

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF BUSINESS REGULATION  
JOHN O. PASTORE COMPLEX, BLDG 68-69  
1511 PONTIAC AVENUE  
CRANSTON, RI 02920

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IN THE MATTER OF:	:	
	:	
Carol Comstock,	:	DBR No.: 15RA010
	:	
Respondent.	:	
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**DECISION**

**I. INTRODUCTION**

This matter arose pursuant to an Order to Show Cause why License Should not be Revoked, Notice of Pre-hearing Conference, and Appointment of Hearing Officer (“Order to Show Cause”) issued to Carol Comstock (“Respondent”) by the Department of Business Regulation (“Department”) on March 6, 2015. Pursuant to R.I. Gen. Laws § 42-4-9.1, the Respondent holds an Operations Employee License (“License”) to work as a Cage and Count cashier at Twin River Casino (“Twin River”). The Department moved to amend the Order to Show Cause to which the Respondent objected. Said motion was allowed by order of the hearing officer on January 10, 2017. A hearing was held on August 30, 2017, September 11, 2017, and October 8, 2017 with oral closings being made on November 3, 2017.<sup>1</sup> Both parties were represented by counsel.

**II. JURISDICTION**

The administrative hearing was held pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 41-4-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearing* (“Rules”).

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<sup>1</sup> The final transcript was received on November 27, 2017.

### III. ISSUE

Whether the Respondent's License should be revoked pursuant to R.I. Gen. Laws § 41-4-

9.1.

### IV. TESTIMONY AND MATERIAL FACTS

The following was stipulated by the parties:

1. The Respondent admits that the following listed and quoted subsections of Cage Policy 311 (as revised 05/20/14) were in force in January, 2015 and that she was provided with a copy of said policies. See Joint Exhibits Four (4) (Policy 311) and Five (5) (Respondent's initialing of receiving said policy). Policy 311 includes the following provisions (numbers one (1) through five (5) and number eight (8)):

A. All Cage Cashiers will sign out a tip box on the key control log in accordance with the Cage Department Policy and Procedure # 406 "Cage Department Key / Card Control Key Loan Procedures." Once the Cage Cashier proceeds to their work station, they will mount the tip box in the designated area for the work station under a clear surveillance camera view.

B. All Cage Cashiers upon receiving a gratuity from a guest will hold the gratuity up to the closest camera to notify surveillance.

C. The Cage cashier will then immediately drop the gratuity into the locked, clear plastic container which is mounted in a designated area of the Cage Cashier's window. The clear plastic container will be labeled for each window.

D. At no time and under no circumstances are Twin River funds to be mixed with gratuities, used to make change for gratuities or in any manner whatsoever to be comingled with gratuities.

E. At the end of the Cage Cashier's shift, after all Twin River funds have been counted, balanced, and placed in a sealed, clear plastic bag; the Cage Cashier will take the locked tip box back to the Cage Cashier Supervisor/above, who will unlock the clear plastic container and the Cage Cashier will remove his/her gratuities. The Cage Cashier will then sign the tip box in accordance with the Cage Department Policy and Procedure # 406 "Cage Department Key / Card Control Key Loan Procedures."

F. Cage Cashiers are prohibited from placing their own funds in, to their tip box prior to or during their shift.

2. On February 13, 2015, Respondent was arrested on a warrant for larceny and embezzlement in connection with allegations of misappropriation of funds during Respondent's shift as a cashier at Twin River Casino on the night of January 9-10, 2015.

3. Respondent did not notify the Department of the above-referenced arrest nor of any resulting changes to her employment status.

4. On October 6, 2016, Respondent was acquitted of the above-referenced embezzlement charge.

5. Respondent concedes that Twin River's clock-in and clock-out records show the Respondent worked on the premises 18 days during the time period between and inclusive of January 9, 2015 to February 13, 2015. Joint Exhibit Eight (8).

Corporal Lawens Fevrier ("Fevrier"), State Police, testified on behalf of the Department. He testified that in 2015, he was a member of the gaming enforcement unit and he received information on February 11, 2015 from Twin River that the Respondent did not fully pay a patron his winnings. He testified that the pay-out was on January 10, 2015 and the patron won \$1,500, but was only paid \$1,200 and the patron contacted Twin River on February 7, 2015 when he realized the money had not been withheld for taxes. See Department's Exhibit 14 (Santos Rubio's ("Rubio")) statement to police.

Fevrier testified that he obtained video surveillance of January 10, 2015 and reviewed the video. See Joint Exhibit 23 (video). He testified that camera number 800 is the view from above the cage window, and at 12:29:54 a.m., Rubio presented his winning voucher and at 12:36 a.m., the Respondent paid out the voucher and counted the bills. He testified that camera 799 is an overhead shot of the cashier inside the high limit cage and it is located above the Respondent. He testified that in this view, the Respondent's tip box, a clear, square box, is located at the very top left of the screen. He testified the cash drawer is to her immediate left and has different denominations. He testified that the patron prior to Rubio tipped the Respondent and she is seen on the video holding up the money to the camera pursuant to Twin River policy and then putting it in the tip box. He testified that on this video, one can see the Respondent count the money twice before giving it to Rubio and then put some money back into the cash register to the left-hand side

of the drawer. He testified that she put an unknown amount of money on the right-hand side of the drawer, but the denominations are to be organized on the left-hand side.

Fevrier testified that none of the videos show the Respondent flashing tip money or putting tip money in her tip box during the Rubio transaction. He testified that camera 799 at 1:15:17 a.m., showed the Respondent bringing money into the cage and at 1:15:52 a.m., placing documents over the tip box so it is obstructed. He testified that at 1:19:30 a.m., she removed her tip box and put it inside the cash drawer. He testified that after the Respondent was arrested, she waived her rights and gave a statement. See Department's Exhibit 13. He testified that she said she thought the money belonged to a friend who had been at her window previously crying, but on review of the video, the friend was not on the video.

On cross-examination, Fevrier testified that at 1:19:27 a.m., the Respondent folded the money and put an elastic band around it and tapped it on top of the tip box. He testified that he and a team of officers arrested her at her home on February 13, 2015. On redirect, he testified that she never stated to the police that she gave the money to her friend (Lisa Grieci, see below).

David Malkasian testified on behalf of the Department. He testified that he works for the Division of Lotteries and oversees the surveillance and security at Newport Grand and Twin River. He testified to Twin River's tip policies (see stipulated facts) that are for the protection of the State's assets, Twin River's assets, and the cashier. See Department's Exhibit 26 (Twin River's tip policy). On cross-examination, he testified that the tip policy dates to 2001-2002. On redirect, he testified that when a cashier is balanced at the end of the shift, the tip box is unlocked.

Tracy Liberatore ("Liberatore"), Cage Manager at Twin River, testified on behalf of the Department. She testified after a cashier's bag has been balanced and the supervisor signed off, the tip box can be unlocked. She testified in terms of a cashier balancing a money bag, a report is

issued by a terminal and that report is used along with the funds left in drawer, cash advances, checks, and cash to see if it balances. She testified that if there is a variance – when funds do not balance - that is reported and a variance of over \$200 must be reported to the supervisor. She testified that a reconciliation sheet goes into the money bag at the end of the shift. See Joint Exhibit Five (5) (reconciliation sheet). She testified that only gratuities from customers can go in the tip box from the guests. She testified that a cashier can be over in the bag, but not in the tips.

On cross-examination, Liberatore testified that she reviewed the Respondent's bag records for January 10, 2015 and it balanced so there was no variance sheet. She testified that the cashier performs the reconciliation, but if there is a variance the cashier is supposed to tell the supervisor. She testified that the tip box goes into the lock box once the bag is sealed and the cart is locked. She testified that the cashier will go with a security officer to the lighthouse cage to turn over the cash bag to the cage supervisor. She testified that if no supervisor is there, the cashier would call the supervisor. She testified that a cashier is not supposed to take his or her tip box unless there is a supervisor there to unlock it. She testified that typically a cashier will close the window half an hour before the shift is to end so there is time to perform the reconciliation and call security and leave about 1:00 a.m. She testified that based on the video, the Respondent left around 1:19 a.m. She testified that she had asked the Respondent approximately 20 or 25 times to train other employees. She testified that that the Respondent had never been formally disciplined.

Charmain Fletcha ("Fletcha") testified on behalf of the Department. She testified she is a Cage Supervisor at Twin River and always works the 11:45 a.m. to 8 a.m. shift. She testified there are usually three (3) supervisors on each shift and they are in radio contact and on a personal cell phone so she can be called if someone needs a cashier and it takes two (2) minutes to get anywhere in the casino. She testified that she realized she had been the supervisor on January 9-10, 2015

when the Department's attorney spoke to her about a month ago and the schedule showed she was the supervisor that night. See Department's Exhibit 25.

On cross-examination, Fletcha testified that did not remember the night in question. She testified that employees would not leave the cart without balancing it with their supervisor and it would be left locked because it already balanced and the bag is closed inside by the cashier. She testified that supervisors do not balance the bag. She testified that cashiers balance their bags and the bag would be closed and put in a bigger cart. She testified that it is only on the graveyard shift that a cart would be left because that is the only time a supervisor would not be available.

The Respondent testified on her behalf. She testified that she is currently employed at a dry cleaner. She testified that prior to that, she worked for 36 years at Twin River starting at age 19. She testified that she started as a mutual clerk punching tickets for the horse or dog racing. She testified that she has handled simulcast wagers and has worked in the high stakes room. She testified that when one starts a shift, one gets a drawer of money and for a five (5) hour shift for high limit, one can handle up to \$200,000.

The Respondent testified that on the night of January 9, 2015, she arrived at 6:45 p.m. for her 7:00 p.m. shift which ended at 1:00 a.m. so she should have been off the window at 12:30 a.m. because it is customary to use that time to cash out and do the paperwork. She testified that Rubio was underpaid by \$300. She testified that the bills are on left-hand side of the drawer, but money that she considers "junk" that she would not hand out, she keeps separate on the right side on the drawer. She testified at the end of a shift, there are various forms as well as cash advances, chips, checks, federal and state taxes to process. She testified that she previously made errors counting money and made one that night for Rubio. She testified that there was a lot going on that night as the cashier after her was late and the cashier next to her was cashing out.

The Respondent testified that at the end of her shift, she was over by \$327 and she went through the money and paperwork, taxable and non-taxable. She testified that she rolled the money and put it at the top of her tip box, but not all the way in because she knew it was not her money. She testified she did not put the money in her bag, because then her bag would have had to be counted in the money room for being over and the variance documented. (9/11/17 Transcript, p. 178). She testified that when she went to the main cage, it was after 2:00 a.m. and there was no manager there. She testified that she was told the managers were on break, but she could not call them because the radio was dead. She testified she waited for 20 minutes and no one came. She testified that she called Liberatore's office to see if there was a manager there, but nobody answered. She testified she took the \$327 home with her in a separate bag with her tips.<sup>2</sup>

The Respondent testified that morning she called Lynn McConnell ("McConnell") who was the Cage Manager of the morning shift and asked McConnell to check to see if she and the other cashier had balanced because both cashed out at the same time. She testified that McConnell called her back and told her that they had balanced. The Respondent testified that she told McConnell that she had money that was not her money and McConnell said she said she didn't know what to tell her and "Merry Christmas."<sup>3</sup> She testified that was January 10 in the morning and she did not hear anything else until the police arrested her.

The Respondent testified that four (4) state police officers came to her house and arrested her. She testified that she thought the \$327 belonged to Lisa Greici ("Greici"), a Twin River customer, because she was the only one that night who had an odd amount. She testified that the

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<sup>2</sup> In the criminal trial, Respondent testified to how no one was there and she could not reach anyone, but also testified that she wrote a note to her supervisor that the money was in the cart. Joint Exhibit 22, p. 126. She did not testify about the note at the Department's hearing.

<sup>3</sup> In the criminal trial, Respondent testified that she told McConnell that she did not know what was going on that night, but she had money that was not her tip money as it was too much money to be tip money and she could not figure out why and McConnell told her she balanced and "Merry Christmas." *Id.* at 126-128.

week following January 10, 2015, she gave the money to Greici at Twin River, but Greici returned it to her later that night and said it was not her money. She testified that she did not know what to do with the money so she put it in her drawer.

The Respondent testified that for variances, one is allowed \$2,000 in variances in the course of a year, but if one has a variance over \$500, one gets a verbal warning. She testified that overages and shortages are recorded. She testified that she covered the tip box when cashing out that night with the IRS papers because there is not much room to do all the paperwork. She testified that she separated the \$327 and gave it to her attorney.

On cross-examination, the Respondent testified that she held various positions at Twin River and is experienced in counting money by hand and machine. She testified that she realized that night that she did not balance by \$327 so put that money partially in the tip box. She testified that she did not fill out the variance line on the reconciliation sheet (Joint Exhibit Six (6)) because the money room fills out variances. She testified that at 2:00 a.m., the managers were on break and she tried calling Liberatore, but she was not there. She testified that she did wait because it was 2:20 a.m., and she took money home with her. She testified that she would never write in a variance as that is done by the money room when the final tally is done.

Lori Cavalieri [previously Lori Fitzpatrick] testified on behalf of the Respondent. She testified that she has worked at Twin River since 1982 as a clerk and is the union's business agent. She testified that if there is no manager in the lighthouse cage, the cashier will call up the manager to say he or she is bringing the money and just lock the cart. She testified that she has done that and it is a common practice. She testified that the money room reviews the reconciliation sheets and fills out the variance as the cashier might not realize there was a variance. She testified that cashiers can be suspended for a series of shortages or a very substantial (e.g. \$1,500) shortage.



Madeline McConnell (“McConnell”) testified at the criminal trial. On examination by the State, she testified that she was a Cage Supervisor at Twin River and that on January 10, 2015, while at work, she received a phone call from the Respondent. She testified that the Respondent told her that she thought she had too much money in her “tip box” and could she see if the Respondent’s bag was short or if she owed taxes for any guest. She testified that she checked the bag that the Respondent had handed in the night before and it balanced. She testified that she called the Respondent back and said that the Respondent’s bag balanced and there were no taxes to be taken out. She testified that she, McConnell, said to the Respondent that it must be her tips because there are no taxes due and she balanced. She testified that the Respondent did say she had too much in her tip box, but she that she did not understand what that meant since money in tip boxes cannot be commingled with Twin River money. She testified that tips are to be given to the employee after he or she hands in the bag.

On cross-examination, McConnell testified that the Respondent said that she had extra money “in my tips,” but not necessarily in her tip box. She testified that she remembered the Respondent mentioning “tips.” She testified that she said to the Respondent “it must be your tips because everything balanced.” Joint Exhibit 22, p. 31. She testified that she told the Respondent that she balanced and there was no money owed for taxes so it must be Respondent’s tips. She testified that nobody at Twin River took a statement from her and she did not report the phone call to anyone at Twin River and the issue did not come up until Rubio reported his shortage.

Jason Shead, a Cage Shift Supervisor, testified at the criminal trial. He testified that when a cashier reports a variance the bag is sent to the VLT money room where it is checked and the variance noted and the employee notified in writing the next day of the variance.

Lisa Greici testified at the criminal trial. On direct examination by the Respondent, she testified that at the time of this incident, she was a daily patron at Twin River and knew the Respondent. She testified that sometime in 2015, she was headed to the restroom when the Respondent stopped her and said, "I think I shortchanged you" (Joint Exhibit 22, p. 108) and handed her a ziplock clear sandwich bag with money and then the Respondent went back to work and she went to the restroom. She testified that after going to the restroom, she realized that that it was not her money so she went back to the Respondent and told her it was not her money and gave it back. On cross-examination, she testified that she only knew the Respondent from Twin River and they had dinner once, around March of 2015 because she, Greici, had just moved to a new house. She testified that she met the Respondent in 2013 when she started going to Twin River. She testified that she remembered the Respondent coming up to her with the money because it was rare for the Respondent to be out of her cage. She testified that that the bag included bills and change which which she thought was weird because she usually did not have change.

A review of the video shows the Respondent's "junk" money to the right in the money drawer and her covering the tip box with paper, putting it in the drawer, and partially putting money in it when the box is in her drawer. At the end of the shift, the "junk" money is counted with the money from the drawer that was kept in the organizer.<sup>4</sup>

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<sup>4</sup> A review of the video (Joint Exhibit 23) (number 799) shows the following (all times are in the "a.m."):

12:37 – "junk" money is on right side of drawer  
12:37 – 12:38 – make change, take a tip, put it to the right on the counter under computer monitor  
12:39:10 – put "junk" money into the left side tray  
12:43 – make change, put one bill to the right in the drawer ("junk" money)  
12:47 – close drawer, money still to the right, start paperwork  
12:48 – count banded bills in the second drawer  
12:53:57 – other cashier gave her a bill, put it on the right of the counter  
12:54 – pick up bill just given, take the "junk" money, take the bill from the "junk money" put it on counter, put bill from counter on stack, rubber band the "junk" money, put it in the drawer to the right; fold some money and flash it, put it in tip box  
12:54:31 – on telephone, paperwork  
12:59:21 – take bill out of the "junk" side of the drawer, put it on the left-hand bills

## V. DISCUSSION

### A. **Legislative Intent**

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning. *In re Falstaff Brewing Corp.*, 637 A.2d 1047 (R.I. 1994). If a statute is clear and unambiguous, “the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

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12:59:36 to 1:00 – go off the camera with some bills, returns to chair  
1:00:02 – put the bills on the right-hand side, closed drawer, paperwork  
1:04 – open the drawer, still junk money there  
1:15: 59 – put paper on top of tip box  
1:16:41 – take out the junk money, put the bills in the tray  
1:17:24 – look at slips, adding  
1:17:53 – take bills, center for the tray, join them in the drawer  
1:18:52 –take bills off the counter, in front of the monitor, walk off camera  
1:19:14 – back in, holding money, take out from the drawer  
1:19 – counting bills in the drawer  
1:19:27 – take paper off the tip box, put the tip box in the drawer, put money partially in the tip box, tip box in drawer, some money on counter  
1:20:04 – walk off with money on counter, tip box is still in the drawer, still doing forms  
1:23:40 – open the top drawer, tip box there  
1:25 – put money in drawer with the plastic bag that was in drawer  
1:26 – band bills  
1:27:48 – take tip box, off screen  
1:28:42 – forms  
1:29:28-29 – on the telephone  
1:31 – papers  
1:32:52 – video ends

## **B. Standard of Review for an Administrative Hearing**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

## **C. Statute**

R.I. Gen. Laws § 41-4-9.1 states in part as follows:

Licensing of concessioners, vendors, and pari-mutuel totalizator companies. –  
(a) All persons, firms, partnerships, associations, or corporations desiring to operate any concession allied to any dog racing track, shall apply for a license to the division of racing and athletics, on such forms and in such a manner as prescribed by regulations of the division. The division by regulations shall establish other occupational licensing for all employees of the concessions, all pari-mutuel employees, and all persons employed in any other capacity by the race track management, and for other persons engaged in racing activities at any dog racing track.

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(c) In determining whether to grant a license pursuant to this section the division may require the applicant to submit information as to: financial standing and credit; moral character; criminal record, if any; previous employment; corporate, partnership or association affiliations; ownership of personal assets; and such other information as it deems pertinent to the issuance of the license. The division may reject for good cause an application for a license, and it may suspend or revoke for good cause any license issued by it after a hearing held in accordance with chapter 35 of title 42 and subject to further appeal procedures provided by § 41-2-3.

#### **D. Arguments**

The Department seeks to revoke the Respondent's License pursuant to R.I. Gen. Laws § 41-4-9.1. The Department argued that the nature and character of the Respondent's offenses demonstrate a dishonest character, security threat, or other threat which provides the basis for revocation based on prior Department cases. The Department relied on prior administrative decisions showing that serious disciplinary action is justified when misconduct within a gaming facility involves handling money. It argued that the Respondent knew she did not balance and took the money home and did not indicate the variance on the reconciliation sheet despite. It argued there were three (3) cage supervisors on staff that night and she could have reached them by radio, cell phone or a two-minute walk, but instead the Respondent claimed that the radios were dead and she tried to call Liberatore's office line. It argued that the Respondent had 18 different shifts after January 9, 2010 where she could have reported the overage or returned the money. In addition, it argued that the Respondent violated Twin River policies including putting the tip box inside the cash drawer, putting documents on top of the tip box, and putting money on the right-hand side rather than in the money slots. In conclusion, the Department argued that the Respondent misappropriated money twice (counting it; taking it home), failed to report the overage, violated important Twin River money handling policies, did not present a credible defense, and failed to take responsibility for her actions.

The Respondent argued that it is uncontroverted, not uncorroborated, that there was no one to report to on January 10, 2015 as there was no testimony regarding the radios actually working and Fletcha, the supervisor that night, had no memory of that night. The Respondent argued that the underpayment was discovered on February 11, 2015 and by February 13, 2015, the Respondent was arrested instead of this being handled internally through union progressive discipline. She

argued that she worked there 36 years without any incident and trained other people and left that night at 2:20 a.m and called the supervisor that day. She argued that there was no willful or malicious behavior there was only one (1) violation and she is not a danger to the public and has no prior sanctions. The Respondent argued that this is not a revocation matter, but rather she made a mistake and may have compounded that mistake by her later actions, but it was a mistake, not a revocation.

#### **E. The License**

The Respondent holds an Operations Employee License.<sup>5</sup> The purpose of said license is to license operations employees at gaming facilities. Without employment as an operations employee, an applicant/employee cannot obtain an Operations Employee License. Unlike a license that allows the holder to practice in a specified field (often after demonstrating certain specified knowledge) without a condition of employment in that field, this type of license is tied to employment. The Respondent's License is required upon employment as an Operations Employee at a gaming facility in Rhode Island. Without employment, such a license cannot be held. Thus, employment as a Twin River Operations Employee is a condition of licensing. If the Respondent had been terminated by Twin River that would be grounds for revocation of License without reference to any other reasons.

Admitted as an exhibit is a letter dated November 14, 2016. Respondent's Exhibit One (1). The letter is from a Twin River attorney to the Twin River union attorney. The letter states that the Respondent's union grievance is being held in abeyance pending the Department's hearing and if the Department reinstates the Respondent's License then she will be reinstated to

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<sup>5</sup> 230-RICR-30-30-2 Gaming and Athletics regulation defines an Operations Employee as follows:

"Operations Employee" means any individual, other than management, employed by a Gaming Facility to handle money used in the pari-mutuel, simulcast, slot operations, and/or table games at the facility.

employment without back pay and without loss of seniority. The Department did not present any witnesses from Twin River with hiring authority to dispute the contents of this letter and testify that the Respondent would not be employed by Twin River. In other words, the Respondent has an offer of employment if she is successful in this matter. Her License cannot be revoked for not being employed at Twin River.<sup>6</sup>

**F. The Respondent's Violations and Evaluating the Appropriate Sanction(s)**

R.I. Gen. Laws § 41-4-9.1 provides that the Department may consider moral character in determining whether there is good cause to revoke the License. Good Cause includes lack of good moral character (cheating) or a bad or dishonest character or a security threat. *Liqiang Chen*, DBR No.: 13RA117 (4/15/15); and *Philip John Druken*, DBR No.: 12RA082 (4/18/13). Because of the nature of Twin River, not only convictions, but arrests are scrutinized for applicants for licenses. 230-RICR-30-30-3 *Gaming and Athletics Criminal Background Investigation Regulation* ("CBI") provides that an arrest or charge within the last ten (10) years may warrant a denial of application. As a gaming facility, Twin River must maintain financial integrity and procedures to ensure public confidence.

The Department argued that the Respondent misappropriated money when counting out Rubio. However, there is no evidence that the miscounting was not a mistake. The Department argued that the Respondent had 36 years of experience as a cashier and should not make that mistake

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<sup>6</sup> There are a series of Department cases on which the Department relied on in which default judgments were entered against gaming licensees who had been arrested and then terminated by either Twin River or Newport Grand (or a casino vendor). See *Araya Brinkley*, DBR No.: 15RA007 (7/16/15) (terminated before arrest, default entered); *Luis Pabon*, DBR No.: 14RA013 (5/29/15) (arrested for fraudulent dealing at Twin River, terminated, default entered); *Alexis Tate*, DBR No.: 15RA002 (5/6/15) (stole at work, terminated, default entered); and *Rebecca Leon*, DBR No.: 15RA001 (5/6/15) (arrested for fraud, terminated, default entered). In *Liqiang Chen*, DBR No.: 13RA117 (4/15/15), the licensee was terminated by Twin River because it was discovered he had been arrested for cheating while working as a table game dealer in another state and omitted that fact on his license application. This licensee contested the Department's proceedings to revoke his license, but as noted in that decision, the fact that he had not been offered future employment at Twin River – in itself - rendered his licensing invalid.

when double-counting the money. However, Twin River expects such mistakes to be made in that cashiers are allowed variances of \$2,000 in a year prior to discipline unless the variance is a large sum. The testimony was not that a variance of \$2,000 in a year would result in termination, but rather there would be some kind of discipline depending on the circumstances. If the Respondent accidentally thought that Rubio was due \$1,200 rather than the \$1,500 and double-counted then that is a variance and a mistake unless it can be shown she did it purposely. As she was acquitted of embezzlement, there is no reason to infer that she purposely tried to take \$300 when counting out Rubio. Instead, the issue is what did she do when she found she had an overage of \$327 (the Rubio mistake and other presumably smaller mistakes).

On questioning from the Department, the Respondent testified to why she did not indicate a variance on the reconciliation sheet (9/11/17 Transcripts pp. 229-232).

Q. So where have you gone other times when you couldn't find a manager in that particular location?

A. I either sit and wait, or I lock up my bag and go.

Q. And you didn't sit and wait until someone came, did you?

A. No. It was 20 after 2, I had to go to the bathroom, and I just wanted to go home.

Q. And instead of leaving the money where it was, or including it in your bag, you took it home with you; right?

A. Yes, I did.

Q. So you could have indicated on that sheet that I just showed you, Exhibit Number 6, that there was a variance in the amount of \$327, could you not?

A. It's not normally something I would do.

Q. But you could have written it on the sheet?

A. I never do that. You can check every sheet I have ever done, I've never done that.

Q. I'm just asking you what you could have done. You could have written that on the sheet –

A. I would have not even thought to do that.

Q. -- where it says variance?

A. I would never have thought to do it.

Q. Is it not a variance?

A. It is a variance.

Q. You could have written it on the sheet; right?

A. I wouldn't have written in that spot, no.



Q. I am asking you –

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A. No. I have not ever written any amount in the variance.

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A. If I wrote it on the sheet, it wouldn't have been in the variance spot, because the variance spot, when you go in the money room and the final tally is done, they write it there.

HEARING OFFICER WARREN: The question was, could you have written it on that. Was that your question?

MS. TINDALL-WOODMAN: That's my question.

A. I could have, but I've never done that.

Q. So you could have; right?

A. I imagine I could have, yes. I could have wrote it here, too (indicating).

Q. Sure, you could have written it anywhere on the sheet. You could have put it in the variance spot; yes?

A. I wouldn't have, but you insist I would have.

Q. No, I'm asking a question, you could have; right?

A. You insist I could have.

Q. And you agree with me?

A. Because I have to, to stop you from asking the question.

Q. You don't have to. You don't have to agree with me.

A. I have never done that.

Q. I understand you're saying you never have.

A. But why do you keep asking me?

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Q. Or you could have put it anywhere else on the sheet?

A. But a manager was supposed to count it down.

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Q. So instead of reporting it, you took it home with you?

A. Yes. There was no manager in the room.

The Respondent testified that did not want to wait for a supervisor nor did she put the money in her bag because then a supervisor would have to count it. Instead of leaving the money in her bag, she took it home. She called McConnell the next day and mentioned having too much money in her tips. The Department argued that the Respondent was inconsistent with her statements/testimony of what she told McConnell. The Respondent told the police that "I said I have way too much in my tip box." Department's Exhibit 13. At trial, Respondent testified that she told McConnell the next day that did not know what went on last night, but the money was not her tip money because it was more

than she thought would have had in tips. Department's Exhibit 22, p. 126. At the Department hearing, Respondent testified she told McConnell that the money was not her money and she was not comfortable with it. The Respondent did not mention her tips at the Department hearing in relation to speaking to McConnell, but her explanation at trial was she did not think the money was her tips because it was more than she would have had in tips. In other words, it was not her money nor she did not think it was her money when she spoke to McConnell. McConnell testified at trial that Respondent mentioned having too much in tips and she told Respondent that it must be her tips because everything balanced.

The Department dismissed the call to McConnell since the Respondent already knew she balanced (on paper). Next the Respondent tried to return the money to Greici. The Respondent told the police that she thought the money belonged to a friend who had been at the window; though, Greici did not appear at the window that night on the video. Greici testified that the Respondent tried to give the money to her the following week. It is not in the Respondent's police statement that she tried to return the money, but she was consistent in that she told the police that she believed the money was Greici's. The Department intimated that the story about the money trying to be returned was cooked up by Greici and Respondent over dinner in March, 2015 after the Respondent's arrest. While not privy to hearing Greici's testimony, her testimony at the criminal trial would not lend itself to believe that she made up the story about the return of the money in that it had details of going to the ladies' room and change in the bag which was unusual (in that she saw the money in the plastic bag) and being surprised seeing Respondent out of the cage. After trying to give the money back to Greici, the Respondent did not pursue the matter further.

The McConnell call and the Greici exchange imply that the Respondent was not intentionally trying to keep the overage. Indeed, the best thing to do if she planned to intentionally keep the overage

is to put it in the tip box and never mention it and if the overage was discovered then claim she had no idea and did not know there was a variance that should have been reported. Instead, the Respondent called McConnell and then haphazardly tried to return the money to Grieci.

If the money had initially been left in the Respondent's bag at work that would be the end of the story. A variance would have been noted and when Rubio complained in February, the paperwork would have shown the variance that night and the video would have confirmed it. Instead, the Respondent took the money home when she testified she knew the money was a variance and in fact, she did not put the money in her tip box because she knew it was a variance. The Respondent violated R.I. Gen. Law § 41-4-9.1 by taking the money home.

To bolster its case, the Department brought up numerous Twin River policy violations by the Respondent. There is no dispute that she violated policies regarding the tip box (putting in drawer, covering it, not waiting for it to be unlocked) as well as others (not showing a tip to the camera, not putting all money in drawer). The Department argued that the series of violations are enough to call into question the integrity and security of the casino.<sup>7</sup>

The Respondent was charged with embezzlement under R.I. Gen. Laws § 11-41-3<sup>8</sup> and was acquitted. If the Respondent had been convicted of embezzlement, the decision would be easy. Instead, a decision must be made based on her actions and whether her violations justify revocation. There are two (2) versions of the Respondent at play here. The Department presented her actions as dishonest and argued that her dishonesty warrants a revocation of License. The Respondent admitted

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<sup>7</sup> The Department also brought up the Respondent's failure to notify the Department of her arrest to which the Respondent admitted but argued that Department was already on notice.

<sup>8</sup> In summing up for the jury, the judge stated that for the Respondent to be convicted the State needed to prove that the Respondent was entrusted with the money on that date, that she came into the possession of that money lawfully, and she intended to appropriate and convert the money to her own use and permanently deprive Twin River of that money. Joint Exhibit 22, pp. 202-205.

to making a mistake and compounding that mistake with more bad choices but not of the type that justify a revocation of License.

The Department argued that while the CBI regulation relates to arrests and conviction, it can be used by analogy to evaluate the Respondent's conduct. Said regulation provides in part as follows:

3.5 Criteria To Be Used in Determining Whether Based on CHRI [criminal history record information], Application for a License or Permit or Renewal Thereof Will Be Approved

A. Types of CHRI That May Warrant Denial of Application for License or Permit or Renewal of a License or Permit

1. Convictions of Offenses that occurred within the last twenty (20) years; and
2. Arrests and/or Charges that occurred within the last ten (10) years.

B. Aggravating factors related to the CHRI to be considered by the Department in connection with an application for a license or permit or a renewal thereof include, but are not limited to:

1. Relevance and seriousness of the Applicant's CHRI record to the type of license or permit sought;
2. Number of Arrests, Charges, and/or Offenses on the applicant's CHRI that are relevant to the type of license or permit sought;
3. Pattern of similar Arrests, Charges, and/or Offenses on the applicant's CHRI that are relevant to the type of license or permit sought;
4. Evidence of significant harm to a victim{s} or community as reflected in the investigation of the applicant's CHRI;
5. Applicant's refusal, delay, or inadequate explanation of facts and circumstances of information reflected on CHRI or obtained during the investigation of information on the CHRI;
6. Applicant's refusal to acknowledge responsibility for Arrest and/or Charge and/or Offense;
7. Applicant's lack of cooperation with the Department's investigation;
8. Applicant's submission of false or misleading statements or evidence to the Department; and,
9. Applicant's intimidation of or threats to witnesses or others involved with the Department's investigation.

C. Mitigating factors related to the CHRI which may be considered by the Department in connection with an application for a license or permit or a renewal thereof include, but are not limited to:

1. Relevance and seriousness of the applicant's CHRI record to type of license or permit sought;
2. Duration of time since the date of Arrest and/or Charge and/or Offense;
3. Lack of extensive relevant criminal history;
4. Lack of Arrests, Charges, or Offenses currently pending against licensee/applicant;
5. Lack of pattern of similar Offenses relevant to the license or permit sought;

6. Age of the applicant at time of Arrest, Charge, and/or Offense;
  7. Documented evidence of the applicant's rehabilitation since Arrest, Charge, and/or Offense;
  8. Applicant's cooperation with the Department's investigation;
  9. No evidence of significant harm to a victim(s) or public as reflected in the investigation of applicant's CHRI;
  10. Documented evidence that the applicant has timely made any required restitution;
  11. Documented evidence of the applicant's understanding, acknowledgment, and remorse for Arrest, Charge, and/or Offense; and,
  12. Documented explanation by the applicant regarding circumstances related to Arrest, Charge and/or Offense;
- D. The Department will also evaluate the CHRI to determine if the Arrest, Charge and/or Offense is relevant to the type of license or permit sought by the applicant,

In addition, 230-RICR-10-00-2 *Rules of Procedure for Administrative Hearings* Regulation provides for how penalties should be determined as follows:

#### 2.16 Penalties

A. In determining the appropriate penalty to impose on a Party found to be in violation of a statute(s) or regulation(s), the Hearing Officer shall look to past precedence of the Department for guidance and may consider any mitigating or aggravating circumstances.

1. Mitigating circumstances may include, but shall not be limited to, the following: the Party's licensing history, i.e. the absence of prior disciplinary actions; the Party's acceptance of responsibility for any violations; the Party's cooperation with the Department; and the Party's willingness to give a full, trustworthy, honest explanation of the matter at issue.

2. Aggravating circumstances may include, but shall not be limited to, the following: the Party's prior disciplinary history; the Party's lack of cooperation and/or candor with the Department; the seriousness of the violation; whether the Party's act undermines the regulatory scheme at issue; whether there has been harm to the public; and whether the Party's act demonstrates dishonesty, untrustworthiness, or incompetency.

B. The finding of mitigating factors will not necessarily lead to a reduction in the penalty imposed if the circumstances of the violations found by the Hearing Officer are such that they do not warrant a reduction in penalty.

The Respondent relied on a Superior Court decision, *Jake and Ella's Inc. v. Department of Business Regulation*, 2002 R.I. Super. LEXIS 46 which has found that there are two (2) components to an administrative decision: 1) a determination of the merits of the case; and 2)

determination of the sanction and while the former is mainly factual, the latter not only involves ascertainment of factual circumstances but the application of administrative judgment and discretion. *Jake and Ella's* concluded that the facts to be considered in weighing the severity of the violation should include the frequency of the violations, the real or potential danger to the public posed by the violation, the nature of any previous violations and sanctions, and any other facts deemed relevant to fashioning an effective and appropriate sanction.

Therefore, in determining the appropriate sanction for the Respondent's violations, it is relevant to consider the Respondent's own disciplinary history and the severity of her violations as well as what would be an effective and appropriate sanction.<sup>9</sup>

In looking at the factors to consider in CBI and Administrative Procedures Regulation and *Jake and Ella's*, the important factors are as follows:

**a. Relevance**

The Respondent took home money that she knew was an overage. She did not leave it at Twin River and did not report it that night. This is very relevant to the Respondent's Operations Employee License where she is responsible for handling money including paying out tickets and making change, etc.

**b. Pattern of Behavior**

There is only one (1) incidence in 36 years that the Respondent worked at Twin River where she took home money. There has been no other evidence of any other type of infractions and no history of discipline.

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<sup>9</sup> Indeed, a recent Superior Court decision remanded an agency decision back to the agency so that the agency could contextualize and develop the record below regarding a licensee's previous discipline so that it could be determined whether the licensee committed intermittent technical violations or had a pattern of an inability to comply with substantive agency policies. *John Hope Settlement House, Inc. v. DCYF*, 2017 R.I. Super. LEXIS 76.

**c. Explanation**

The decision by Respondent to take the money home rather than leaving it at Twin River is hard to reconcile with Twin River's money-handling procedures. The Respondent testified that when she left that night, it was late, she had to go to the bathroom, there no supervisors, and she could not contact the supervisors by radio. She did not write a note about the variance because it just was not something she would ever do. But presumably she never knew she had a variance like that before and knew it would only be discovered by leaving the money in the bag at Twin River. Her decision to take the money is almost inexplicable in light of her many years of experience working at Twin River which as a gaming facility is heavily regulated and in order to maintain its financial integrity extensively controls and manages the handling of money.

**d. Responsibility**

The Department argued that the Respondent blamed others for her actions, but that was mostly her explanation in terms of closing (next cashier was late, counting at same time as cashier next to her). She admitted she made a mistake counting out Rubio. She admitted she took the money home, but never acknowledged why that was such a serious violation.

**e. Duration of Time from Arrest to Licensing Issue**

The Respondent was arrested while holding the License and was then acquitted.

**f. Criminal History**

The Respondent has no other arrests and no criminal record.

**g. Disciplinary History**

The Respondent has no discipline from the Department or Twin River. The Respondent's personnel file (or part therefor) was entered into evidence. See Respondent's Exhibit One (1). The file includes some performance reviews by management of Respondent. Her reviews for 2007 and 2008 for Cage Cashier indicated that she knew her job well and was a pleasure to work with

and her only issue was attendance.<sup>10</sup> Once in 2008 and once in 2009, she was spoken to for having a single variance over \$50, but no discipline was imposed. For 2009, her performance review as a Cage Cashier indicated that she was positive and consistent and a great team player and no had attendance issues. Her 2009 review for Mutual Clerk indicated that it was good to have her back (presumably as Mutual Clerk). In 2010, she was spoken to about failing to circle something on a form and about variances. Her 2010 review for Mutual Clerk called her an asset to the Department and her 2010 review for Cage Cashier stated she was great to supervise and had a positive attitude and always helped out. Her 2011 VLT Count Room Attendant review indicated that she always gave her best and worked quietly and steadily while getting a lot done. Her 2011 Cage Cashier review called her great team player and a great employee. In 2011, she received coaching for an accumulation of variances of \$79.49. In 2012, her Cage Cashier review called her an excellent cashier and stated she always sought ways to help, but should work on her attendance. Her 2013 Cage Cashier review stated that the Respondent improved her attendance and continued to be one of the most reliable cashiers and provided top notch service and always helped out.

**h. Severity of Violation**

The Respondent took money home that she knew was not her money. She did not leave the money at Twin River and did not report it that night. This is a severe violation.

**i. Danger to Public**

Because Twin River is a gambling facility which handles a lot of money daily, the issue of honesty and competence and ability to follow money-handling procedures by its employees is very important since the financial integrity and security of the casino must be maintained.

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<sup>10</sup> The reviews do not always include the year of the review, but the signatures in January are dated so show the review is for the prior year. The exhibit also was redacted for some personal identifying information.



**j. Prior Violation(s) and Sanction(s)**

Having a variance is not a violation. It is expected that there will be variances and licensees are “allowed” up to \$2,000 in a rolling year. The Respondent had variances in the past, but none that arose to any discipline/sanction. She had received no discipline at Twin River.

**G. Conclusion**

The stumbling block regarding the Appellant’s actions is that she took the money home from Twin River that she knew was an overage/variance. Twin River is a gaming facility which handles people’s money all the time. Its purpose is to allow people to play games of chance and gamble so its financial integrity is paramount to maintaining the public confidence in it.

The Respondent’s violations are not necessarily indicative of dishonesty and could be perceived more as a very serious mistake in judgment. Perhaps her failure to wait for a supervisor was more indicative of negligence or a lax approach to the procedures. Or perhaps her failure to write a note to the supervisor about her overage was due to a lack of imagination. Whatever the reason, the Respondent left Twin River with money she knew was not her money. Whether dishonest or a very bad mistake, taking home money that the Respondent knew was not her own is a threat to the casino (severe violation of money handling policy) and a danger to the public (not handling the public’s money appropriately).

The Respondent worked at Twin River for 36 years. On one hand her 36 year record without discipline could serve to mitigate her actions, but on the other hand, a 36 year employee would be expected to know better. The Respondent’s job is to handle money. She cannot take home money that she knew was not her money. Since she knew it was not her money, she knew it was either Twin River’s or a patron’s money. Her explanation that it was late at night, she had to go to the bathroom, and there were no supervisors do not serve to explain how she could decide

to leave with money not her own. The act of leaving the casino where one is employed to handle money with someone else's money weighs very heavily against the mitigating factors (disciplinary history, length of service, call to McConnell) in terms of determining the appropriate sanction for the violation.

In some licensing statutes, it is possible for the Department to impose conditions on a license in appropriate situations. However, in terms of gaming licenses, the Department argued that they would be used for vendor employees who do not actually work at the casino and who do not handle money. The type of job that the Respondent performed only handled money. There is no way to limit the amount of money that the Respondent may handle in that a patron may cash their winnings at any cashier.<sup>11</sup>

In some licensing schemes, suspension of license may be appropriate. In this situation, the Respondent holds a license conditioned on employment at Twin River. The reason for this is because of the type of license: it is tied to the operation of a gaming facility. It may be that at some future time, the Respondent may be able to demonstrate that she can once again handle the responsibilities associated with her licensing, but in evaluating the aggravating and mitigating factors and balancing those against the severity of the violation (taking money not her own and not reporting it that night) in the context of a gaming facility (must maintain highest financial integrity), the appropriate sanction at this time is revocation.

## **VI. FINDINGS OF FACT**

1. On March 6, 2015, an Order to Show Cause was issued to the Respondent by the Department. The undersigned granted the Department's Motion to Amend the Order to Show Cause on January 10, 2017.

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<sup>11</sup> The parties represented this to the undersigned at hearing.

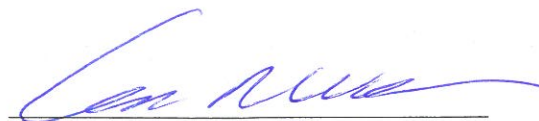
2. A hearing was held on August 30, September 11, and October 8, 2017 with oral closings being made on November 3, 2017.

3. The facts contained in Section IV and V are reincorporated by reference herein.

**VII. CONCLUSIONS OF LAW**

Based on the forgoing, the undersigned recommends that the Respondent's License be revoked pursuant to R.I. Gen. Laws § 41-4-9.1.

Date: January 23, 2018

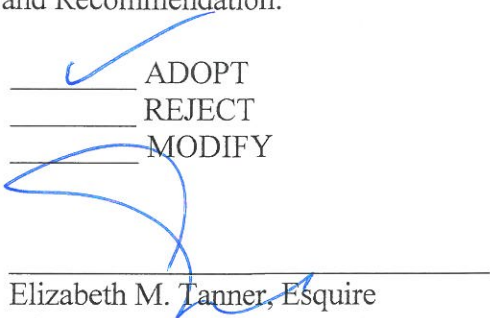
  
Catherine R. Warren, Esquire  
Hearing Officer

**ORDER**

I have read the Hearing Officer's Decision and Recommendation in this matter, and I hereby take the following action with regard to the Decision and Recommendation:

ADOPT  
 REJECT  
 MODIFY

Dated: 1/25/18

  
Elizabeth M. Tanner, Esquire  
Director

**NOTICE OF APPELLATE RIGHTS**

**THIS ORDER CONSTITUTES A FINAL ORDER OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.**

**CERTIFICATION**

I hereby certify that on this 26 day of January, 2018, that a copy of the within decision was sent by first class mail, postage prepaid to Louis A. DeSimone, Jr., Esquire, 703 West Shore Road, Warwick, RI 02889 and by electronic delivery to Jenna Algee, Esquire, Sara Tindall-Woodman, Esquire, and Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue. Cranston, RI.

A handwritten signature in cursive script, appearing to read "P. D'Alessandro", is written over a horizontal line.