

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

IN THE MATTER OF:

Hakeem Emmanuel,

Respondent.

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DBR No.: 22GA002

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause why License Application Should not be Denied, Notice of Pre-hearing Conference, and Appointment of Hearing Officer (“Order to Show Cause”) issued to Hakeem Emmanuel (“Respondent”) by the Department of Business Regulation (“Department”) on April 5, 2022. Pursuant to R.I. Gen. Laws § 41-4-9.1, the Respondent applied for a Gaming Facility – Gaming Vendor Employee License (“License”) to work at Bally’s Twin River Lincoln Casino Resort and Bally’s Tiverton Casino and Hotel. A hearing was scheduled for September 12, 2022. The Department was represented by counsel and the Respondent was *pro se*. The parties rested on the record. The record closed on September 16, 2022.

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.*

III. ISSUE

Whether the Respondent's License application should be denied pursuant to R.I. Gen. Laws § 41-4-9.1.

IV. TESTIMONY AND MATERIAL FACTS

An issue in this matter involves how the Respondent answered the following questions on the application for License (questions 52 and 53). These questions¹ state as follows:

52. Has the applicant ever been detained, issued a summons or citation, arrested, charged, indicted or forfeited bail for any criminal offense or violation for any reason whatsoever.

53. If YES, provide details in the grid below. All detentions, summonses and citations, arrests, charges, and indictments shall be included even if the final result was the dismissal of charges or expungement. Applicant shall include all DWI/DUI charges; however, minor traffic violations need not be included.

Question 53 then has a grid with the following notations:

Nature of charge or offense – location of incident – date of charge or offense – name and address – disposition - sentence

Brian Coutu, Assistant Administrator of Gaming and Athletics, testified on behalf of the Department. He testified that on January 18, 2022, the Respondent applied for a non-facility International Games Technology ("IGT") slot machine technician license. He testified that he compared the Respondent's application to the Respondent's criminal background check and found that the Respondent omitted information from his application about a pending criminal charge. He testified that the Respondent responded to question 52 with a "no," but Court records showed that the Respondent was arrested in 2021. Department's Exhibit One (1) (application); Two (2) (Superior

¹ It is noted that the Order to Show Cause erroneously referred to questions 42 and 43. At hearing, the correct questions and correct numbers were noted.

Court case summary for Respondent),² and Three (3) (District Court case summary for Respondent). He testified that the Respondent's District Court case was transferred to the Superior Court. He testified that the Department decided to deny the Respondent's application after its background review and sent a letter to the Respondent informing him that his application was denied and that he could request a hearing. Department's Exhibit Four (4) (March 11, 2022 Department letter to Respondent denying License application). He testified that the Respondent requested a hearing. He testified that IGT has informed the Department that the Respondent is no longer employed by IGT. Department's Exhibit Five (5) (June 2, 2022 email from IGT to Department). He testified that for the online application, if one answers a question "yes," one can go to the next question and carry on. Department's Exhibit Six (6) (screen shot of blank questions 52 and 53). On cross-examination, he testified that one can get to the next screen even if one does not answer a question.

The Respondent testified on his behalf. He testified that he initially answered "yes" to question 52 when filling out the application but that question 53 then asked for the end date, disposition, and court documents, and he did not know what to enter as he did not have a disposition or court documents. He testified that he spoke to his manager at IGT who suggested that he just say "no" so he put "no" to bypass it. He testified he tried to put in "NA" for not applicable, but that did not work. He testified that he asked his manager if he remembered their conversation about how to answer question 52, but his manager did not remember the conversation.

On cross examination, the Respondent testified that he was not aware of an information being filed in Superior Court in December, 2021. He testified that he did not go to Superior Court until February, 2022 when he pled not guilty. He testified that when looking at the District Court record, he was arrested on July 8, 2021 and arraigned on July 9, 2021. On redirect examination, he testified

² It is noted that the Superior Court print out now includes information that would not have been available at the time of the Department's review of the Superior Court records in January or February, 2022.

that when he filled out the application, he did not know what date he was arrested or arraigned, and he was not sure what to input so he put “no” to question 52. He testified that IGT had been waiting for outcome of the Department hearing, but his last day with IGT was June 2, 2022. He testified that he signed a resignation agreement with IGT but was told he still had an offer of employment and would have six (6) months to obtain a license.

The Respondent indicated that he had the employment offer from IGT in writing. The record was left open to September 16, 2022 for the Respondent to submit any documentation regarding his employment with IGT. The Respondent did not submit any such documentation by either September 16, 2022 or the date of this decision.

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.*

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.

D. Whether the Respondent's License Application Should be Denied

The Department argued the Respondent's answer to question 52 was a misrepresentation as he had been arrested in 2021. The Respondent argued that he answered "no" to Question 52 because he was unable to fully answer question 53. The Respondent was arrested in July, 2021 and charged with carrying a pistol without license or permit. On December 17, 2021, the case was transferred from District Court to Superior Court. Department's Exhibits One (1) and Two (2).

The Respondent testified he did not know when he was arrested. However, he did know that he had been arrested. He testified that he first appeared in court in February, 2022 after his application and was not aware the case had been transferred from District to Superior Court. He testified that since he did not have all the information requested for question 53, he did not answer it. Question 53 requests information about an arrest or conviction so not every part would be able to be answered by an applicant depending on the circumstances of an applicant's criminal charge. Thus, the Respondent could have answered question 53 by stating that he had been arrested. By answering question 52 as a "no," the Respondent indicated that he had not been arrested when he had been arrested prior to filling out the application. The Respondent thought he needed to complete the entire question 53 and not just answer part of it. It seems illogical for the Respondent to answer question 52 incorrectly when the application itself states on the first page that an applicant is subject to a national criminal background check. Department's Exhibit One (1).

However, it is undisputed that the Respondent is no longer employed by IGT. R.I. Gen. Laws § 41-4-9.1 and 230-RICR-30-30-2, *Gaming and Athletics License Application Regulation* ("License Regulation"), provide that the Department shall establish occupational licensing for all employees at gaming facilities.³ Section 2.3(10) of the Licensing Regulation defines a "Non-

³ The License Regulation defines "gaming facility" as "any building, enclosure, or premises at which pari-mutuel, simulcast, or slot operations, and/or table games are conducted." See § 2.3(6).

employee" as "any individual employed by a Licensed Vendor rather than by the Gaming Facility, or any individual employed by a construction contractor with access to any area of a Gaming Facility." Section 2.4 of the same regulation requires a "Non-Facility/Vendor Employee License" for "[a]ll individuals working on the premises of (but not employed by) a Gaming Facility are required to hold a Non-Facility/Vendor Employee License."

The purpose of said license is to license employees (such as technicians) of vendors (such as IGT) at gaming facilities (such as Bally's Twin River). Without employment as a vendor employee, an applicant/employee cannot obtain a Non-Facility/Vendor Employee License. Indeed, obtaining such a license is required for anyone employed as a non-facility vendor employee of Bally's Twin River or Bally's Tiverton. Unlike a license that allows the holder to practice in a specified field (often after demonstrating certain specified knowledge such as a doctor or lawyer) without a condition of employment in that field, this type of license is tied to employment. The Respondent's License requires employment as a vendor employee at a gaming facility in Rhode Island. Without employment, such a license cannot be held. Thus, employment as a vendor employee at Bally's Twin River or Bally's Tiverton is a condition of licensing. The Respondent is currently not employed by IGT so he cannot hold the License. *In the Matter of: Baher Andrawis*, DBR No.: 17GA006 (6/11/18).

At hearing, the Respondent indicated that he still had an offer of employment from IGT. However, he did not provide any documentation to this effect. Thus, currently, he is not employed by IGT, and since there is no evidence of an offer of employment, he cannot hold the License.⁴

Pursuant to R.I. Gen. Laws § 41-4-9.1 and the License Regulation, the Department has grounds to deny the Respondent's application for License as he is not employed by IGT.

⁴ Nothing precludes the Applicant from applying to IGT again and if given an offer of employment by IGT from applying again to the Department for a license.

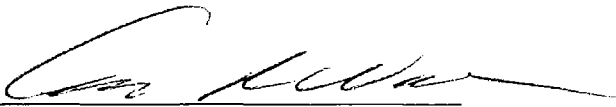
VI. FINDINGS OF FACT

1. An Order to Show Cause was sent by the Department to the Respondent on April 5, 2022.
2. A hearing was held on September 12, 2022. The record was left open to September 16, 2022 for the further submission of documents by the Respondent. None were submitted by September 16, 2022. None were submitted by the date of this decision.
3. The Respondent answered "no" to question 52 when he had been arrested prior to his application for License.
4. As of June 2, 2022, the Respondent is no longer employed by IGT.
5. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

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

Entered this day 3rd October, 2022.

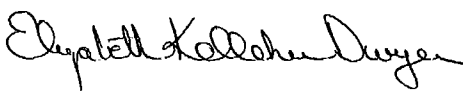

Catherine R. Warren, Esquire
Hearing Officer

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: 10/3/22


Elizabeth Kelleher Dwyer, Esquire
Interim 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 3rd day of October, 2022, that a copy of the within decision was sent by first class mail, postage prepaid, and certified mail to Mr. Hakeem Emmanuel, 31 Rankin Avenue, Providence, R.I. 02908 and by electronic delivery to the Respondent at hakeemwagnac@gmail.com and by electronic delivery to Sara K. Tindall-Woodman, Esquire, and Brian Coutu, Assistant Administrator, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue. Cranston, RI.

