STATE OF OHIO CASINO CONTROL COMMISSION

In re:

Case No. 2012-0045

MICHAEL DEPINTO, JR.
CASINO GAMING EMPLOYEE LICENSE
APPLICANT

:

Respondent.

ORDER APPROVING CASINO GAMING EMPLOYEE LICENSE APPLICATION

On March 22, 2012, Respondent Michael DePinto, Jr., filed a Casino Gaming Employee License Application ("Application") with the Ohio Casino Control Commission ("Commission"). (Hr'g Ex. F.) Thereafter, the Commission conducted a suitability investigation of DePinto 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 May 17, 2012. (See Hr'g Ex. D.) DePinto received the Notice, sent via certified mail, on May 21, 2012. (Hr'g Ex. E.) Pursuant to R.C. 119.07 and 3772.04, DePinto had the right to a hearing if requested within 30 days of the Notice's mailing. DePinto so requested and the Commission scheduled a hearing for June 12, 2012; and upon its own motion, the Commission continued the hearing until July 10, 2012. (Hr'g Ex. A.) DePinto appeared at the hearing without counsel. Accordingly, 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 to prepare a Report and Recommendation ("R&R"), (Tr. 69-70), which he submitted on August 10, 2012. Therein, the Examiner found that DePinto: 1) did not submit an Application that contained false information in violation of R.C. 3772.10(C)(2); 2) has not been convicted of, or pled guilty or no contest to, one or more offenses having an element of moral turpitude, in violation of R.C. 3772.07 and 3772.10(C)(1); and 3) proved his suitability for licensure by clear and convincing evidence, as required by 3772.10(B) and (C)(7). (Id. at 11-12.) As a result of these findings, the Examiner recommended that the Commission grant DePinto's Application. (Id. at 12.)

On August 13, 2012, the Commission sent DePinto, via certified mail, a copy of the R&R. (App. #1; App. #2.) DePinto received the R&R on August 20, 2012, (App. #2), giving him until September 19, 2012, to file objections, see R.C. 3772.04(A)(2); DePinto did not do so, however.

In accordance with R.C. 119.07 and 3772.04, the matter was submitted to the Commission on October 17, 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 concluded that Michael DePinto: 1) did not submit a Casino Gaming Employee License Application ("Application") that contained false information; 2) has not been convicted of, or pled guilty or no contest to, one or more offenses that have an element of moral turpitude and therefore is not statutorily disqualified under R.C. 3772.07 and 3772.10(C)(1); and 3) proved his suitability for licensure by clear and convincing evidence. (R&R 11-12.) Based on these conclusions, the Examiner recommends that the Commission grant DePinto's Application. (Id. at 12.)

While the Examiner's conclusions regarding all three of the allegations in the Notice and recommendation of licensure can be adopted without modification, one finding of fact and one conclusion of law, both of which pertain to Notice Allegation #1 (i.e., failure to disclose), are hereby modified. With respect to the former, the Examiner found that DePinto failed to disclose certain state tax liens filed against DePinto in the past ten years, as alleged in the Notice. (Id. at 10.) The record is devoid of any such tax liens, however. Rather, the evidence shows that DePinto's licensing investigation revealed two undisclosed Motor Vehicle Commission ("MVC") surcharges that the Accurint Report erroneously labeled as state tax liens. (Hr'g Ex. D.) These surcharges are not state tax liens. See N.J. Stat. Ann. § 17:29A-35; *In re Schick*, 418 F.3d 321, 323-325 (3rd Cir. 2005); *In re Marcucci*, 256 B.R. 685, 693-697 (Bankr. D. N.J. 2000). And because there is no evidence in the record that any state tax liens have been filed against DePinto in the last ten years, he did not fail to disclose that information in response to Application Question #16.

Moreover, the Commission modifies the Examiner's conclusion that "[t]o the extent that Mr. DePinto failed to disclose all of the financial liens or judgments against him in his Application, his failure to make such disclosures was inadvertent and did not constitute the willful submission of false information to the Commission in violation of R.C. 3772.10(C)(2)," (R&R 11), for two reasons. First, as discussed above, DePinto did not fail to disclose "state tax liens" in his response to Application Question #16. Those liens being the only allegation in support thereof, the Commission finds that DePinto did not fail to disclose all of the financial liens or judgments against him in his Application.

Second, by requiring the Commission to demonstrate that an applicant willfully failed to disclose required information, the Examiner applied an incorrect legal standard. R.C. 3772.10(C)(2) reads, in pertinent part, that "The Commission shall not issue a . . . license under this chapter to an applicant if . . . (2) The applicant has submitted an application for license under this chapter that contains false information." Under Ohio law, the term "false" has "two distinct and well-recognized meanings: (1) intentionally or knowingly or negligently untrue; (2) untrue by mistake, accident or honestly after the exercise of reasonable care." Fouts v. State, 113 Ohio St. 450, 462 (1925). In prohibiting the Commission from issuing a license to an applicant who submits an application containing false information, the General Assembly did not limit the prohibition to those who do so willfully, intentionally, knowingly, or negligently. See R.C. 3772.10(C)(2). Accordingly, the Commission concludes that both meanings espoused in Fouts apply to license applications submitted under R.C. Chapter 3772, meaning that, regardless of the reason, an applicant must be denied if they submit to an application that contains untruthful information.

Because there is no evidence that DePinto had any tax liens filed against him in the last ten years, no further analysis or modification is necessary regarding Notice Allegation #1. Consequently, the Examiner's R&R is adopted, except as modified herein.

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

- 1) DePinto's Application is APPROVED;
- DePinto is hereby **LICENSED** for a period not to exceed three years, effective today, as a casino gaming employee, subject to continued compliance with R.C. Chapter 3772 and the rules adopted thereunder, including payment of the nonrefundable license fee of \$250.00 as required by R.C. 3772.17(F) and Ohio Adm. Code 3772-8-03(C);
- 3) Upon issuance of his casino gaming employee license credential, DePinto is **PERMITTED** to work or otherwise serve in any capacity that requires such a license under R.C. Chapter 3772 and the rules adopted thereunder; and
- 4) A certified copy of this Order shall be served upon DePinto, 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.