

**TATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDG. 68-1
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920**

IN THE MATTER OF

JORGE ZELAYA,

RESPONDENT.

:
:
:
:
:
:
:

DBR No. 14RA015

DECISION

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: November 10 and 12, 2015

Appearances: For the Respondent: *Failed to appear.*

For the Department: Jenna R. Algee, Esq.

I. FINDINGS OF FACT

1. On or about March 27, 2014, the Respondent filed an application for a Vendor/Non-Facility Employee license with the Division of Racing and Athletics of the Department, for employment at the Sbarro restaurant located within the Twin River Casino facility, in accordance with the provisions of R.I. Gen. Laws §41-4-9.1(a).

2. On page 4 of the Application, the Respondent answered “No” to the question “Have you ever been arrested or charged with any crime or offense in Rhode Island or any other jurisdiction in the last ten (10) years?”

3. On page 2 of the application, it is clearly stated that “[f]ailure to answer any question completely and truthfully will result in denial of your Non-Facility/Vendor Employee Application.”

4. The Respondent’s Criminal History Record (“CHR”) listed six (6) offenses which should have been reported on his application, including arrests on warrants, driving after denial, suspension or revocation of license.

5. On September 22, 2014, the Director issued an Order to Show Cause Why Application Should Not Be Denied, which was served upon the Respondent at his last and only known address on file with the Department. (“Notice”), ordering that he appear at the Department on October 8, 2014 for a pre-hearing conference.

6. The Respondent appeared at the Department on October 8, 2014 for the pre-hearing conference. At that time, a full evidentiary hearing was scheduled for November 10, 2014 at 10:00 a.m., and the Respondent acknowledge that date and time.

7. Due to a scheduling conflict, the time of the scheduled hearing was changed from 10:00 a.m. to 2:00 p.m. on the same day. Counsel for the Department notified the Respondent of the time change by electronic mail on October 30, 2014, sent to the email address on file with the Department.

8. The Respondent failed to appear at the Department at any time on the scheduled hearing date.

9. On that date, a the undersigned Hearing Officer noted on the record that the Respondent failed to appear, and indicated that he was defaulted after reasonable notice provided by the Department. Due to unavailability of the Department’s witness, the

hearing was continued to November 12, 2014 for the Department to establish proof of claim as to the Respondent's default.

10. At the hearing, Counsel for the Department presented three (3) documents which were marked as full exhibits: #1 was a copy of the email notice to the Respondent referenced in paragraph 7 herein; #2 was the License Application completed by the Respondent on March 27, 2014; #3 was the Rhode Island Criminal History Record for the Respondent.

11. The Department presented as a witness the Chief Licensing Examiner for the Racing and Athletics Division, who testified that she processed the Respondent's application and authenticated his Criminal History Record.

II. CONCLUSIONS OF LAW

1. The Respondent has defaulted in accordance with the provisions of Central Management Regulation 2 – *Rules of Procedure for Administrative Hearings*, Section 21, by his failure to appear at hearing and/or defend this administrative enforcement action.

2. The Department has complied with the requirements of R.I. Gen. Laws 42-35-9 regarding notice in contested cases, and has sustained its burden in establishing that the Division has “good cause” to deny the Respondent's license application, as set forth in R.I. Gen. Laws 41-4-9.1(c), by proving that he lied on his application regarding his arrests.

3. There is sufficient cause to deny the Respondent's license application based on the existence of six (6) reportable offenses in his Criminal History Record pursuant to Racing and Athletics Regulation 9 – Criminal Background Investigation,

Section 5(A), which states that arrests and/or charges that occurred within the last ten (10) years are “types of [criminal records] that may warrant denial of application for license”

4. A default judgment against Respondent is appropriate given his failure to appear and/or defend this action pursuant to Section 21 of *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings*.

III. RECOMMENDATION

Accordingly, it is hereby recommended that the Respondent be defaulted for his failure to appear, and that the Respondent’s application for Vendor/Non-Facility employee license be denied.

Dated this 13 day of April, 2015.



Ellen R. Balasco, Esq.
Hearing Officer

ORDER

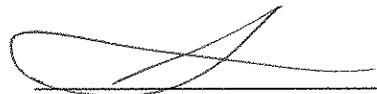
I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT

REJECT

MODIFY

Dated: 4/14/15

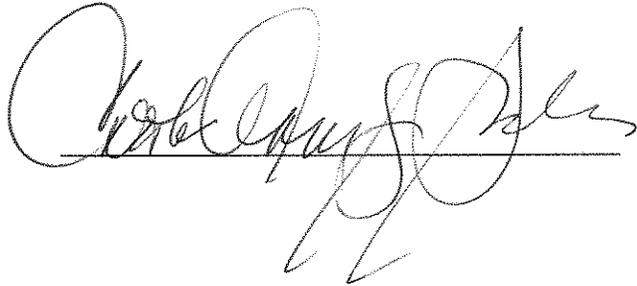


Macky McCleary
Director

THIS ORDER OF REVOCATION CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO RHODE ISLAND GENERAL LAWS TITLE 42, CHAPTER 35. AS SUCH, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS ORDER. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW WITH THE COURT. RESPONDENT'S LICENSE SHALL BE REVOKED EFFECTIVE THE DATE OF THIS ORDER. NOTIFICATION OF THE REVOCATION MAY BE PUBLISHED IN THE PROVIDENCE JOURNAL.

CERTIFICATION

I hereby certify on this 14th day of April, 2015, that a copy of the within Decision was mailed by first class mail, postage prepaid, to Jorge Zelaya at 85 Winthrop Avenue, Providence, RI 02908 and by electronic mail to the following parties at the Department of Business Regulation: Maria D'Alessandro, Esq., Deputy Director for Racing and Athletics, Christina Tobiasz, Chief Licensing Examiner for Racing and Athletics, Ellen R. Balasco, Esq., Deputy Chief of Legal Services and Hearing Officer and Jenna Algee, Esq. Legal Counsel



A handwritten signature in black ink, appearing to read "Karl [unclear]", is written over a horizontal line. The signature is cursive and somewhat stylized.