

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

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IN THE MATTER OF:

MENKYO VY,

RESPONDENT.

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DBR No. 13RA116

**DECISION**

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: May 27, 2014

Appearances: For Respondent: *Pro se.*  
For the Department: Jenna Algee, Esq.

**I. INTRODUCTION**

On April 28, 2014, this matter came on for a pre-hearing conference regarding the Order to Show Cause Why License Application Should Not Be Denied (“Order to Show Cause”), issued by the Director of the Department of Business Regulation (“Department”) on or about April 14, 2014. At that time, the Department asserted that the Racing and Athletics Division denied the Respondent’s license application pursuant to the authority granted under Racing and Athletics Regulation 9, and R.I. Gen. Laws § 41-4-9.1(c). The matter was continued to May 27, 2014 for a full hearing at the request of the Respondent.

**II. JURISDICTION**

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 41-1-1, *et seq.*, R. I. Gen. Laws § 42-14-1, *et seq.*, and R.I. Gen. Laws § 42-35-1, *et seq.*

### **III. ISSUE**

The issue presented in this matter is whether or not Respondent's application for a Operations Employee – Table Game Dealer license at the Twin River facility was rightfully denied by the Department's Racing and Athletics Division ("the Division").

### **IV. EVIDENCE PRESENTED AND FINDINGS OF FACT**

1. The Division received an application for an Operations Employee license Table Game Dealer position (Twin River) from the Respondent on May 14, 2014.

2. After receipt of the application, the Division issued to the Respondent a Temporary Approval of Application for Licensure and Agreement ("Temporary Approval"), which served to approve the application temporarily, subject to a due diligence investigation. That approval expired on August 20, 2013.

3. Officials at the Twin River facility notified the Division that the Respondent's employment there had been terminated effective August 7, 2013.

4. The Respondent failed to notify the Division of the termination at any time, in violation of the terms and conditions attached to the Temporary Approval.

5. At the hearing, the Department presented as a witness Christina Tobiasz, Chief Licensing Examiner for the Division of Racing and Athletics, who testified that she processed the Respondent's license application in the normal course of her duties, which included obtaining his national background check from the FBI through the Rhode Island Department of Attorney General.

6. Tobiasz testified that the Respondent had completed a Rhode Island Division of Lotteries Background Questionnaire Form prior to the filing of his Application. That form states clearly on its face that "failure to answer any questions completely and truthfully will result in elimination."

7. In response to Question #28 on the Questionnaire, (“Have you ever been arrested or charged with any crime or offense in Rhode Island or any other jurisdiction”), the Respondent answered in the negative.

8. In response to Question #28 on the application (“Have you ever been arrested with any crime or offense in Rhode Island or any other jurisdiction in the last 10 years”), the Respondent listed arrest for disorderly conduct, reckless driving and assault with a weapon from the Commonwealth of Massachusetts in June 2008.

9. The criminal background check received by the Division was entered as a full exhibit at the hearing. It revealed that the Respondent also received charges for resisting arrest and failure to stop for police, disturbing the peace, resisting arrest, and fugitive from justice in the June 2008 incident.

10. The Respondent answered question 25 (Job 2) by stating that he left employment at Salon Domani due to “slow salon/commission only.”

11. An investigation was conducted by the Division based on discrepancies in the Respondent’s application and questionnaire responses.

12. As a result of that investigation, the Division learned that the Respondent had been fired from Salon Domani due to absenteeism and tardiness.

13. In his defense, Respondent testified that his untruthful answers to the application questions were based on his belief that the charges had been expunged from his record.

14. The Respondent testified that he has been diagnosed with bipolar disorder, and presented two letters, marked as full exhibits at the hearing verifying this diagnosis. Both letters were from the Providence Center. The first (Respondent’s Exhibit #2) was from a registered nurse at the facility and it states that Mr. Vy had been “in and out of treatment” for bipolar disorder since 2008. It further stated that he had been “stable over the last 6 months” and that he is currently taking medications and “remains engaged in treatment”.

15. Respondent's Exhibit #3 was from Ann Potter, MD at the same facility and it stated that "the events that took place on June 24, 2008 were related to Mr. Vy's mental illness and non-adherence to medications. This letter also verified that Mr. Vy had been "in and out of treatment" since 2008, and that this was currently (as of March 4, 2014) taking medications and was engaged in treatment at the Providence Center.

16. The Respondent testified that the incident which occurred on June 4, 2008 involved a high-speed police chase through the cities of Attleboro, Massachusetts and Pawtucket, Rhode Island, and that his arrest was a "nightmare." He stated that he was having a manic episode, caused by his untreated bipolar disorder, and the chase involved over twenty cars.

17. The parties presented a Joint Stipulation at hearing that caused to be admitted as a full exhibit a three-page Attleboro Police arrest report dated June 24, 2008. According to that report, the Respondent, at speeds of up to 50 mph, led police on a chase through two heavily populated cities, then onto Route 95, where he continually "slammed on his brakes forcing the officers to take evasive actions to avoid crashing into his vehicle."

18. The report further details that the Respondent was swerving his vehicle towards police cruisers and civilian motorists causing them to "take evasive actions to avoid being struck by Vy's vehicle."

19. The Department additionally presented the following documents at the hearing, which were marked as full exhibits for consideration by the Hearing Officer: Employee Vendor license application form signed by the Respondent on March 28, 2014; arrest report from the Cranston Police Department.

20. The Respondent's untruthful answers to the application questions regarding criminal history is evidence of untrustworthiness and dishonesty.

21. The description of the Respondent's behavior in the arrest report showed that he acted in reckless disregard of his own safety and the safety of many others – police officers and civilians.

22. The fact that the Respondent resisted arrest, had to be taken into police custody at gun point and his refusal to stop for police, illustrates a disrespect for the law.

23. The Respondent admitted in his testimony that he also suffers from a “gambling addiction”, and a “shopping addiction.”

24. Based on the documentary and testimonial evidence presented at hearing by the Department and the Respondent, and the foregoing findings of fact, the Division of Racing and Athletics has good cause to deny the application of the Respondent.

## **V. CONCLUSIONS OF LAW AND RECOMMENDATION**

R.I. Gen. Laws § 41-4-9.1(c) provides that the Department may reject for good cause an application for a license. That statute further provides that, in determining whether to grant a license pursuant to this section the division may require the applicant to submit information as to moral character and criminal record.

Racing and Athletics Regulation 9, Section 5(A) *Criminal Background Investigation* states that arrests and/or charges that occurred within the last ten (10) years are types that may warrant denial of application for license or permit, or renewal of a license or permit.

Section 5(B) of Regulation 9 provides a number of factors which may be considered as extenuating circumstances in granting or denying an application. Once such factor is the applicant's refusal to acknowledge responsibility for arrest and/or criminal offense. In this respondent's testimony, he indicated that the dangerous high speed chase and his violent actions that night were, in his words “not me.” He claims that his crimes and his arrest were caused by

the fact that he was in a manic episode due to his bipolar disorder, which came on because he had not been taking his medications.

While the Hearing Officer believes that his unmedicated psychiatric disorder is likely to have been the cause for this criminal activity, it was the Respondent himself who chose not to take his medication. In fact, he testified at hearing that he was hospitalized “numerous” times from 2008 to the present due to his resistant to treatment for his bipolar disorder, and that he has had “at least twenty” psychiatric hospitalizations since he turned eighteen. He further stated that he “does not want to take Lithium for his whole life.” This is a cause for concern, as it creates a likelihood for the Respondent to engage in such behavior in the future if he again decides to not take his medications.

It is undisputed that the Respondent provided untrue, incomplete and inaccurate information and omitted material facts regarding his criminal history on his application.

The nature of his arrest and criminal charges show that the Respondent engaged in dangerously reckless behavior, however it is his decision to allow his bipolar disorder to go untreated for which the Respondent is accountable. He knew, or should have known of the likelihood that such a “nightmare” was a possibility if he did so.

While the Hearing Officer is sympathetic to the Respondent’s psychiatric diagnosis and the effect it has had on his life, his past refusals to take prescribed medications for his disorder create a risk that he will again place himself and others in mortal danger in the future.

Additionally, the Respondent presented no evidence that he has been treated for his gambling addiction, which makes him unsuitable for employment in a gaming facility.

It is the considered opinion of the undersigned Hearing Officer, based on all of the testimony adduced at hearing and the documentary evidence presented, that the Division of Racing and Athletics has rightfully and with good cause denied the Respondent’s application.

The Hearing Officer recommends that the Director issue an Order denying the Table Gaming Dealer application of the Respondent.

Dated: 27 Oct. 2014

Ellen R. Balasgo  
Ellen R. Balasgo, Esq.  
Hearing Officer

**FINAL ORDER**

I have read the Hearing Officer's Decision and Order in this matter, and I hereby take the following action with respect to her recommendations.

ADOPT

REJECT

MODIFY

Dated: 28 Oct 2014

Paul McGreevy  
Paul McGreevy  
Director

**THIS DECISION CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO RHODE ISLAND GENERAL LAWS TITLE 42, CHAPTER 35. AS SUCH, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW IN SAID COURT.**

**CERTIFICATION**

I hereby certify on this 30<sup>th</sup> day of October, 2014, that a copy of the within Decision was sent by certified and first class mail, postage prepaid to: Menkyo Vy, 558 Potters Ave., Apt. 2, Providence, RI; and by electronic mail to the following parties at the Department of Business Regulation: Maria D'Alessandro, Esq., Deputy Director of Commercial Licensing and Racing and Athletics; Christina Tobiasz, Chief Licensing Examiner – Racing & Athletics; Jenna Algee, Legal Counsel.

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Kristen L. Masse