

1 MATTHEW RODRIQUEZ
Attorney General of California
2 SARA J. DRAKE
Senior Assistant Attorney General
3 T. MICHELLE LAIRD
Supervising Deputy Attorney General
4 RONALD R. GIUSSO
Deputy Attorney General
5 State Bar No. 184483
6 600 West Broadway, Suite 1800
San Diego, CA 92101
7 P.O. Box 85266
San Diego, CA 92186-5266
8 Telephone: (619) 738-9565
9 Fax: (619) 645-2271
E-mail: ronald.giusso@doj.ca.gov
Attorneys for Complainant



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

15 In the Matter of the Statement of Reasons for
16 Denial of Application for a Tribal Key
17 Employee License Regarding:

CGCC Case No.: CGCC-2020-1015-7A
BGC Case No.: BGC-HQ2020-00031SL

18 **HECTOR ANDRADE**
19 [REDACTED]

STATEMENT OF REASONS

20 **Respondent.**

22 Complainant alleges as follows:

23 **PARTIES**

24 1. Stephanie K. Shimazu (Complainant) brings this Statement of Reasons for denial of
25 an application for a determination of suitability for a tribal key employee license solely in her
26 official capacity as the Director of the California Department of Justice, Bureau of Gambling
27 Control (Bureau).
28

1 **FIRST CAUSE FOR DENIAL**

2 **(Providing Untrue or Misleading Information)**

3 9. Respondent's Application is subject to denial because he provided untrue or
4 misleading information to the Bureau about his termination by a previous employer, "The 101
5 Casino," and his reason for leaving that employment. Initially, Respondent stated his reason for
6 leaving was due to "unfair treatment and disorganization." Respondent claimed subsequently that
7 he left The 101 Casino in order to avoid termination due to attendance. Finally, Respondent
8 stated that he resigned from employment with The 101 Casino for violating the employer's
9 harassment policy. The information Respondent provided to the Bureau is in conflict with the
10 information provided by his previous employer. (Bus. & Prof. Code, §§ 19805, subd. (j); 19854,
11 subd. (b); 19857; 19859, subd. (b); & 19866; Cal. Code Regs., tit. 4, § 12346, subd. (a)(1).)

12 **PRAYER**

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

- 15 1. Denying Respondent's Application; and
16 2. Taking such other and further action as the Commission may deem appropriate.

17
18 Dated: March 24, 2021

19 Stephanie Shimazu Digitally signed by Stephanie Shimazu
Date: 2021.03.24 15:25:11 -0700

20 STEPHANIE K. SHIMAZU, DIRECTOR
21 Bureau of Gambling Control
22 California Department of Justice
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APPENDIX A
JURISDICTION

1. Business and Professions Code section 19805, subdivision (j), provides:

Finding of Suitability means a finding that a person meets the qualification described in subdivisions (a) and (b) of Section 19857, and that the person would not be disqualified from holding a state gambling license on any of the grounds specified in Section 19859.

2. Business and Professions Code section 19811, subdivision (b), provides:

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

3. Business and Professions Code section 19823 provides:

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

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

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

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

4. Business and Professions Code section 19824 provides in part:

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

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(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 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.

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

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

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

6. 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 either deny the application or grant a license to an applicant who it determines to be qualified to hold the license.

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

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

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

1 (e) A decision of the commission denying a license or
2 approval, or imposing any condition or restriction on the grant of a
3 license or approval may be reviewed by petition pursuant to Section
4 1085 of the Code of Civil Procedure. Section 1094.5 of the Code of
5 Civil Procedure shall not apply to any judicial proceeding described in
6 the foregoing sentence, and the court may grant the petition only if the
7 court finds that the action of the commission was arbitrary and
8 capricious, or that the action exceeded the commission's jurisdiction.

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10 7. Business and Professions Code section 19871 provides:

11 (a) The commission meeting described in Section 19870 shall
12 be conducted in accordance with regulations of the commission and as
13 follows:

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

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

17 (A) To call and examine witnesses.

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

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

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

25 (E) To offer rebuttal evidence.

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

(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.

1 (b) Nothing in this section confers upon an applicant a right to
2 discovery of the department's³ investigative reports or to require
3 disclosure of any document or information the disclosure of which is
4 otherwise prohibited by any other provision of this chapter.

4 **SPECIFIC STATUTORY AND REGULATORY PROVISIONS**

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

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

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

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

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

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

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

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

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

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

11. Business and Professions Code section 19866 provides:

³ Hereinafter, "department" refers to the Department of Justice, Bureau of Gambling Control. (Bus. & Prof. Code, § 19805, subd. (h).)

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

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

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

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

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

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

24 (4) Extend a license for up to 180 calendar days as
25 necessary, as provided in Business and Professions Code section
26 19876, subdivision (c).

27 (5) Approve or deny a request for withdrawal pursuant to
28 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.

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

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

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

19 (c) The presiding officer shall have no communication with
20 the Commission or Commission staff upon the merits, or upon
21 information or documents related to the application prior to the
22 evidentiary hearing. The Executive Director shall designate a
23 presiding officer which shall be:

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

26 (d) The applicant or the complainant, or the applicant and the
27 complainant, may request a continuance in writing to the Executive
28 Director stating the reason for the continuance and any proposed
future hearing dates. The Executive Director or Commission may
approve the request.

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

- 29 (1) A list of potential witnesses with the general subject
30 of the testimony of each witness;
- 31 (2) Copies of all documentary evidence intended to be
32 introduced at the hearing and not previously provided;
- 33 (3) Reports or statements of parties and witnesses, if
34 available; and

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(4) All other written comments or writings containing relevant evidence.

(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;

(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

1 filed one with the Commission according to Business and Professions
2 Code section 19868, to enable the Commission to make an informed
3 decision on whether the applicant has met his, her, or its burden of
4 proof. The complainant may but is not required to recommend or seek
any particular outcome during the evidentiary hearing, unless it so
chooses.

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

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

9 (k) Except as otherwise provided in subsection (g), the
10 complainant and applicant shall have the right to call and examine
11 witnesses under oath; to introduce relevant exhibits and documentary
12 evidence; to cross-examine opposing witnesses on any relevant matter,
13 even if the matter was not covered in direct examination; to impeach
14 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 own behalf, the applicant may be called and
examined, under oath, as if under cross-examination.

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

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

20 14. California Code of Regulations, title 4, section 12346, subdivisions
21 (a)(1) and (b)(3), provide:

22 (a) An application for a gambling license shall be denied by
23 the Commission if any of the following apply:

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

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(b) An application for a gambling license may be denied if:

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(3) The Commission finds that the applicant's past behavior calls into question the applicant's qualification requirements and considerations outlined in Business and Professions Code section 19856.

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

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

* * *

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

16. California Code of Regulations, title 4, § 12355, subds. (a) and (b), provide:

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

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

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

* * *

(2) The Commission finds that the applicant's past behavior calls into question the applicant's qualification requirements and considerations outlined in Business and Professions Code section 19856.