau recommendation;

(D) Stipulations for undisputed facts and/or the admission of evidence including without limitation the Bureau’s report;

(E) Authorizing offsite livestreaming appearances for parties or witnesses if good cause has been presented and only if the process for offsite livestreaming has been approved by the Executive Director; and,

(F) 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.

(h) 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 (f); or

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

(i) The complainant will 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.

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

(k) The applicant may choose to represent himself, herself, or itself, or may retain an attorney or lay representative. Lay representatives may assist the applicant but are not authorized to serve as an attorney as otherwise defined and regulated by state law.

(l) Except as otherwise provided in subsection (h), the complainant and applicant will 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 any witness, regardless of which party first called the witness to testify; and to offer rebuttal evidence. If the applicant does not testify on his, her or its behalf, the applicant may be called and examined, under oath, as if under cross-examination.

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

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

15. California Code of Regulations, title 4, section 12122, subdivision (d), provides:

(d) Upon issuance or denial of a license or Commission work permit by the Commission, the temporary license will become void and cannot be used thereafter.

16. California Code of Regulations, title 4, section 12130, subdivision (d), provides:

(d) A TPPPS [Third-Party Proposition Player Services] registration includes all conditions of a temporary license provided in subsections (a), (b), and subsections (d) and (e) of Section 12122.

17. California Code of Regulations, title 4, section 12270, subdivisions (b)(8) and (b)(9), provide:

(b) . . .

* * *

(8) That proposition player services must be provided in the gambling establishment only in compliance with laws and regulations pertaining to controlled gambling.

(9) That proposition player services may be provided only by authorized players with current licensing under Chapter 2.