

**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: | : | |
| | : | |
| | : | |
| Melanie Biesecker, | : | DBR No.: 15RA004 |
| | : | |
| Respondent. | : | |
| | : | |

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause why Application Should not be Denied, Notice of Pre-hearing Conference, and Appointment of Hearing Officer (“Order to Show Cause”) issued to Melanie Biesecker (“Respondent”) by the Department of Business Regulation (“Department”) on March 24, 2015. Pursuant to R.I. Gen. Laws § 42-4-9.1, the Respondent applied (“Application”) for a Non-Facility/Vendor Employee license (“License”) to work at a retail business at Twin River Casino. A hearing was scheduled for April 16, 2015 at which time the Respondent did not appear at hearing. Pursuant to Section 9 of *Central Management Regulation 2 Rules of Procedure for Administrative Hearing* (“CMR2”), service may be made by hand-delivery or first class mail and service is complete upon mailing when sent to the last known address of the party. In this matter, the Notice was sent to the Respondent’s last known address by first class and certified mail.¹ Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on April 16, 2015.² Additionally, Section 21 of CMR2 provides that a default judgment may be entered based on pleadings and/or evidence

¹ See Department’s Exhibit One (1) which contained the United States Post Office tracking sheet showing that the Order to Show Cause had been delivered by certified mail to the Respondent at the address used on her Application.
² Pursuant to a delegation of authority by the Director of the Department of Business Regulation.

submitted at hearing by a non-defaulting party. The Department was represented by counsel who rested on the record.

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.*, and R.I. Gen. Laws § 42-35-1 *et seq.*, and the Hearing Regulation.

III. ISSUE

Whether the Respondent should be licensed pursuant to R.I. Gen. Laws § 41-4-9.1 and *Racing and Athletics Regulation 9 – Racing and Athletics Criminal Background Investigation* (“RAR9”).

IV. TESTIMONY AND MATERIAL FACTS

Christina Tobiasz, Chief Licensing Examiner, testified on behalf of the Department. She testified that the Respondent applied for a Non-Facility/Vendor Employee License and the Respondent’s application showed that in 2009, the Respondent had been convicted of drug possession in Pennsylvania. See Department’s Exhibit Two (2) (Respondent’s 2014 Application). She also testified that a National Criminal Background Check revealed that in 2008, the Respondent had also been arrested for possession of drugs in New Jersey. See Department’s Exhibit Three (3).³

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,

³ This exhibit was sealed per order of the hearing officer.

“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 (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.*

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.

(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.

Section 5 of the RAR9 provides in part as follows:

CRITERIA TO BE USED IN DETERMINING WHETHER BASED ON A 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:

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;

8. Applicant's submission of false or misleading statements or evidence to the department.

D. Whether the Respondent Should be Granted a License

The Department sought denial of the Application pursuant to R.I. Gen. Laws § 41-4-9.1 and Section 5 of RAR9 which provide that the Department may consider moral character and criminal record(s) in determining whether there is good cause to deny an application for license.

Section 5(A) of RAR9 provides that criminal convictions for offenses within the last 20 years may warrant a denial of an application and that an arrest within the last 10 years may warrant a denial of application. The Respondent was convicted of drug possession in 2009 which is less than 20 years ago. The Respondent was arrested for drug possession in 2008 which is less than ten (10) years ago. Section 5(B)(1) of RAR9 provides that an inadequate explanation of a criminal conviction or arrest may warrant denial of application. The Respondent did not provide an explanation of her conviction or her arrest. Section 5(B)(8) of RAR9 provides that false or misleading statements may warrant denial of an application. The Respondent did not include her 2008 arrest in her Application so that she provided false and misleading information to the Department. RAR9 provides that mitigating factors in terms of criminal records may be considered by the Department. The Respondent did not appear at hearing and offered no mitigating evidence.

VI. FINDINGS OF FACT

1. Pursuant to Section 21 of the CMR2, the Respondent is declared to be in default for failing to appear at the hearing.

2. Pursuant to Section 21 of the CMR2 and based on the testimony at hearing, the allegations in the Order to Show Cause are found to be true.

3. The Respondent submitted her Application for License in 2014 pursuant to R.I. Gen. Laws § 41-4-1 *et seq.*

4. An Order to Show Cause was sent by the Department to the Respondent on March 24, 2015 to the Respondent's address on record with the Department.

5. A hearing was scheduled for April 16, 2015 at which time the Respondent did not appear. As the Respondent had adequate notice of hearing, the undersigned held the hearing that day.

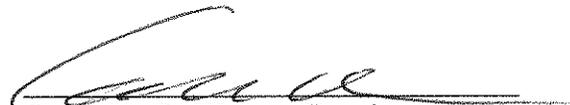
6. The Respondent was convicted of drug possession in 2009 and arrested for drug possession in 2008. The Respondent did not notify the Department of her 2008 arrest. The Respondent did not provide an explanation of her 2009 conviction and her 2008 arrest.

7. 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 Application be denied pursuant to R.I. Gen. Laws § 41-4-9 and Section 5 of the RAR9.

Entered this day 5th May, 2015.


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: 5/6/15


Macky McCleary
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 6th day of May, 2015, that a copy of the within decision was sent by first class mail, postage prepaid to Ms. Melanie Biesecker, 239027 State Route 92, Susquehanna, PA 18847 and by electronic delivery to Jenna Algee, Esquire and Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue. Cranston, RI.

