

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 19-030

BRIAN D. BROWNING
May 29, 2019

WHEREAS, Brian D. Browning (“Browning”), requested a hearing to contest the proposed disciplinary action initiated against him on October 1, 2018, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-18-088; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Browning’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 modifies the Hearing Officer’s recommendation and issues to Browning a suspension of his occupational license for seven (7) calendar days in the above-referenced case in the matter of DC-18-088; 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:)
)
BRIAN M. BROWNING) Case No. DC 18-088
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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. Brian M. Browning (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.

FINDINGS OF FACT

1. Licensee holds a Level II Occupational License and was employed as a Bartender at River City Casino at all relevant times herein (Tr.p.14, 1.6).

2. On May 26, 2018, a Patron of the River City Casino, one Allen Vine, ordered a drink from Laverne M. Schmidt, a Bartender, who was working at the bar at Judy's Velvet Lounge. Licensee had no direct contact with said Patron (Exhibit 4, Video Surveillance).

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 (Tr.p.34, 1.19-22) (Exhibit 1, P.000014).

4. Another Bartender, one Laverne M. Schmidt, retrieved the TITO and placed it on the back bar beside the Tip Bucket (Jar).

5. 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 Licensee another Bartender and a Barback (Laverne M. Schmidt and Joshua Crull) (Exhibit 4 Video CD No. 1).

6. At 7:30 p.m. Licensee actually looked at the TITO (Tr.p.34, 1.63).

7. At 9:42 p.m. Assistant Beverage Manager Ashley Madigan walked behind the bar and spoke directly with Joshua Crull and Licensee but neither mentioned the TITO (Exhibit 1, P.000012).

8. At 12:35 a.m. Barback, Joshua Crull, 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).

9. Licensee never knew whether the TITO was left as a tip or if a guest would return for it (Exhibit 3, P.000023).

10. Licensee made no attempt to find the person the TITO belonged to (Tr.p.48, l.1-8).

11. At 10:28 p.m. Assistant Beverage Manager Austin Wilson walked behind the bar and spoke to all of the Bartenders, including Licensee (Exhibit 3, P.000012).

12. Licensee made no mention of the TITO to a Supervisor or to a Security Officer (Exhibit 1, P.2).

13. Licensee stated "I have full admittance of not adhering to the policy (regarding unsure [owner or location] TITOs) (Tr.p.51, l.5-6).

14. At 3:30 a.m. May 27, 2018, Sgt. Hoffman interviewed Licensee and asked Barback, Joshua Crull, why the TITO was not placed in the Tip Bucket (Jar) with the rest of the tips and Barback, Joshua Crull, stated he wasn't sure if it was a tip or not, that's why it was placed on the back bar beside the Tip Bucket (Jar), in case the guest returned (Exhibit 1, P.000013).

15. 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.

16. 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."

17. 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 . . .

18. 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."

19. 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); and Licensee's Exhibit A (Letter of Patrick Baum) were all admitted into evidence without Objection.

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

Although Licensee's contact with the TITO was minimal, he did look at it and was involved in discussions with other Bartenders regarding the ticket. Licensee knew the requirements and obligations of all Licensees when dealing with a questionable TITO but failed to meet that obligation by reporting to a supervisor or security officer.

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 lost TITO, the failure to notify his supervisor of the incident and the treating of a lost 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 5, 2019

Chas H. Steib

Chas. H. Steib, Hearing Officer