

MISSOURI GAMING COMMISSION  
COMMISSION RESOLUTION NO. 21-038

ZACHARY R. RUSSELL  
August 25, 2021

WHEREAS, Zachary R. Russell ("Russell"), requested a hearing to contest the proposed disciplinary action initiated against him on September 9, 2019, by the Commission's issuance of a Preliminary Order for Disciplinary Action ("Preliminary Order"), DC 19-085; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Russell'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 approves and adopts the attached Final Order in the matter of DC 19-085 and sets aside the revocation proposed in the Preliminary Order; and

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

SO ADOPTED.

  
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Mike Leara, Chairman  
Missouri Gaming Commission

**BEFORE THE MISSOURI GAMING COMMISSION**

In Re: Zachary R. Russell

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Case No. 19-085

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License Number: 326159

**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 receipt of a letter dated October 4, 2019, making a request for a hearing by Zachary R. Russell (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated September 9, 2019. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on May 4, 2021 where the Petitioner, his attorney Mr. Tim Mudd, and the Commission's attorney, Ms. Carolyn Kerr, appeared to present evidence and arguments of law.

**FINDINGS OF FACT**

1. On March 23, 2019 and at all times relevant hereto, Petitioner was employed by Harrah's North Kansas City, LLC ("Company") as a Dealer aboard the *Harrah 's North Kansas City* ("Casino").
2. On March 23, 2019, Trooper Rickey McQuerrey, II ("Tpr. McQuerrey") of the Missouri State Highway Patrol was advised by Casino security of a bag of white powder located on the gaming floor behind a table game.
3. At all times relevant hereto, Tpr. McQuerrey was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Tpr. McQuerrey's investigation and review of surveillance footage revealed the following facts:
  - a) Surveillance footage showed a bag of a white substance appearing on the floor by the Petitioner's feet during his shift dealing at Table 403; and
  - b) When questioned, Petitioner denied possession of the bag and refused to submit to a urine analysis; and
  - c) The Missouri State Highway Patrol Crime Laboratory tested the substance in the bag and determined it to be cocaine, a Schedule II controlled substance.



5. The case was referred to the Clay County Prosecutor's Office, which declined to prosecute the offense on the basis that there was insufficient evidence establishing a criminal offense.
6. At hearing, Petitioner testified that he did not possess the cocaine and that he did not know where the bag came from. He stated that he resigned from his position of employment in lieu of being terminated for refusing to take a drug test after the incident because he was taking prescribed anti-anxiety medication and he did not want that information disclosed to his employer.
7. Tpr. McQuerrey testified that surveillance video shows the Petitioner tapping in to his duty station at the table game at 20:58 hours. At 21:47 hours, he observed a small white bag located at the Petitioner's feet that he noticed when the Petitioner leaned back. His review of surveillance showed that Petitioner was at the table game the entire time he was tapped in for his shift and that the bag remained visible for 47 minutes.
8. Upon cross examination, Tpr. McQuerrey admitted that he did not review surveillance video outside of the Petitioner's shift, and that the Petitioner never placed his hands under the gaming table. He also stated that multiple patrons were at or around the table during the Petitioner's shift. He could not eliminate the possibility that other people had accessed the table prior to the Petitioner's shift or that a customer dropped the bag of cocaine. He could also not eliminate the possibility that the bag was kicked or blown under the table toward the Petitioner. Tpr. McQuerrey stated that the bag of cocaine weighed 0.33 grams. He stated that the Petitioner has consistently and adamantly denied possessing the cocaine.
9. The surveillance video admitted into evidence as Exhibit 4 begins at 20:58 hours on March 22, 2021 when the Petitioner taps in for his shift. The video is looking directly down at Table 403 and the viewing area contains the table and rear area where the dealer's station is located. The bag is first visible between the Petitioner's feet at 21:47 hours. Movement of the Petitioner's feet cause the bag to move from between his feet to below his left foot at 21:52 hours. At 21:58 hours, the Petitioner taps out of his shift and a new dealer taps in. The bag remains at the bottom of the new dealer's left leg. At 22:47, a hand retrieves the bag from the area near the left foot of the second dealer. The video then shifts to another view of Table 403 looking towards the front of the table and the time stamp begins at 20:58 hours. The gaming floor in front of the table can be seen, and there is a small, white object on the floor in front of Table 403. As patrons and employees walk around, the small, white object appears to be kicked at least twice. This short clip ends at 20:59:52 hours with the small, white object still in front of and close to Table 403.



10. The photographs admitted into evidence as Petitioner's Exhibits A, B, C, D, E, and F depict different views of Table 403. Exhibit F in particular shows that the table is not flush with the gaming floor, and is open from the front to the dealer's station in the rear.

### CONCLUSIONS OF LAW

1. "The Commission shall have full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to 313.850." Section 313.805 MO. REV. STAT. 2015.
2. "A holder of any license shall be subject to the 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 of the state of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action . . . the following acts 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 or regulation." Section 313.812.14 MO. REV. STAT. 2016.
3. "The burden of proof is at all times on the petitioner. The petitioner 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).
4. "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).
5. "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 the 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).
6. Section 579.015 RSMo. states: "1. A person commits the offense of possession of a controlled substance if he or she knowingly possesses a controlled substance. . ."

7. 11 CSR 45-10.030 states: "(1) Licensees shall promptly report to the commission any facts which the licensee has reasonable grounds to believe indicate a violation of law (other than minor traffic violations) . . . committed by licensees, their employees or others, including, without limitation, the performance of licensed activities different from those permitted under their license. . . (3) In the event that a licensee . . . knows or should have known that an illegal or violent act has been committed on or about the licensed premises, they shall immediately report the occurrence to law enforcement authorities and shall cooperate with law enforcement authorities . . ."
8. "The commission may . . . revoke or suspend an occupational license of any person . . . who has failed to comply with or make provision for complying with Chapter 313, RSMo, the rules of this commission, or any federal, state, or local law or regulation." Regulation 11 CSR 45-4.260(4)(E).

### DISCUSSION

The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. In this case, Petitioner was aware of his obligations as a Level II licensee and that the possession of cocaine is a violation of Missouri state law. Gaming is a highly regulated activity, and a Level II license is privilege subject to the gaming laws and regulations. The Commission does not need to prove guilt beyond a reasonable doubt to impose discipline upon a gaming license. In its preliminary order for discipline, the Commission found that the Petitioner was subject to discipline for possession of cocaine based upon the surveillance video.

The Clay County Prosecutor did not believe that there was sufficient evidence that the Petitioner possessed cocaine to sustain a conviction, and the evidence produced by the Petitioner certainly casts a reasonable doubt were this a criminal case. The issue becomes whether the Petitioner has established his case by clear and convincing evidence as required by Missouri law. In this case, it is the surveillance video itself that makes the Petitioner's case. The small, white object is observed in front of Table 403 at the same time that the Petitioner taps in to his shift. The object appears to be the same size as the bag of white powder observed at the Petitioner's feet beginning at 21:47 hours on the surveillance video. Therefore, the bag could not have fallen or dropped from the Petitioner's body or clothing. Petitioner met his high burden of proof of clear and convincing evidence in showing that no violation occurred.



**FINAL ORDER**

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner is found to have not violated Missouri law. The decision of the Commission dated September 9, 2019 to impose a revocation of Petitioner's occupational gaming license is vacated and set aside.

DATED: \_\_\_\_\_

July 15, 2021

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BRYAN W. WOLFORD  
Hearing Officer