

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 19-029

JOSHUA R. CRULL
May 29, 2019

WHEREAS, Joshua R. Crull (“Crull”), requested a hearing to contest the proposed disciplinary action initiated against him on October 17, 2018, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-18-087; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Crull’s request and the Hearing Officer has submitted the proposed Findings of Fact, Conclusions of Law and Final Order attached hereto (collectively the "Final Order") for approval by the Commission; and

NOW, THEREFORE, BE IT RESOLVED, that the Commission has reviewed the Final Order and hereby rejects the recommendation of the Hearing Officer and assesses no penalty against his occupational license in the above-referenced case in the matter of DC-18-087; and

BE IT FURTHER RESOLVED, that this shall be considered a final decision of the Missouri Gaming Commission.

BEFORE THE MISSOURI GAMING COMMISSION

In Re:

JOSHUA CRULL

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) Case No. DC 18-087
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as "Commission") upon a request for hearing received October 30, 2018, submitted by Mr. Joshua Crull (hereinafter referred to as "Licensee"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated October 1, 2018. The designated Hearing Officer, Mr. Chas. H. Steib, conducted a hearing on February 21, 2018, where the Licensee and the Commission's attorney, Ms. Carolyn H. Kerr, appeared to present evidence and arguments of law. Licensee was afforded an opportunity to retain Legal Counsel, opted to not do so.

FINDINGS OF FACT

1. Licensee holds a Level II Occupational License and was employed as a Casino Beverage Department Barback at River City Casino at all relevant times herein (Tr.p.13, 1.21-22).

2. On May 26, 2018, a Patron of the River City Casino, one Allen Vine, ordered a drink from a Bartender at the bar at Judy's Velvet Lounge. Licensee had no direct contact with said Patron.

3. After receiving his drink the Patron paid for said drink, left a cash tip of \$3.00 on the bar and a spatially-separated by 30" TITO (Ticket In-Ticket Out) in the amount of \$145.60 ("TITO") (EGD) on the bar and walked away (Exhibit 4, Video Surveillance).

Patron Vine, when contacted later advised the Investigating Officer that he had not intended to leave the TITO as a tip, but had lost it somewhere (Exhibit 1, P.000014).

4. Licensee placed the TITO next to the Tip Bucket (Jar) on the back bar (Tr.p.30, 1.21-22).

5. Licensee had been told by another Bartender (Laverne M. Schmidt) that the TITO had been accepted by said Bartender and that Schmidt had accepted the TITO as a Tip (Tr.p.28, 1.6-7).

6. Licensee placed the TITO next to the Tip Bucket (Jar) and not in the Tip Bucket (Jar) because he saw the amount on the TITO (\$145.60) and THOUGHT the Patron meant to give a different TITO and the Patron gave the TITO by mistake (Tr.p.28, 1.13-15).

7. Between 7:17 p.m. and 9:28 p.m. the TITO remained on the back bar, either beside the Tip Bucket (Jar) or on a shelf above the Tip Bucket (Jar) and was the subject of the attention of at least two (2) other Bartenders (Laverne M. Schmidt and Brian Browning) (Exhibit 4 Video CD No. 1).

8. At 9:42 p.m. Assistant Beverage Manager Ashley Madigan walked behind the bar and spoke directly with Licensee but despite thinking the TITO may have been a mistake, did not mention the TITO to this supervisor (Exhibit 1, P.000012).

9. At 12:35 a.m. Licensee retrieved the Tip Bucket (Jar) and the TITO and walked to the Beverage Wall to count the tips and divide the tips among the Bartenders, including Licensee (Exhibit 1, P.000012).

10. When approached at the Beverage Wall by Sgt. Phillip Hoffman, Highway Patrol, and asked "Was it (TITO) a tip or did he (Laverne M. Schmidt) find it?" Licensee stated, "I am not sure." (Tr.p.21, l.7).

11. Title 11 CSR 45-10.030 states:

(7) All occupational licensees shall have a working knowledge of Chapter 313.800, RSMO et seq., *Code of State Regulations*, Title 11 Division 45, and the internal controls of the Class A or B licensees for whom they are currently employed by as they pertain to the responsibilities and limitations of their job.

12. The Commission's MICS as well as the Casino's ICS, Chapter H § 14.05 both require the Casino to "take reasonable action to identify, locate, and notify the proper owner of unclaimed jackpots, unclaimed credits on an EGD, cash, chips, and EGD tickets found unattended regardless of where found on the property."

13. The Commission's MICS, as well as the Casino's ICS, Chapter H § 14.07 both state, in pertinent part, as follows:

If the owner of found cash, chips, unclaimed credits, or EGD tickets is identified and the item is valued at \$10 or more, the funds shall be placed in safekeeping for return to the owner. If the value is less than \$10, the funds shall be processed as unclaimed property or placed in safekeeping. If the owner is not identified, the funds shall be processed as unclaimed property, regardless of the amount . . .

14. The Commission's MICS, as well as the Casino's ICS, Chapter H § 14.08 both require that "All found tickets, for which the owner could not be determined, shall be redeemed at the cage and the cash transferred to the Main Bank or floating employee window as unclaimed property."

15. Commission Exhibit 1 (Preliminary Order for Disciplinary Action); Exhibit 2 (Licensee's Request For Hearing); Exhibit 3 (Gaming Incident/Investigation Report No. 20180604006); Exhibit 4 (Two (2) DVDs of Surveillance Coverage Regarding Incident 20180604006).

CONCLUSIONS OF LAW

1. "The Commission shall have the full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to 313.850." Section 313.805, MO. REV. STAT. 2000.

2. "A holder of any license shall be the subject to imposition of penalties, suspension or revocation of such license, or if the person is an applicant for licensure, the denial of the application, for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety,

morals, good order and general welfare of the people of the State of Missouri, or that would discredit or tend to discredit the Missouri gaming industry or the State of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action . . . the following acts or omissions may be grounds for such discipline: (1) Failing to comply with or make provision for compliance with Sections 313.800 to 313.850, the rules and regulations of the Commission or any federal, state or local law regulation; . . . "Section 313.812.14, MO. REV. STAT. 2000.

3. "The State has a legitimate concern in strictly regulating and monitoring riverboat gaming operations. As such, any doubt as to the legislative objective or intent as to the Commission's power to regulate riverboat gaming operations in this State must be resolved in favor of strict regulation." *Pen-Yan Investment, Inc. v. Boyd Kansas City, Inc.*, 952 S.W.2d 299, 307 (Mo. App. 1997).

4. The burden of proof is at all times on the Licensee. The Licensee shall have the affirmative responsibility of establishing the facts of his/her case by clear and convincing evidence . . ." Regulation 11 CSR 45-13.060(2).

5. "Clear and convincing evidence" is evidence that "instantly tilts the scales in the affirmative when weighed against the opposing evidence, leaving the fact finder with an abiding conviction that the evidence is true." *State ex rel. Department of Social Services v. Stone*, 71 S.W.3d 643,646 (Mo. App. 2002).

6. "The Commission shall have the following powers . . . to access any appropriate administrative penalty against a licensee, including, but not limited to, suspension, revocation, and penalties of an amount as determined by the commission . . ." Section 313.805(6), MO. REV. STAT. 2000.

7. Section 313.812.14(1), RSMO (2000), states that a Licensee may be disciplined for failing to comply with or make provisions for compliance with Section 313.800 to 313.850, the rules and regulations of the Commission of any federal, state or local law or regulation.

8. Section 313.812.14(2), RSMO (2000), states that a Licensee may be disciplined for failing to comply with any rule, order of ruling of the Commission or its agents pertaining to gaming.

DISCUSSION

In the matter herein, the Licensee had no interaction with the Patron who left the TITO on the bar. Licensee was told by a Bartender that the TITO had been left as a TIP. Upon seeing the amount of the TITO (\$145.60), however, Licensee was cautious enough to think the TITO had been left by mistake and hence, did not place the TITO in the Tip Bucket (Jar) as a TIP but placed it next to the Tip Bucket (Jar) in case the Patron returned. Licensee, however, did not report his concern to a supervisor; took no steps to ascertain whether the TITO was mistakenly left and nevertheless attempted to consolidate the TITO with TIPs for disbursement to himself and other Bartenders. Licensee's admitted concern regarding whether the left TITO was a mistake, evidenced by keeping the TITO apart from other Tips without notifying a supervisor falls below the Chapter H § 145 duty to take reasonable action to identify the true nature and purpose of the TITO.

FINAL ORDER

WHEREFORE, IT IS ORDERED AND ADJUDGED that Licensee did not meet his burden of proof to show clearly and convincingly that he should not be subject to discipline for the mishandling of a TITO, the failure to notify his supervisor of the incident and the treating of the TITO as a tip.

It is the recommendation of the Hearing Officer that the Licensee's Level II License be suspended for sixty (60) calendar days.

Dated:

March 31, 2019

Chas H. Steib

Chas. H. Steib, Hearing Officer