

**STATE OF OHIO
CASINO CONTROL COMMISSION**

In re: :
 : Case No. 2017-LIC-002
Marcus Koonce, :
CASINO GAMING EMPLOYEE APPLICANT :
 :
Applicant. :

ORDER DENYING CASINO GAMING EMPLOYEE LICENSE

On July 14, 2016, Marcus Koonce filed with the Ohio Casino Control Commission (“Commission”) a renewal application for a Casino Gaming Employee License. Thereafter, the Commission conducted a suitability investigation of Koonce to determine his eligibility for such a license.

During a suitability investigation of Koonce, the Commission discovered sufficient derogatory information to warrant issuance of a Notice of Opportunity for Hearing (“Notice”), dated January 26, 2017. (State’s Ex. 2 at 2-4.) The Notice was sent via certified mail, but was returned to the Commission marked “unclaimed” on March 23, 2017. (State’s Ex. 2 at 4-5.) The Notice was resent, via ordinary mail with certificate of mailing on March 30, 2017. (State’s Ex. 2 at 6-11.) The Notice was not returned to the Commission for failure of delivery.

Pursuant to R.C. 119.07 and 3772.04, Koonce had the right to a hearing if requested within 30 days of the Notice’s mailing. Koonce so requested, (State’s Ex. 2 at 12-13.) and the Commission scheduled a hearing for April 13, 2017; and upon its own motion, the Commission continued the hearing until June 6, 2017. (State’s Ex. 2 at 14-16.) Koonce appeared at the hearing without counsel, and the Commission held the hearing as scheduled before Hearing Examiner John Williams (“Examiner”).

After presentation and submission of the evidence at the hearing, the Examiner closed the record. (Tr. 62-63.) The Examiner prepared a Report and Recommendation (“R&R”), which he submitted on July 13, 2017. Therein, the Examiner found that Koonce: (1) submitted an application to the Commission that contained false information, in violation of R.C. 3772.10, R.C. 3772.131, and Ohio Adm. Code 3772-8-02; (2) failed to notify the Commission of information impacting his suitability to obtain or maintain a casino gaming employee license, in violation of R.C. 3772.10 and Ohio Adm. Code 3772-8-04; but (3) had established by clear and convincing evidence his suitability for licensure as a Casino Gaming Employee, as required by R.C. 3772.10(B) and Ohio Adm. Code 3772-8-05. (R&R at 18-20.) As a result of these findings, the Examiner recommended that the Commission grant Koonce’s renewal application for a Casino Gaming Employee License. (*Id.* at 20-21.)

On July 13, 2017, the Commission attempted service of the R&R via certified mail to Koonce, (App. 1) and upon determination that the R&R had likely been lost, personally served

Koonce on August 10, 2017. (App. 2.) Therefore, Koonce had until September 9, 2017 to file objections. *See* R.C. 3772.04(A)(2). Koonce did not do so.

However, on September 1, 2017, the Attorney General's Office, on behalf of the Commission, filed a Motion for Leave to File Response to the R&R and Memorandum in Support ("Commission Motion"), pursuant to Rule 7.3 in the Commission's Administrative Hearing Manual. (App. 3). Koonce did not submit a response to the Commission Motion. On September 14, 2017, the Commission received an Order Granting the Commission's Motion. (App.4).

In accordance with R.C. 119.07 and 3772.04, the matter was submitted to the Commission on October 18, 2017, 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.

Specifically, the Commission adopts the R&R's Statement of the Case, Applicable Law, Review of Evidence, and Findings of Fact sections. The Commission also adopts the R&R's Conclusions of Law numbers 1-6. The Commission modifies the R&R's Analysis section, Conclusions of Law numbers 7-13, and Recommendation section.

In the Analysis section (pages 11-16), the R&R contains several fatal mistakes. First, the R&R recognizes that Koonce did fail to disclose information and provided false information on his renewal application. (R&R at 15.) Further, the R&R acknowledges that the disclosure requirements in R.C. 3772.10, R.C. 3772.131, and Ohio Adm. Code 3772-8-02 do not require such failures be willful. (*Id.* at 12-13.) However, the R&R then questions the "absolute[ness]" of these provisions. (*Id.* at 15.) Moreover, the Analysis section questions the ability of the Commission to consider past instances of criminal conduct, whether known previously by the Commission or not, in assessing an applicant's suitability on a renewal application. (*Id.* at 14-15).

Conclusions of Law 7-13 compound many of the same problems. Conclusions of Law 7 and 8 state that criminal misconduct that occurred prior to Koonce's initial licensure cannot be used as a basis for finding him unsuitable now, simply because they are similar in nature to other criminal misconduct the Commission did have knowledge of. Conclusions of Law 10 and 11 read into R.C. 3772.10, R.C. 3772.131, Ohio Adm. Code 3772-8-02, and 3772-8-04 an "intent to deceive" standard that does not exist. Conclusion of Law 12 states that known instances of criminal misconduct that occurred prior to Koonce's initial licensure cannot now be revisited in the context of a new investigation with new information. Moreover, Conclusion of Law 13 finds Koonce suitable for licensure after Conclusions of Law 7-9 and 12 individually considers each piece of evidence and individually, not cumulatively, concludes that each piece is not sufficient to render Koonce unsuitable for licensure. Finally, the R&R recommends the Commission grant Koonce's renewal license, based upon the faulty analysis and conclusions.

The infirmities in the above-listed modified sections are best, and more thoroughly, laid out in the Commission Motion, and the Commission Motion is thus incorporated into the modified R&R, as analysis, replacing the current Analysis section. Briefly, the Motion points out the clear

dictates of R.C. 3772.131(D), 3772.10(C)(2), (5), (F), Ohio Adm. Code 3772-8-02(A), and 3772-8-05(B)(11). (Commission Motion at 2-3). These provisions contain language stating that applicants shall submit all information required to the Commission and that the submission of false or incomplete information to the Commission shall be considered by the Commission and is cause for denial of a license. Most clearly, R.C. 3772.10(C)(2) says: “The commission *shall not* issue a . . . casino gaming employee . . . license under this chapter to an applicant if: The applicant has submitted an application for license under this chapter that contains false information.” (emphasis added). The R&R specifically concluded that Koonce violated R.C. 3772.10, R.C. 3772.131, and Ohio Adm. Code 3772-8-02 by failing to disclose his February 2007 domestic violence charge and conviction, his May 2007 domestic violence charge and conviction, and his three separate liens and/or judgments listed in the Notice, as well as by providing a false response to Question 16 of his renewal application. (R&R Conclusions of Law 2-5). Therefore, given these conclusions the Commission is mandated to deny Koonce’s renewal application. (*See also* Commission Motion at 3.)

Beyond this mandate, the Commission must also evaluate the suitability of each applicant and each applicant must “establish their suitability for a license by clear and convincing evidence.” R.C. 3772.10; Ohio Adm. Code 3772-8-05. In evaluating suitability the Commission must consider the factors listed in R.C. 3772.10(A) and Ohio Adm. Code 3772-8-05(A). The R&R’s Conclusions of Law 7-13 misapply this standard and conclude that Koonce is suitable. These Conclusions try to apply some sort estoppel against the State. However, R.C. 3772 and Ohio Adm. Code Chapter 3772-8 make clear each application results in a complete and new investigation. *See also* Commission Motion 4-5). And, R.C. 3772.10(D)(3) provides a clear dictate that “[a] license issued under [Chapter 3772] is a revocable privilege. *No licensee has a vested right in or under any license issued under this chapter.*” (emphasis added). Moreover, case law on the issue of estoppel against the State is clear: “estoppel does not apply against a state or its agencies in the exercise of a governmental function.” *Ohio State Bd. of Pharmacy v. Frantz*, 51 Ohio St. 3d 143, 146 (1990) (citing *Sekerak v. Fairhill Mental Health Ctr*, 25 Ohio St.3d 38, 39 (1986)). Given this outline based in statute, administrative rules, and case law, it is clear that the Commission has a duty to consider all information impacting Koonce’s suitability—regardless of whether it occurred prior to any initial license granted by the Commission.

Here, the Commission proved, and Koonce admitted, that in addition to the above-listed failures to disclose and the conduct underlying those disclosures,¹ he also: (1) failed to update the Commission of a 2015 bankruptcy;² (2) had charges for Domestic Violence and Endangering Children for which he was convicted of Domestic Violence in 2010; and (3) had an Assault charge for which he was convicted of Disorderly Conduct in 2013. R&R at 9-10, 16-19. Given the high standard Koonce must meet—clear and convincing evidence—one must be left with a “firm belief or conviction”³ that a man with four convictions for instances of violence, two of which he failed to disclose to the Commission; three liens he failed to disclose to the Commission; a bankruptcy

¹ In fact, evidence submitted at the hearing showed that Koonce did not disclose these violations on either his initial or renewal applications. Further, during the course of the initial suitability investigation in 2013, none of his criminal convictions appeared in any of the criminal records checks that the Commission conducted.

² In violation of R.C. 3772.10 and Ohio Adm. Code 3772-8-04. (R&R at 19.)

³ This standard is borrowed from the R&R. (R&R at 15). The statement comes from *Cross v. Ledford*, 161 Ohio St. 469, 477 (1954).

during his first licensure period he failed to update the Commission about; and a finding of contempt of court that he failed to disclose to the Commission is suitable to work in one of the most highly regulated environments in Ohio. Koonce failed to do so.

The only evidence submitted by Koonce was his own testimony, in which he admitted to all violations, but attempted to provide excuses for his conduct. Therefore, in addition to his violations for failing to provide complete and accurate information, the Commission concludes that Koonce is not suitable due to his conduct implicating R.C. 3772.10(A)(1), (3), (4), (5), (8), (9); Ohio Adm. Code 3772-8-05(B) (1), (2), (3), (5), (6), (8), and (11).

Given the evidence admitted at the hearing, the unmodified portions of the R&R, the Commission Motion, and the above reasoning, Conclusions of Law 7-13 are deleted. A new Conclusion of Law 7 is inserted stating that Koonce failed to disclose a finding of Contempt of Court for failure to pay fines, costs, and fees on February 2, 2016, in the Euclid Municipal Court.⁴ A new Conclusion of Law 8 is inserted stating that Koonce failed to establish his suitability by clear and convincing evidence given the cumulative weight of all offenses as originally laid out in the Commission's Notice. R.C. 3772.10 and Ohio Adm. Code 3772-8-05. Additionally, a Conclusion of Law 9 is inserted stating that, even if Koonce established his suitability, the Commission is precluded from issuing Koonce a renewal license due to his submission of false and/or misleading evidence. R.C. 3772.10, R.C. 3772.131, Ohio Adm. Code 3772-8-02, and 3772-8-05. Finally, the Recommendation is replaced in its entirety with the Commission's order of denial of Koonce's renewal application.

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

- 1) Koonce submitted a casino gaming employee license application that contained false information or failed to set forth all of the information required by the Commission, in violation of R.C. 3772.10, R.C. 3772.131, Ohio Adm. Code 3772-8-02, and 3772-8-05, including:
 - A) Koonce was arrested for or charged with Domestic Violence, which he was convicted of, or pled guilty or no contest to, on May 31, 2007, in the East Cleveland Municipal Court;
 - B) Koonce was charged with Domestic Violence, which he was convicted of, or pled guilty or no contest to, on May 31, 2007, in the East Cleveland Municipal Court;
 - C) Koonce was found in Contempt for failure to pay fines, costs, and fees on February 2, 2016, in the Euclid Municipal Court; and
 - D) Koonce answered "NO" to Question 16 when he should have answered "YES";
 - i. Koonce had a civil complaint and resulting May 14, 2007 lien or judgment filed against him in the East Cleveland Municipal Court;

⁴ Although the R&R found this to be the case, (R&R at 17) this finding was left out of the Conclusions of Law.

- ii. Koonce had a civil complaint and resulting February 12, 2009 lien or judgment filed against him in the East Cleveland Municipal Court; and
 - iii. Koonce had a civil complaint and resulting May 8, 2012, lien or judgment filed against him in the Euclid Municipal Court.
- 2) Koonce failed to notify the Commission of information impacting his suitability to obtain or maintain a casino gaming employee license, in violation of R.C. 3772.10 and Ohio Adm. Code 3772-8-04, including:
 - A) An August 5, 2015, discharge of Chapter 7 bankruptcy in the United States Bankruptcy Court-Northern District of Ohio; or
- 3) Koonce is not suitable or otherwise eligible to be granted or to maintain a casino gaming employee license, as required by R.C. 3772.10 and Ohio Adm. Code 3772-8-05, based on the above allegations, including the underlying conduct, and the following:
 - A) Koonce was indicted for or charged with Domestic Violence and Endangering Children, and he was convicted of, or pled guilty or no contest to, Domestic Violence, on December 8, 2010, in the Cuyahoga County Court of Common Pleas; and
 - B) Koonce was arrested for or charged with Assault, which he was convicted of, or pled guilty or no contest to, Disorderly Conduct on February 12, 2013, in the South Euclid Municipal Court.
- 4) Based on the above allegations, Koonce has failed to establish, by clear and convincing evidence, his suitability for licensure as a casino gaming employee, as required by R.C. 3772.10 and Ohio Adm. Code 3772-8-05.

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

- 1) Koonce's application is **DENIED**;
- 2) Koonce is **PROHIBITED** from working or otherwise serving in any capacity that requires a license under R.C. Chapter 3772;
- 3) Koonce 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 Koonce, via certified mail, return receipt requested, and his counsel of record, if any, via ordinary mail.

IT IS SO ORDERED.


June E. Taylor, Chair
Ohio Casino Control Commission

NOTICE OF APPEAL RIGHTS

The Party is hereby notified that pursuant to R.C. 119.12, the Commission Order may be appealed by filing a Notice of Appeal with the Commission, setting forth the Order that the Party 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 Franklin County 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.