

STEVEN OGULEDO,
LICENSEE
v.
MARYLAND LOTTERY AND
GAMING CONTROL AGENCY

*** BEFORE MARY SHOCK,**
*** AN ADMINISTRATIVE LAW JUDGE**
*** OF THE MARYLAND OFFICE OF**
*** ADMINISTRATIVE HEARINGS**
*** OAH No: MLGCA-X-01-16-31064**

* * * * *

DECISION

STATEMENT OF THE CASE
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STATEMENT OF THE CASE

On March 22, 2016, the Maryland Lottery and Gaming Control Commission (Commission) notified Stephen Oguledo (Licensee) that the agency was recommending revocation of his video lottery employee license. On April 5, 2016, the Licensee requested a hearing. On October 17, 2016, the Commission delegated the authority to the Office of Administrative Hearings (OAH) to conduct the hearing and issue a final decision. Md. Code Ann., State Gov't § 10-205 (2014), Code of Maryland Regulations (COMAR) 36.01.02.060.

On January 9, 2017, I held a hearing at the OAH in Hunt Valley, Maryland. Jennifer Tosky, Assistant Attorney General, represented the Commission. John Hopkins, Esquire, represented the Licensee.

The contested case provisions of the Administrative Procedure Act, the procedural regulations of the Commission, and the Rules of Procedure of the OAH govern procedure in this

case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2016); COMAR 31.01.02.06; and COMAR 28.02.01.

ISSUE

Did the Commission lawfully recommend revocation of the Licensee's video lottery employee license?

SUMMARY OF THE EVIDENCE

Exhibits

The Commission offered the following exhibits, which were admitted into evidence as indicated:

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| Ex. #1 | Not offered |
| Ex. #2 | Trespassing Arrest of Former Team Member, Report, Donald Dougherty, January 17, 2016 |
| Ex. #3 | Not offered |
| Ex. #4 | Not offered |
| Ex. #5 | Anne Arundel County Police Department, Report, January 16, 2016 |
| Ex. #6-25 | Photographs from video surveillance camera, January 16, 2016 |
| Ex. #26-37 | Photographs from video surveillance camera, January 17, 2016 |
| Ex. #38 | Notice of Agency Action, Recommendation for License Revocation, March 22, 2016 |
| Ex. #39 | Trespassing Arrest of Former Team Member, Report, Donald Dougherty, January 17, 2016 |
| Ex. #40 | Incident File, Full Report, R. Warren, January 16, 2016 |
| Ex. #41 | Incident File, Full Report, J. Lintz, January 16, 2016 |

The Licensee did not offer any exhibits.

Testimony

The Licensee testified on his own behalf.

The Commission called the following witnesses:

- Anthony Singleton, Licensing Specialist, Lead
- Philip Metz, Director of Licensing

FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. On February 16, 2015, the Commission approved the Licensee for a video lottery employee license (license) to work at Maryland Live! Casino (Maryland Live) as a blackjack dealer.
2. On or about June 11, 2015, Maryland Live terminated the Licensee's employment for conduct inconsistent with the company's policies and revoked sponsorship of the Licensee's license.
3. In November 2015, the Licensee applied to the Commission to transfer his license to the Horseshoe Casino.
4. By January 2016, the Licensee had submitted to the Commission all the documentation required for the agency to make a decision on his application to transfer his license to the Horseshoe Casino.
5. On January 16, 2016, at approximately 3:20 p.m., the Licensee went to Maryland Live. The Licensee was wearing a hooded sweatshirt. He approached the security desk and spoke with Officer R. Frank.
6. On January 16, 2016, at 3:48 p.m., the Licensee was wearing the hood of his sweatshirt. Wearing a hood in Maryland Live is prohibited by company policy. At 3:54 p.m., Officer Frank directed the Licensee to remove his hood, but the Licensee failed to remove his hood for five minutes, until 3:59 p.m.
7. The Licensee made several statements to Officer Frank including that he was going to explode and there would be casualties. He also stated that for the past couple weeks,

someone had been following him. He asked "what's the wors[t] thing that ever happened to you." He stated that there would be "casualties today," and that he was God.

8. Security Manager Nathan Long responded to the scene and observed that the Licensee would not take off his hood. The Licensee sat down at a slot machine.

9. Security Supervisor T. Herring responded and requested the assistance of the Anne Arundel County Police.

10. Anne Arundel County Police arrived on the scene. The Licensee was seated at a slot machine. He would not speak with the police officers. Because security reported that the Licensee made statements concerning explosions and casualties, the officers arrested the Licensee.

11. The Licensee resisted arrest and the officers took him to the floor to handcuff him. The officers then escorted the Licensee from Maryland Live.

12. The Anne Arundel County Police transported the Licensee to the hospital.

13. Anne Arundel County Police Department officer Sergeant McBee notified Maryland Live security staff that during transport, the Licensee stated that his car was in the casino garage and there were explosives in the vehicle. Security checked the garage, but could not find the Licensee's vehicle.

14. The Licensee was released from the hospital that night.

15. On January 17, 2016, at 4:19 p.m. the Licensee returned to Maryland Live. He approached a security desk and demanded \$10,000.00 that he said the casino owed him. The casino gave the Licensee a notice of a seven-day eviction.

16. Maryland Live called Anne Arundel County Police. Officers arrived on the scene and escorted the Licensee from the premises. Anne Arundel County Police did not arrest the Licensee on January 17, 2016.

17. The Licensee did not report the January 16 or 17, 2016 incidents to the Commission.

18. When the Commission learned of the January 16 and 17, 2016 incidents, the agency stopped processing the Licensee's request to transfer his license to the Horseshoe Casino.

19. On March 22, 2016, the Commission notified the Licensee that the agency was recommending revocation of his video lottery employee license.

DISCUSSION

Statute and Regulations

Maryland law provides that a video lottery employee must be licensed to work in a video lottery operation, such as a casino. Md. Code Ann., State Gov't §§ 9-1A-06(a)(4) and 9-1A-14(a) (2014 & Supp. 2016). Licensees hold the affirmative responsibility to establish by clear and convincing evidence their qualifications to maintain a license and their good character, honesty, and integrity. Md. Code Ann., State Gov't § 9-1A-07(c)(1) and (7)(iii) (2014). Licensees also have a duty to inform the Commission in writing of an act that the person knows or should know constitutes a violation of the video lottery terminal law or the Commission's regulations. Md. Code Ann., State Gov't § 9-1A-07(c)(6)(i); COMAR 36.03.02.01G(2).

Further, Commission regulations provide that a licensee may not violate the licensing regulations, must continue to conform to all the information in the license application, and must continue to meet all licensing requirements. COMAR 36.03.04.03A(2), 36.03.02.01G(1), 36.03.04.03C(2). The Commission is authorized to deny a license to a licensee whose past or

present conduct would bring the State into disrepute. COMAR 36.03.02.01D(2). The Commission is also authorized to sanction a licensee, including revocation of the license, if the licensee engages in any conduct that exposes the State's gaming program to a serious and imminent risk of harm to its integrity, security, or profitability. COMAR 36.03.04.07A(4), 36.03.04.09A(2)(a). Finally, a licensee is presumed to be familiar with the applicable statutes and regulations. COMAR 36.03.04.09D.

Although the law provides that licensees must establish by clear and convincing evidence that they qualify for a license, the Licensee in this case is appealing an enforcement action. In its March 22, 2016 Notice of Agency Action, the Commission advised the Licensee that in an enforcement action, the Commission would determine if the agency presented a preponderance of the evidence to support the action. (Ex. #38.) As a result, the Commission bears the burden of proof in this case to show by a preponderance of the evidence that the agency lawfully recommended revocation of the Licensee's license. For the reasons discussed below, I find that the Commission has met its burden of proof.

Summary of the Evidence

The Licensee does not deny that he went to Maryland Live on January 16 and 17, 2016. He stated that he went there because he needed to speak with a supervisor about his termination. He stated that he was unjustly terminated. He was harassed by patrons of Maryland Live who had lost at table games. He stated that cars would follow him home at night. Those same patrons returned to his table and threatened him. The Licensee testified that he reported the harassment to management, but management failed to take any action. Instead, Maryland Live terminated his employment. The Licensee argued that on January 16, 2016, Maryland Live security called the

police because they were biased. They knew that the Licensee was a former employee and they knew that Maryland Live had terminated him for discriminatory reasons.

The Licensee further testified that on January 16, 2016, he asked the security officer at Maryland Live if he could speak with someone in management. The officer said he could not speak with anyone. The Licensee stated that when refused contact, he sat in a chair. He denied making any statements about casualties or explosives. He testified that he did not state that he was God. Instead, he stated that everyone was God.

Finally, the Licensee acknowledged that he returned to Maryland Live on January 17, 2016. He testified that he had no knowledge of a seven-day eviction notice from Maryland Live at that time.

Anthony Singleton, Licensing Specialist, Lead, testified that he investigated the January 16, 2016 incident. He went to Maryland Live and reviewed the investigative reports. Mr. Singleton explained that there is a State employee at every casino in Maryland. The employee at Maryland Live, Donald Dougherty, wrote a report summarizing the January 16, 2016 incident. (Ex. #2 and #39.) Mr. Singleton testified that at Maryland Live he also spoke with security officers and Surveillance Department personnel. He reviewed video surveillance of the incident. He also reviewed the police report.

The Maryland Live records include the January 16, 2016 report of J. Lintz, Surveillance Department. (Ex. #41.) The report relates that the Licensee approached Officer Frank at a security desk and stated "he was going to explode and there would be casualties." Security directed the Licensee to remove his hood, but the Licensee refused. The report goes on to relate that Security Manager Nathan Long notified the Surveillance Department that the Licensee made statements to his staff that "for the past couple weeks, someone had been following him." The

Licensee asked “what’s the wors[t] thing that ever happened to you?” He also said there would be “casualties today,” and that “he was God.” The report relates that an Anne Arundel County police officer, Sergeant McBee, advised security that during transport the Licensee said his car was in the casino garage and contained explosives. Security staff swept the garage, but could not locate the vehicle. (Ex. #41.)

Mr. Lintz’s report further states that security found the Licensee’s car on January 17, 2016. Police swept the vehicle with a police dog and cleared the car. Finally, Mr. Lintz reported that on January 17, 2016, the Licensee returned to Maryland Live. He approached a security desk and demanded \$10,000.00 that he said the casino owed him. Security and police escorted the Licensee off the property after Maryland Live gave the Licensee a copy of the seven-day eviction notice. (Ex. #41.)

Mr. Singleton testified that because the Licensee would not remove his hood and because he stated that there would be casualties and an explosion, the Commission determined that the Licensee was not fit to hold a license.

On cross-examination, Mr. Singleton acknowledged that at some point the Licensee removed his hood. He also acknowledged that the Licensee was not arrested on January 17, 2016, when he returned to Maryland Live.

Philip Metz, Director of Licensing, testified that he reviewed Mr. Singleton’s investigation. Based on the January 16, 2016 incident and the Licensee’s statements about explosives, Mr. Metz determined that the Licensee threatened the security and operation of Maryland Live. He further stated that the Licensee was obligated to notify the Commission about the incident, but he failed to do so.

In response to Mr. Metz's testimony, the Licensee stated that he did not believe that he was required to notify the Commission about the incidents because the agency had knowledge of the events.

Analysis

The Commission relies, in part, on hearsay to prove the Licensee's conduct on January 16 and 17, 2016. Hearsay is admissible in an administrative proceeding if it is reliable and it can form the basis of the agency action if it is credible and probative. *Travers v. Baltimore Police Dep't*, 115 Md. App. 395 (1997). I find the hearsay evidence in this case is credible and sufficient to prove that the Licensee made some, but not all of the statements alleged.

As stated above, the Licensee contends that Maryland Live security staff was biased against him because they knew he had been terminated for discriminatory reasons. Although security staff, including Officer Frank, may have known that the Licensee was a former employee, there is no evidence that anyone on the scene knew the reason for his separation, or even that he had been terminated rather than voluntarily left the job. The Licensee failed to show that the security department falsely reported his statements because of bias.

On January 16, 2016, Officer Frank notified the Surveillance Department that the Licensee stated that "he was going to explode and there would be casualties." (Ex. #41.) Officer Frank was working when the Licensee made the statement. As part of her job and for her security and the security of Maryland Live staff and patrons, she recounted the Licensee's statement to the Surveillance Department immediately. Because Officer Frank made the statement in the course of her employment, to her superiors, for the security of Maryland Live, and almost immediately after the Licensee made the statements, I find that the evidence is credible. As a result, I find that the Licensee made the statement alleged.

Also on January 16, 2016, Security Manager Long reported that his staff related the Licensee's statements the he was being followed, asking what was the worst that had happened, stating that there would be casualties today, and remarking that he was God. (Ex. #41.) On January 17, 2016, Security Manager Long notified the Surveillance Department that the Licensee was at the security desk demanding \$10,000.00. *Id.* Because Security Manager Long was working and reported the statements in the course of his employment, on the days the Licensee made the statements, I consider the evidence credible and find that the Licensee made the statements as alleged.

With regard to the allegation that the Licensee said there were explosives in his vehicle, the Commission relies on a Maryland Live report relating Sergeant McBee's statement. (Ex. #41.) Scргеant McBee told security that during transport the Licensee stated that his car was in the casino garage and there were explosives in the car. The Maryland Live reports indicate that police and security conducted a sweep of the garage. (Ex. #41.) That action would support a finding that the Licensee made the statement as alleged. However, the police report fails to record the Licensee's statement. (Ex. #5.) Officer J. Ruggiero wrote the police report and addressed the Licensee's vehicle. He states that casino security advised that the Licensee's vehicle left the garage at 2:54 p.m., but that the car might still be on the Arundel Mills Mall Property. Mall Security did not find the vehicle on the mall lot. (Ex #5.) Officer Ruggiero does not relate that the Licensee stated there were explosives in his vehicle. The absence of the statement is significant. If the Licensee indeed told the officers that there were explosives in his vehicle in the garage, that statement was serious and more likely than not, would be included in the police report. Because the statement concerning explosive in the Licensee's car is absent from the police report, I do not give that evidence any weight.

The Commission also relied on photographs from Maryland Live surveillance cameras to establish the Licensee's conduct on January 16 and 17, 2016. (Ex. #6-#37.) The photographs show the Licensee at the security desk. A security officer motions for him to remove his hood, but he continues to wear his hood from at least 3:54 to 3:59 p.m. (Ex. #7-#11.) The photographs further show the Licensee sitting on a trash can and at a slot machine with security or police around him. Then the photographs show the police taking the Licensee to the ground, handcuffing him, and escorting him from the casino. Finally, the photographs show the Licensee returning to Maryland Live on January 17, 2016, at 4:19 p.m., and then being escorted out of the casino by security and police. (Ex. #26-#37.)

I find that a preponderance of the evidence establishes that on January 16, 2016, the Licensee made statements to a Maryland Live security officer concerning casualties and explosives. He failed to remove his hood immediately when directed, and refused to leave the casino after he knew or should have known he would be unable to speak with a supervisor about his termination. The Licensee's conduct demonstrates that he no longer qualifies for a license. The seriousness of statements threatening casualties and explosives while standing in a public place cannot be understated. The Licensee made a direct threat that exposed Maryland Live to a serious and imminent risk of harm to its security. COMAR 36.03.04.07A(4). Allowing someone who made such a threat to continue to be licensed in a casino would bring the State into disrepute if the public learned of the threat. COMAR 36.03.02.01D(2).

The Licensee's failure to remove his hood when directed was also a threatening act. As a former employee at Maryland Live, the Licensee knew or should have known about the policy prohibiting the wearing of hoods, yet he aggressively failed to abide by the policy when specifically directed to do so. Such conduct demonstrates that the Licensee lacks good character

and integrity. Md. Code Ann., State Gov't § 9-1A-07(c)(7)(iii).

The Licensee's refusal to leave the casino on January 16, 2016, when he knew or should have known that a supervisor was not going to speak to him about his termination is a further aggressive, threatening act. Although the Licensee was just sitting at a slot machine, he interfered with the secure operation of the casino. The photographs show numerous security members called to the scene and at least four police officers. The Licensee refused to speak with the officers. Based on the statements concerning casualties and explosives and his refusal to speak, the police had no other option but to arrest the Licensee. If the Licensee believes that he was terminated for impermissible discriminatory reasons, he had other avenues of recourse. Making threats and refusing to leave was an improper and dangerous way to make his point. The Licensee's refusal to leave Maryland Live threatened the security and profitability of the State's gaming program. It is reasonable to find that patrons would be concerned if they observed someone taken out of the casino by force and those patrons might be less likely to stay or return. COMAR 36.03.04.07A(4). The Licensee's conduct also demonstrates a lack of character and integrity. Md. Code Ann., State Gov't § 9-1A-07(c)(7)(iii).

The Licensee returned to Maryland Live on January 17, 2016, the date after he was arrested and forcibly removed from the casino. He demanded money he believed he was owed. Because the Licensee went to Maryland Live on January 16, 2016, for reasons related to his termination, I infer that the Licensee's contention that the casino owed him money was related to his employment. Again, the Licensee he knew or should have known, especially after the episode the day before, that a supervisor was not going to speak to him about his termination or pay him any money. The Licensee's conduct of returning to Maryland Live on January 17, 2016, threatened the security of the casino and demonstrates a lack of character and integrity. Md.

COMAR 36.03.04.07A(4); Code Ann., State Gov't § 9-1A-07(c)(7)(iii).

Finally, the Licensee failed to notify the Commission of the January 16, 2016 incident and the seven-day eviction he received on January 17, 2016. Although Mr. Metz testified that he learned of the incidents on January 17 and 18, 2016, there is no evidence that the Licensee knew that the Commission had knowledge of the events. Thus, his position that he was not required to notify the Commission because the agency already knew lacks merit. Moreover, the Licensee is required to notify the Commission of any change in information in writing, and he failed to do so. Md. Code Ann., State Gov't § 9-1A-07(c)(6)(i); COMAR 36.03.02.01G(2).

The Commission established by a preponderance of the evidence that the Licensee does not qualify for license because he lacks good character and integrity. Md. Code Ann., State Gov't §§ 9-1A-07(c)(1) and (iii). The Licensee violated licensing regulations when he exposed Maryland Live to a serious risk of imminent harm to the casino's security and profitability. COMAR 36.03.04.03A(2), 36.03.04.07A(4). He engaged in conduct that would bring the State into disrepute. COMAR 36.03.02.01D(2). He failed to notify the Commission in writing of either the January 16 or 17, 2016 incidents. Md. Code Ann., State Gov't § 9-1A-07(c)(6)(i); COMAR 36.03.02.01G(2). Based on the seriousness of the Licensee's conduct, revocation of his license is a reasonable and appropriate sanction. COMAR 36.03.04.09A(2)(a).

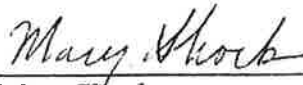
CONCLUSION OF LAW

I conclude as a matter of law that the Maryland Lottery and Gaming Commission lawfully recommended revocation of the Licensee's video lottery employee license. Md. Code Ann., State Gov't §§ 9-1A-07(c)(1), (6)(i), (7)(iii); COMAR 36.03.02.01D(2), 36.03.04.03A(2), 36.03.02.01G(1)-(2), 36.03.04.03C(2), 36.03.04.07A(4).

ORDER

I **ORDER** that the Maryland Lottery and Gaming Control Commission's March 22, 2016 recommendation of revocation of the Licensee's video lottery employee license be **AFFIRMED**.

February 28, 2017
Date Decision Issued



Mary Shock
Administrative Law Judge

MKS/ac
#166389

REVIEW RIGHTS

A party aggrieved by this final administrative decision may file a petition for judicial review with the Circuit Court for Baltimore City, if any party resides or has a principal place of business there, or with the circuit court for the county where any party resides or has a principal place of business within thirty days of the date the decision is mailed. Md. Code Ann., State Gov't § 10-222(c) (Supp. 2016); Md. Rules 7-201 through 7-210. A separate petition may be filed with the court to waive filing fees and costs on the ground of indigence. Md. Rule 1-325.

The Office of Administrative Hearings is not a party to any review process.

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