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By CGCC Legal Division at 2:44 pm, Dec 12, 2022

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

14 In the Matter of the Statement of Reasons for
Denial of Application for Approval of Third-
15 Party Proposition Player Services Employee
Type License for:

17 **BRANDON RICHARD CREAM**
18 

19 TP Worker License No. TPWK-000889

21 **Respondent.**

BGC Case No. BGC-HQ2022-00010SL

CGCC Case No: CGCC-2022-0512-9Bi

STATEMENT OF REASONS

Hearing Date: January 31, 2023
Hearing Time: 10:00 a.m.
Hearing Place: 2399 Gateway Oaks, Ste. 100,
Sacramento, CA 95833

**This hearing will be conducted by means of
video conferencing on Zoom. The Zoom
meeting code is 285 757 8614**

23
24 Complainant alleges as follows:

25 **PARTIES**

26 1. Yolanda Morrow (Complainant) brings this Statement of Reasons solely in her
27 official capacity as Director of the California Department of Justice, Bureau of Gambling Control
28 (Bureau).

1 2. Brandon Richard Cream (Respondent) is an applicant for approval of a Third-Party
2 Proposition Player Services (TPPPS) Employee Type License.

3 **THE APPLICATION AND THIS PROCEEDING**

4 3. On April 22, 2021, the Bureau received an initial application for a TPPPS Worker
5 License for Respondent (Application) for Commerce Group, Inc. The Application included a
6 Commission Work Permit or TPPPS Worker: Supplemental Information form (CGCC-CH2-10
7 (New 05/20) (Supplemental Information Form). Also on April 22, 2021, the Bureau received an
8 Appointment of Designated Agent form from Respondent identifying Jaycee Macalino as
9 Respondent’s designated agent. Jaycee Macalino acknowledged this appointment on March 10,
10 2021. On April 27, 2021, Respondent was issued Temporary Third-Party Proposition Player
11 Services License Number TPWK-000889, which is valid through April 30, 2023.

12 4. The Bureau conducted an initial background investigation with respect to the
13 Application. Respondent’s Supplemental Information Form disclosed that Respondent had
14 served in the United States Army from June 10, 2010 to January 1, 2013, and had been
15 discharged under “other than honorable” circumstances. Respondent disclosed no criminal
16 convictions. During the course of its investigation, the Bureau learned that Respondent had, in
17 fact, pled guilty on October 2, 2018, to violating Penal Code section 148, subdivision (a)(1), that
18 is, resisting, delaying or obstructing an officer or emergency medical technician, etc., a
19 misdemeanor, in *People of the State of California vs. Brandon Richard Cream*, San Joaquin
20 County Superior Court Case Number LOD-CR-Mi-2018-0012302, and the plea was on that date
21 accepted by the court. The Bureau then requested that Respondent provide information
22 concerning the circumstances of both his military discharge and the circumstances of the 2018
23 misdemeanor conviction, and to explain why he had affirmatively denied having been convicted
24 or having pled guilty or nolo contendere to any misdemeanor or felony.

25 5. On September 15, 2021, Respondent provided, through Respondent’s Designated
26 Agent Jaycee Macalino, written responses concerning his military discharge and his 2018
27 misdemeanor conviction. The Bureau subsequently requested further information from
28 Respondent concerning his misdemeanor conviction, in particular with respect to discrepancies

1 between Respondent's initial response and the police report the Bureau had obtained concerning
2 the incident. On December 9, 2021, Respondent provided a written response concerning the
3 discrepancies the Bureau had noted and further explaining the circumstances of the incident.

4 6. On February 8, 2022, then Assistant Director Yolanda Morrow and Manager II Brian
5 Gilleland of the Bureau met by telephone with Respondent and Respondent's designated agent
6 Jaycee Macalino, and informed them generally of the basis for the Bureau's recommendation to
7 deny the Application.

8 7. On February 9, 2022, the Bureau issued its Third-Party Worker Initial Background
9 Investigation Report in this matter, recommending that the California Gambling Control
10 Commission (Commission) deny the Application on the ground that Respondent had failed to
11 disclose a misdemeanor conviction.

12 8. At its May 12, 2022 meeting, the Commission referred Respondent's Application to
13 an evidentiary hearing pursuant to California Code of Regulations Title 4, Division 18, Chapter 1,
14 section 12054, subdivision (a)(4), to be conducted as a hearing under the Gambling Control Act,
15 Government Code section 19800 et seq. (Act), pursuant to California Code of Regulations, title 4,
16 section 12060.¹ On May 13, 2022, the Commission notified Respondent of its action upon the
17 Application and provided Respondent with a Notice of Defense form (CGCC-CH1-03).

18 9. The Bureau subsequently received a Notice of Defense from Respondent dated May
19 31, 2022, requesting an evidentiary hearing and indicating that Respondent was not at that time
20 represented by an attorney.

21 10. On July 15, 2022, the Commission's staff notified Respondent that an evidentiary
22 hearing would be heard before the Commission starting at 10:00 a.m. on January 31, 2023, and
23 that the meeting would be conducted by Zoom, and that a prehearing conference would be held
24 on December 13, 2022, also by Zoom.

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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 11. Respondent has the burden of proving that he is qualified to receive a license. (Bus.
3 & Prof. Code, § 19856, subd. (a).)

4 **FIRST CAUSE FOR DENIAL**

5 **(Disqualified for Licensure)**

6 12. Respondent failed to disclose in the Application that he had been convicted on
7 October 2, 2018, of violating Penal Code section 148, subdivision (a)(1) (resisting, delaying or
8 obstructing officer or emergency medical technician, etc.), a misdemeanor, in *People of the State*
9 *of California vs. Brandon Richard Cream*, San Joaquin County Superior Court Case No. LOD-
10 CR-Mi-2018-0012302. In the Application’s Supplemental Information Form, Respondent
11 affirmatively represented that he had not been convicted of any misdemeanor or felony.
12 Respondent’s Application is therefore subject to mandatory denial under Business and
13 Professions Code section 19859, subdivision (b), for supplying information that is untrue or
14 misleading as to a material fact pertaining to the qualification criteria.
15 (Bus. & Prof. Code, §§ 19859, subd. (b); Cal. Code Regs., tit. 4, § 12040 (a) (2).)

16 **SECOND CAUSE FOR DENIAL**

17 **(Failure to Establish Qualification for Licensure)**

18 13. As described in paragraph 12 above, Respondent supplied information that is untrue
19 or misleading as to a material fact pertaining to the qualification criteria. By doing so,
20 Respondent also failed to make full and true disclosure as required by the Act. By acting in the
21 manner described herein, Respondent has failed to establish that Respondent is a person of good
22 character, honesty, and integrity, and has further failed to establish that Respondent’s prior
23 activities, criminal record, and habits do not pose a threat to the public interest of this state, or to
24 the effective regulation and control of controlled gambling. The Application is therefore subject
25 to discretionary denial under Business and Professions Code section 19857.
26 (Bus. & Prof. Code, §§ 19856, 19857, subds. (a) & (b), 19859, subd. (a), 19866; Cal. Code Regs.,
27 tit. 4, §12040 (a) (1).)

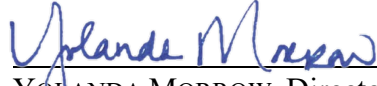
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PRAYER

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 Approval of a Third-Party Proposition Player Services Employee Type License; and
2. Taking such other and further action as the Commission may deem appropriate.

Dated: December 12, 2022



YOLANDA MORROW, Director
Bureau of Gambling Control
California Department of Justice
Complainant

1 APPENDIX A

2 **BUSINESS AND PROFESSIONS CODE**

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

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

- 8 2. Business and Professions Code section 19823 provides:

9 (a) The responsibilities of the commission include, without
10 limitation, all of the following:

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

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

21 (b) For the purposes of this section, “unqualified person” means
22 a person who is found to be unqualified pursuant to the criteria set
23 forth in Section 19857, and “disqualified person” means a person who
24 is found to be disqualified pursuant to the criteria set forth in Section
25 19859.

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

27 The commission shall have all powers necessary and proper to
28 enable it fully and effectually to carry out the policies and purposes of
this chapter,^[2] including, without limitation, the power to do all of the
following:

* * *

(b) For any cause deemed reasonable by the commission, deny
any application for a license, permit, or approval provided for in this
chapter or regulations adopted pursuant to this chapter, limit,
condition, or restrict any license, permit, or approval, or impose any
fine upon any person licensed or approved. The commission may
condition, restrict, discipline, or take action against the license of an

² “Chapter” refers to Business and Professions Code, division 8, chapter 5, (commencing with section 19800), also known as the Gambling Control Act.

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individual owner endorsed on the license certificate of the gambling enterprise whether or not the commission takes action against the license of the gambling enterprise.

* * *

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

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

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

* * *

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

5. Business and Professions Code section 19856 provides:

(a) Any person who the commission determines is qualified to receive a state license, having due consideration for the proper protection of the health, safety, and general welfare of the residents of the State of California and the declared policy of this state, may be issued a license. The burden of proving his or her qualifications to receive any license is on the applicant.

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

(c) In reviewing an application for any license, the commission shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the gambling operations with respect to which the license would be issued are free from criminal and dishonest elements and would be conducted honestly.

1 6. Business and Professions Code section 19857 provides:

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

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

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

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

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

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

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

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

25 8. Business and Professions Code section 19866 provides:

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

29 9. Business and Professions Code section 19870 provides:

30 (a) The commission, after considering the recommendation of the
31 chief^{3]} and any other testimony and written comments as may be
32 presented at the meeting, or as may have been submitted in writing to
33 the commission prior to the meeting, may either deny the application

34 ³ “Chief” refers to the Director of the Bureau. (Bus. & Prof. Code, § 19805, subd. (d).)

1 or grant a license to an applicant who it determines to be qualified to
2 hold the license.

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

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

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

12 (e) A decision of the commission denying a license or approval,
13 or imposing any condition or restriction on the grant of a license or
14 approval may be reviewed by petition pursuant to Section 1085 of the
15 Code of Civil Procedure. Section 1094.5 of the Code of Civil
16 Procedure shall not apply to any judicial proceeding described in the
17 foregoing sentence, and the court may grant the petition only if the
18 court finds that the action of the commission was arbitrary and
19 capricious, or that the action exceeded the commission's jurisdiction.

20 10. Business and Professions Code section 19871 provides:

21 (a) The commission meeting described in Section 19870 shall be
22 conducted in accordance with regulations of the commission and as
23 follows:

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

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

27 (A) To call and examine witnesses.

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

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

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

(E) To offer rebuttal evidence.

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

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

(b) Nothing in this section confers upon an applicant a right to discovery of the department's^[4] investigative reports or to require disclosure of any document or information the disclosure of which is otherwise prohibited by any other provision of this chapter.

CALIFORNIA CODE OF REGULATIONS

11. California Code of Regulations, title 4, section 12040, subdivision (a) provides, in part:

An application for an initial or renewal license:

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

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

12. California Code of Regulations, title 4, section 12054, subdivision (a)(2) provides:

(a) At a non-evidentiary hearing meeting, the Commission may take, but is not limited to taking, one renewal or other approval.

* * *

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

⁴ "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd. (h).)

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

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

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

9 (a) If the Executive Director determines it is appropriate, he or she
10 may set an application for consideration at a GCA hearing in advance of
11 a meeting pursuant to Section 12054. The Executive Director will give
12 notice to the applicant, pursuant to paragraph (2) subsection (c) of
13 Section 12052, to the Office of the Attorney General, and to the Bureau
14 no later than 90 calendar days in advance of the GCA hearing. The
15 Executive Director's determination will be based on information
16 contained in the Bureau's report or other appropriate sources including,
17 without limitation, a request from the Bureau or applicant as well as the
18 Commission's operational considerations.

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

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

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

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

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

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

(2) If at any time before the hearing, the Executive Director
determines that the criteria in subparagraphs (A) through (C) of

1 paragraph (1) are no longer met, Commission staff may cancel the
2 Southern California GCA hearing and issue a new notice for a
hearing at the Commission's principal office in Sacramento.

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

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

8 (e) The applicant or the complainant, or the applicant and the
9 complainant, may request a continuance in writing to the Executive
10 Director stating the reason for the continuance and any proposed future
11 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).

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

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

21 (g) A presiding officer will rule on the admissibility of evidence and
22 on any objections raised except for objections raised under subsection
(h). A ruling by the presiding officer is final.

23 (1) In advance of the GCA hearing, upon a motion of a party
24 or by order of the presiding officer, the presiding officer may
25 conduct a pre-hearing conference, either in person, via
26 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.

- 27 (A) Evidentiary issues;
- 28 (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,

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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.

(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.