

**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:

Kyle Harris,

Respondent.

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DBR No.: 22GA001

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause why License Renewal Application Should not be Denied, Notice of Pre-hearing Conference, and Appointment of Hearing Officer (“Order to Show Cause”) issued to Kyle Harris (“Respondent”) by the Department of Business Regulation (“Department”) on April 5, 2022. Pursuant to R.I. Gen. Laws § 41-4-9.1, the Respondent held a catering and food service license (“License”) at Twin River Casino Hotel. A hearing was scheduled for October 18, 2022 at which time the Respondent did not appear at hearing. Pursuant to § 2.9 of the 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearing* (“Rules”), 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 Order to Show Cause was sent to the Respondent’s last known address by first class and certified mail. Since the Respondent was adequately noticed of hearing, a hearing was held before the undersigned on October 18, 2022.¹ Additionally, § 2.21 of the Rules provides that a default

¹ A prehearing conference on this matter was held on May 2, 2022. After the prehearing conference, the parties communicated by email. A hearing date of October 18, 2022 was chosen based on both parties indicating by email their availability on that date. The scheduling email was sent on October 4, 2022 by the undersigned to both parties. After holding the hearing on October 18, 2022, the undersigned received an email on that date from the Respondent

judgment may be entered based on pleadings and/or evidence 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.*

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

The issue in this matter involves how the Respondent answered the following questions on his License renewal application (questions 40 and 43). These questions state as follows:

40. Since your last application, 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.

43. Since your last application, has the applicant ever been convicted of, or plead guilty or nolo contendere to any charge of offense?

Brian Coutu ("Coutu"), Assistant Administrator of Gaming and Athletics, testified on behalf of the Department. He testified that the Respondent was licensed as a caterer at Twin River and his License expired on December 31, 2021. He testified that on the Respondent's renewal application, the Respondent answered "no" to the questions 40 and 43 about being arrested or convicted. Department's Exhibit One (1) (Respondent's renewal application). Coutu testified that a criminal background check (BCI) for the Respondent showed that on June 10, 2020, he was charged with

inquiring about the hearing date. The undersigned replied that a hearing had been held that day on October 18, 2022. As of the date of the undersigned's recommended decision, the Respondent has not moved to reopen the hearing or reconsider this matter pursuant the Rules. Instead on November 9, 2022, he inquired by email as to the status of the decision to which the undersigned replied that it would be issued soon.

breaking and entering the premises of someone over 60. Coutu testified that the BCI showed that on June 21, 2021, the Respondent pled *nolo contendere* to trespass and simple assault. Department's Exhibits Two (2) (Respondent's case summary); and Three (3) (national criminal background record). Coutu testified that he spoke to the Respondent prior to issuing the renewal denial, and the Respondent's explanation of the charges and plea was erratic, and the Respondent said he thought they were due to his sleep walking, and said he answered "no" on his renewal application because he thought the charges would go away.

Upon questioning from the undersigned, Coutu testified that the Respondent is currently not working at Twin River, but there is no evidence that he has been terminated from his catering position.

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 Renewal Application Should be Denied

Based on the pleadings, exhibits, and testimony, the Respondent filed his renewal application on October 26, 2021 for his License. In the renewal application, he was asked if he had been arrested since his last application, and he answered "no." He was arrested on June 10, 2020. He was also asked in the renewal application if since his last application, he had ever pled *nolo contendere* to any charge or offense, and he answered "no." He pled *nolo contendere* to trespass and simple assault on June 14, 2021. The Respondent was arrested and pled *nolo contendere* prior to completing his renewal application.

Based on the foregoing, the Respondent misrepresented his criminal history on his renewal application so that pursuant to R.I. Gen. Laws § 41-4-9.1, there are grounds to deny his application for renewal of License.

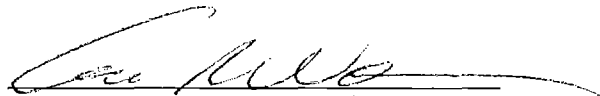
VI. FINDINGS OF FACT

1. An Order to Show Cause was sent by the Department to the Respondent on April 5, 2022.
2. A hearing was scheduled for October 18, 2022, at which time the Respondent did not appear. As the Respondent had adequate notice of hearing, the undersigned held the hearing that day.
3. 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 renewal application be denied pursuant to R.I. Gen. Laws § 41-4-9.1.

Entered this day 9th November, 2022.

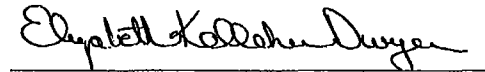

Catherine R. Warren, Esquire
Hearing Officer

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:

 X ADOPT
 REJECT
 MODIFY

Dated: 11/10/2022


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 10th day of November, 2022, that a copy of the within decision was sent by first class mail, postage prepaid, and certified mail to Mr. Kyle Harris, 87 Bagley Street, Central Falls, R.I. 02863 and by electronic delivery to the Respondent at falconsfan22m@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.

