

**STATE OF OHIO
CASINO CONTROL COMMISSION**

In re:

**BRIAN NOGGLE,
CASINO GAMING EMPLOYEE LICENSE
APPLICANT**

Respondent.

Case No. 2012-0011

ORDER DENYING CASINO GAMING EMPLOYEE LICENSE APPLICATION

On February 27, 2012, Respondent Brian Noggle filed an application for a casino gaming employee license with the Ohio Casino Control Commission ("Commission"). (Hr'g Ex. F.) Thereafter, the Commission conducted a suitability investigation of Noggle to determine his eligibility for such a license.

During the suitability investigation, the Commission discovered sufficient derogatory information to warrant issuance of a Notice of Intent to Deny and Opportunity for Hearing ("Notice"), dated April 20, 2012. (See Hr'g Ex. A.) Noggle received the Notice, sent via certified mail, on April 24, 2012. (Hr'g Ex. B.) Pursuant to R.C. 119.07 and 3772.04, Noggle had the right to a hearing if requested within 30 days of the Notice's mailing. Noggle so requested and the Commission scheduled a hearing for May 4, 2012; and upon its own motion, the Commission continued the hearing until May 24, 2012. (Hr'g Ex. C.) Upon Noggle's request, and without objection from the Commission, the hearing was continued until July 17, 2012. (Hr'g Ex. O.)

Through a letter, dated May 8, 2012, the Commission provided Noggle with supplemental information regarding the allegations contained in the Notice. (Hr'g Ex. D.) Noggle appeared at the hearing with counsel. Accordingly, the Commission held the hearing as scheduled before Hearing Examiner Thomas C. Montgomery ("Examiner").

Upon Noggle's request, and without objection from the Commission, the record was left open until July 31, 2012. The Examiner closed the record on July 31, 2012 to prepare a Report and Recommendation ("R&R"), which he submitted on September 12, 2012. Therein, the Examiner found that Noggle: 1) has been convicted of, or pleaded guilty or no contest to, one or more offenses having an element of moral turpitude, constituting a disqualifying offense under R.C. 3772.07(D); and 2) failed to prove his suitability for licensure by clear and convincing evidence, as required by 3772.10(B). (R&R p. 7.) As a result of these findings, the Examiner recommended that the Commission deny Noggle's Application. (Id.)

On September 14, 2012, the Commission sent Noggle, via certified mail, a copy of the R&R. (App. #1; App. #2.) Noggle received the R&R on September 17, 2012 (App. #2), giving him until October 17, 2012, to file objections, see R.C. 3772.04(A)(2). Noggle did so on October 16, 2012, (App. #3), and the Commission considered his filing before rendering this decision.

In accordance with R.C. 119.07 and 3772.04, the matter was submitted to the Commission on November 14, 2012, for final adjudication.

WHEREFORE, in consideration of the foregoing and upon a quorum and majority vote of the members, the Commission **ADOPTS IN PART AND MODIFIES IN PART** the Examiner's R&R.

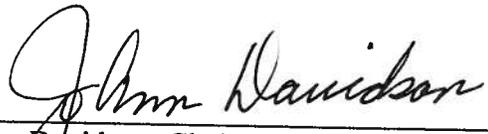
In his R&R, the Examiner recommended that the Commission deny Noggle's Application because Noggle has been convicted of, or pleaded guilty or no contest to, one or more offenses having an element of moral turpitude, constituting a disqualifying offense under R.C. 3772.07(D) (i.e. Allegation #1) and failed to prove his suitability for licensure by clear and convincing evidence (i.e., Allegation #2), as required by R.C. 3772.10(B) and (C)(7). (R&R p. 7). The Examiner, however, found Noggle's criminal records check obtained by the Commission pursuant to R.C. 3772.07 revealed certain criminal offenses, in violation of R.C. 3772.10(A)(4).

R.C. 3772.10(A)(4) requires the Commission, in determining whether to grant a Casino Gaming Employee License, to consider whether "the applicant has been indicted, convicted, pleaded guilty or no contest, or forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or misdemeanor." R.C. 3772.10(A)(4) therefore operates as a list of factors that the Commission must consider in determining whether to grant or maintain a license issued under R.C. Chapter 3772, but does not establish express grounds for which the Commission must deny a license applicant. Thus, an applicant cannot be found in violation of R.C. 3772.10(A)(4); instead, the Commission must, as it has done here, consider R.C. 3772.10(A)(4) in determining whether to grant or deny a license. Accordingly, the Commission modifies the Examiner's conclusion of law that Noggle violated R.C. 3772.10(A)(4).

WHEREFORE, in consideration of the foregoing and upon a quorum and majority vote of the members, the Commission **ORDERS** as follows:

- 1) Noggle's Application is **DENIED**;
- 2) Noggle is **PROHIBITED** from working or otherwise serving in any capacity that requires a license under R.C. Chapter 3772;
- 3) Noggle is **PROHIBITED** from reapplying for licensure under R.C. Chapter 3772 for three years from the date this Order is served upon him, absent a waiver granted by the Commission commensurate with Ohio Adm. Code 3772-1-04; and
- 4) A certified copy of this Order shall be served upon Noggle, via certified mail, return receipt requested, and his counsel of record, if any, via ordinary mail.

IT IS SO ORDERED.



Jo Ann Davidson, Chair
Ohio Casino Control Commission

NOTICE OF APPEAL RIGHTS

Respondent is hereby notified that pursuant to R.C. 119.12, this Commission Order may be appealed by filing a Notice of Appeal with the Commission setting forth the Order that Respondent is appealing from and stating that the Commission's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notice of Appeal may also include, but is not required to include, the specific grounds for the appeal. The Notice of Appeal must also be filed with the appropriate court of common pleas in accordance with R.C. 119.12. In filing the Notice of Appeal with the Commission or court, the notice that is filed may be either the original Notice of Appeal or a copy thereof. The Notice of Appeal must be filed within 15 days after the date of mailing of this Commission Order.