

OFFICE OF THE ATTORNEY GENERAL
MARYLAND STATE LOTTERY AND GAMING CONTROL AGENCY

TO: Maryland Lottery and Gaming Control Commission
Gordon Medenica, Director

FROM: Robert T. Fontaine, Assistant Attorney General
Principal Counsel

RTF/HKC

DATE: August 15, 2017

SUBJECT: Report for the August Commission Meeting

This is a status update of ongoing and special projects in the Office of the Attorney General.

I. Contracts, Human Resources, and Administrative

a. Key accomplishments last period:

- i. Reviewed six contracts for the Lottery's Communications Division for promotion of public affairs events.
- ii. Reviewed one Corporate Guaranty document and one Financial Responsibility Agreement for 7-11 Lottery retailers.
- iii. Reviewed various employment issues and documents for the Human Resources Division.
- iv. Filed liens against five retailers on behalf of the Lottery's AFO Division in the total amount of \$72,886.49.
- v. Assisted Staff in responding to requests under Maryland's Public Information Act for records pertaining to: (1) Maryland Live! vendors; (2) Offerors' Proposals submitted in response to the Request For Proposals (RFP) for the Lottery central monitoring and control system; and (3) the Agency's current contract for the Lottery's central monitoring and control system.
- vi. Assisted Staff in responding to Plaintiffs' and Defendant's subpoenas for Agency records in *Harbourt, et al. v. PPE Casino Resorts Maryland, LLC*, Civil Action No. 14-cv-03211-CCB (D. Md.)
- vii. Filed a motion to dismiss in *Edward M. Jones, et al. v. Gordon Medenica, et al.*, Circuit Court for Baltimore City, Case No.: 24-C-17-002701. This is an action brought by two *pro se* plaintiffs against the Agency and Director, and Horseshoe Casino Baltimore and General Manager Erin Chamberlin, that bases a wide-ranging variety of claims on an allegedly improperly processed winning Racetrax ticket. By Order dated August 11, the Court granted our motion. We will keep you apprised of any more developments.

b. Upcoming tasks for this period:

- i. Work with Staff as needed on implementing any new legislation that impacts the Agency.

c. Issues:

- i. N/A

II. Lottery

a. Key accomplishments last period:

- i. Reviewed nine requests from Creative Product Development relating to new Lottery scratch-off games.
- ii. Reviewed one Special Promotion from Creative Product Development.
- iii. Assisted Staff as needed in implementing the award of the Lottery central monitoring and control system contract.
- iv. Continued to assist Creative Services Division in developing and implementing the *My Lottery Rewards Program* by reviewing rules, licenses and other related documents for new promotions using MLR.
- v. Continued to work with Staff on issues associated with investigations of two retailers charged with conspiracy and bribery of Prince George's County Liquor Board officials. Both retailers' licenses are currently suspended.
- vi. Continued to work with Staff on review and revision of the Rules for the Mega Millions and Cash 4 Life games.
- vii. Assisted Staff as needed regarding the Lottery drawings RFP.

b. Upcoming tasks for this period:

- i. Continue to assist Staff as needed on implementation of the award of the Lottery central monitoring and control system contract.
- ii. Work with Staff on implementing a paperless application process.
- iii. Continue to work with Staff on issues associated with investigations of the two suspended Prince George's County retailers described above.
- iv. Continue to assist Staff as needed on issues associated with the Lottery drawings RFP.

c. Issues:

- i. N/A

III. Gaming

a. Key accomplishments last period:

- i. On June 30, the Office of Administrative Hearings issued a written decision affirming the Agency's recommendation to deny an applicant's application for a video lottery employee license. The decision is attached to this report. The applicant is attempting to appeal the decision to circuit court; the Circuit Court for Anne Arundel County sent us an Order by which it denied the applicant's request to waive the prepaid costs of his appeal. Given this Order, we are uncertain whether he will further pursue an appeal. We will keep the Commission apprised of the status of this matter.
- ii. Continued to assist Staff on enforcement and licensing issues associated with casino operations.

- iii. Continued to assist Staff in monitoring the impact of Caesars' financial status on Horseshoe Casino Baltimore.

b. Upcoming tasks for this period:

Continue to assist Staff on enforcement and licensing issues associated with casino operations.

c. Issues:

- i. N/A

IV. Electronic Gaming Devices

a. Key accomplishments last period:

- i. N/A

b. Upcoming tasks for this period:

- i. Provide any necessary advice to Staff concerning issues associated with the Commission's regulation of electronic gaming devices.

V. Amusement Gaming Licenses

a. Key accomplishments last period:

- i. N/A

b. Upcoming tasks for this period:

- i. Provide any necessary advice to Staff concerning issues associated with the Commission's regulation of amusement gaming license regulations.
- ii. Assist Staff as needed on reviewing the Skill-Based Amusement Device Applications.

CHAUNCEY A. HILL,

APPELLANT

v.

MARYLAND LOTTERY AND

GAMING CONTROL COMMISSION

*

BEFORE TARA K. LEHNER,

*

AN ADMINISTRATIVE LAW JUDGE

*

OF THE MARYLAND OFFICE OF

*

ADMINISTRATIVE HEARINGS

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OAH No: MLGCA-X-02-17-06239

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DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSION OF LAW
ORDER

STATEMENT OF THE CASE

On September 21, 2016, the Maryland Lottery and Gaming Control Agency (Agency) notified Chauncey A. Hill (Appellant) that the Agency was recommending to the Maryland Lottery and Gaming Control Commission (Commission) that his application for a Video Lottery Employee License (Application) be denied. Code of Maryland Regulation (COMAR) 36.03.02.16A(2). On an unspecified date, the Appellant requested a reconsideration meeting. COMAR 36.03.02.16A(3)(c), (4). After the meeting, on December 29, 2016, Charles LaBoy, Managing Director for Gaming, concluded that the Agency would continue to recommend to the Commission that it deny the Application. On January 10, 2017, the Appellant requested a hearing before the Commission on the Application. COMAR 36.03.02.16A(7)(a), (8).

On October 17, 2016, the Commission delegated to the Office of Administrative Hearings (OAH) its final decision-making authority in these cases, including conducting the contested case hearing and issuing a final decision, consisting of final findings of fact and conclusions of law. Md. Code Ann., State Gov't § 10-205 (2014); COMAR 36.01.02.06O; *see also* the February 28, 2017 transmittal from the Agency to the OAH. On May 1, 2017, I held a hearing at the OAH in Hunt Valley, Maryland. COMAR 36.03.02.16A(10), (12), (13). The Appellant was present and represented himself. Jennifer Tosky, Assistant Attorney General, represented the Agency.

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 §§ 9-1A-04(c), 10-201 through 10-226 (2014 & Supp. 2016); COMAR 31.01.02.06; COMAR 36.03.02.16A(11); and COMAR 28.02.01.

ISSUE

Did the Appellant prove, by clear and convincing evidence, that he is qualified for a video lottery employee license?

SUMMARY OF THE EVIDENCE

Exhibits

The Agency offered the following exhibits, which were admitted into evidence as indicated:¹

- | | |
|------------|---|
| Agy. Ex. 1 | Appellant's Application, undated |
| Agy. Ex. 2 | Maryland Judiciary Case Information (MJCI) for District Court Case No. 00621691A0 |
| Agy. Ex. 3 | MJCI for District Court Case No. 00625319A2 |
| Agy. Ex. 4 | MJCI for District Court Case No. 006256546A0 |
| Agy. Ex. 5 | MJCI for District Court Case No. 00671231A1 |
| Agy. Ex. 6 | MJCI for District Court Case No. 5A00184728 |

¹ The Commission premarked its exhibits and never offered what it premarked as Exhibit 7.

- Agy. Ex. 8 Memorandum from Agent Amanda Byrd, Division of Parole and Probation, Department of Public Safety and Correctional Services, to Lester McCrey, undated
- Agy. Ex. 9 Certification of Charles LaBoy, Custodian of Records, March 27, 2017, with Letter to Appellant from Mr. LaBoy, December 29, 2016, attached
- Agy. Ex.10 Letter to Appellant from Phillip Metz, Manager, Licensing Division, September 21, 2016

The Applicant offered App. Ex. 1, which consisted of unsworn written testimony and case law excerpts. I did not admit this document as evidence.²

Testimony

The Applicant testified on his own behalf.

The Agency called the following witnesses:

Lester McCrea, Licensing Specialist, Licensing Division;
Russell Newell, Assistant Manager, Licensing Division; and
Philip Metz, Director of Casino Licensing.

FINDINGS OF FACT

I find the following facts by clear and convincing evidence:

1. The Appellant was born on September 18, 1957.
2. On January 14, 1987, the Appellant was charged in the District Court of Maryland for the misdemeanors of Theft and Bad Checks. The State entered *nolle prosequi* on the charges on October 1, 1990.
3. On May 20, 1987, the Appellant was charged in the District Court of Maryland for the misdemeanor of Fraud-Conversion/Leased Goods. The State placed the charge on the Stet docket on October 1, 1990.
4. On June 25, 1987, the Appellant was charged in the District Court of Maryland for the misdemeanors of Theft and Bad Checks. The State entered *nolle prosequi* on the charges on October 1, 1990.

² When rendering my decision, I reviewed and considered the case law excerpts provided by the Appellant.

5. On July 31, 1991, the Appellant was charged in the District Court of Maryland for the misdemeanor of Theft: Less than \$300 Value. The State entered *nolle prosequi* on the charge on March 9, 1992.

6. On November 7, 2007, the Appellant was charged in the District Court of Maryland for the felony of Theft: \$500 Plus Value. The State entered *nolle prosequi* on the charge on March 24, 2008.

7. On October 4, 2007, the Appellant was found guilty of the felonies Child Abuse: Parent, Rape Second Degree, and Sex Offense Third Degree. He was sentenced to fifteen, ten and five years, respectively.

8. On July 15, 2015, the sentences for Rape Second Degree, and Sex Offense Third Degree, were vacated. The Appellant was placed on Mandatory Supervision until February 13, 2022 for the Child Abuse: Parent conviction.

9. On an unspecified date, the Appellant submitted his Application for a Video Lottery Employee License.

10. Question No. 32 of the Application asked the Appellant to list any criminal arrests and/or charges. The question states that failure to disclose a criminal arrest and/or charge would be taken into account in assessing an applicant's character, honesty and integrity.

11. On Question No. 32, the Appellant listed a sexual assault charge from 1981, and under the box for "Disposition" the Appellant wrote that he was "serving." (Agy. Ex. 1.) He did not disclose the charges listed in Findings of Fact Nos. 2 through 6.

12. On September 21, 2016, the Agency notified the Appellant that the Agency was recommending the denial of his Application due to his active parole for a crime of moral turpitude and his failure to disclose prior criminal charges on his Application.

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). Licensing is required to protect the public interest. Md. Code Ann., State Gov't § 9-1A-06(b) (2014). Applicants for a video lottery employee license hold the affirmative responsibility to establish to the Commission, by clear and convincing evidence, that they are qualified to hold the license and that they have good character, honesty, and integrity. Md. Code Ann., State Gov't §§ 9-1A-07(c)(1) and (7)(iii) (2014), 9-1A-14(c) (Supp. 2016); COMAR 36.03.02.01D(1).

The Commission has the discretion to deny an application for various reasons. It may deny an application based on an applicant's failure to provide timely or accurate information. Md. Code Ann., State Gov't § 9-1A-20 (c)(2) (2014). The Commission is also authorized to deny an application to an applicant whose past or present conduct would bring the State into disrepute. COMAR 36.03.02.01D(2).

The Commission must deny an application from an applicant who is disqualified by law. Md. Code Ann., State Gov't § 9-1A-14(c). An applicant is disqualified if they fail to prove their good character, honesty and integrity and/or if they have been convicted, on active parole or on probation, within the prior seven years, for a crime involving moral turpitude or gambling. *Id.* at (c)(1) and (3); COMAR 36.03.02.16A(12)(b)(i).

Analysis

I find that the Appellant has not met his burden of proof, by clear and convincing evidence, that he is qualified to be approved for a video lottery employee license.

The Agency gave two reasons for its recommended denial of the Appellant's application. The first was his failure to disclose on his application that he was charged in 1987 through 2007 with various offenses, including Theft, Fraud/Conversion and Bad Checks. The Agency argued that the Appellant did not display honesty and good character when he failed to disclose the criminal charges, and the State cannot license individuals who are dishonest for fear they will also be dishonest in their employment. The Agency also stated that it concluded that Child Abuse: Parent is a crime of moral turpitude, and the Appellant's conviction, and current mandatory supervision for that crime, bars him from receiving the license.

The Appellant does not dispute that he omitted his multiple charges for Theft, Fraud/Conversion and Bad Checks from his application. He testified that he did not do so purposefully; but, rather, stated that he was young when he was charged and that he forgot about them. He argued that if he was trying to hide anything, he would have tried to hide the more serious sexual assault charge. He stated that if he knew he was disqualified from getting a video lottery employee license due to his status on mandatory supervision, he would not have applied. He further asserted that the licensing statute in place today was not in place at the time he committed the acts that resulted in his conviction of Child Abuse: Parent. Thus, he argued this previous crime should not impact his ability to receive a video lottery employee license under this new licensing statute.

I conclude the Appellant's Application must be denied based on his failure to disclose prior criminal charges. I do not find that Appellant's assertion, that he forgot about these prior charges, credible. While it is true some of the charges were from 1987, when the Appellant was

approximately thirty years old, the Appellant was charged with felony theft as recently as November 2007, when he was fifty years old. It is unfathomable the Appellant was charged with seven crimes (theft four times, bad checks twice and fraud-conversion once) but did not recall even one of these charges when completing the Application.

The Application clearly states that an applicant shall provide information about all criminal arrests and charges. The only plausible inference I can draw from the Appellant's failure to disclose even one of these seven charges discussed above is the Appellant intended to hide these charges from the Commission. His decision to hide these charges demonstrates the Appellant does not embody good character, honesty and integrity.

The State has a responsibility to protect the public from dishonest individuals working in the lottery and gaming industry. *See* Md. Code Ann., State Gov't § 9-1A-06(b). That is why it requires that any applicant demonstrate by clear and convincing evidence that they embody good character, honesty and integrity. Md. Code Ann., State Gov't § 9-1A-14(c)(1); COMAR 36.03.02.01D(1) and 36.03.02.16A(12)(b)(i). The Appellant's dishonesty on his Application means that his application must be denied. Md. Code Ann., State Gov't § 9-1A-14(c); *see also* Md. Code Ann., State Gov't § 9-1A-20(c)(2).

With regard to whether the Appellant's application must be denied due to his being on Mandatory Supervision for a crime of moral turpitude, I am unable to conclude whether the crime of Child Abuse: Parent is a crime of moral turpitude based on the record before me. Moral turpitude is not defined by the pertinent statutes or regulations, and Maryland courts have not clearly identified whether child abuse is a crime involving moral turpitude in an administrative context. Some offenses related to the veracity or honesty of the perpetrator, such as fraud, are

consistently found to be crimes involving moral turpitude. See *Oltman v. State Bd. of Physicians*, 162 Md. App. 457, 487 (2005). However, for offenses that do not specifically address an individual's honesty, courts generally looked to the profession considered for licensure and the facts underlying the crime in question, and if the crime reflects poorly upon the profession being regulated, have held that the offense is a crime involving moral turpitude. See *Stidwell v. State Bd. of Chiropractic Exam'rs*, 144 Md. App. 613, 616, 618-19 (2002) (misspelling in original corrected) ("the phrase is chameleon-like, adopting different shades of meaning in different legal contexts" and a massage therapist's conviction for solicitation was a crime of moral turpitude due to the particularly intimate setting of a massage parlor, and the "unsavory, even menacing, shadow" of her conviction on that profession); *Attorney Grievance Comm'n v. Walman*, 280 Md. 453, 462 (1977) ("[w]e think the better view is represented by the cases holding that not every conviction of failure to file [a tax return] is a crime involving moral turpitude, but that the issue depends on the particular facts of the individual case"); *Brun v. Lazzell*, 172 Md. 314, 321 (1937) (a dentist's conviction for indecent exposure was "base, vile, and shameful" and violated the ethical standards of the profession; thus, it was a crime of moral turpitude).

In the present case, I do not know the facts surrounding the Appellant's conviction for Child Abuse: Parent. I also do not have any evidence regarding how this conviction relates to the appropriateness of the Appellant being issued a video lottery employee license. Thus, I am unable to conclude under this factual scenario whether the crime of Child Abuse; Parent is a crime involving moral turpitude in this case.³

Nevertheless, based on my conclusion above that the Appellant lied on his application, the Claimant's Application for video lottery employee license is denied.

³ Because I do not deny the Appellant's application based on a crime involving moral turpitude, I do not reach the Appellant's argument that his application cannot be denied based on a crime he was convicted of prior to the enactment of this licensing statute.

CONCLUSION OF LAW


I conclude as a matter of law that the Appellant has not proven that he is qualified for a video lottery employee license. Md. Code Ann., State Gov't §§ 9-1A-14(c)(1) (Supp. 2016); COMAR 36.03.02.01D(1) and 36.03.02.16A(12)(b)(i).

ORDER

I **ORDER** that the Maryland Lottery and Gaming Control Commission shall deny Chauncey A. Hill's application for a Video Lottery Employee License.

June 30, 2017
Date Decision Issued

TKL/sw
#167884


Tara K. Lehner
Administrative Law Judge

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.

Copies Mailed To:

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