

**STATE OF OHIO  
CASINO CONTROL COMMISSION**

*In re:*

**KEITH FELL,  
CASINO GAMING EMPLOYEE LICENSE  
APPLICANT**

Respondent.

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Case No. 2012-0021  
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**ORDER DENYING CASINO GAMING EMPLOYEE LICENSE APPLICATION**

On March 5, 2012, Respondent Keith Fell filed an application for a casino gaming employee license with the Ohio Casino Control Commission (“Commission”). (Hr’g Ex. F.) Thereafter, the Commission conducted a suitability investigation of Fell to determine his eligibility for such a license.

During the suitability investigation, the Commission discovered sufficient derogatory information to warrant issuance of a Notice of Intent to Deny and Opportunity for Hearing (“Notice”), dated May 1, 2012. (Hr’g Ex. A.) Fell received the Notice, sent via certified mail, on May 16, 2012. (Hr’g Ex. B.) Pursuant to R.C. 119.07 and 3772.04, Fell had the right to a hearing if requested within 30 days of the Notice’s mailing. Fell so requested and the Commission scheduled a hearing for May 29, 2012; and upon its own motion, the Commission continued the hearing until June 19, 2012. (Hr’g Ex. C.)

Through a letter, dated May 17, 2012, the Commission provided Fell with supplemental information regarding the allegations contained in the Notice. (Hr’g Ex. D.) Fell appeared at the hearing without counsel. Accordingly, the Commission held the hearing as scheduled before Hearing Examiner John Gonzales (“Examiner”).

After presentation and submission of the evidence at the hearing, the Examiner closed the record to prepare a Report and Recommendation (“R&R”), (Tr. 58-60), which he submitted on July 20, 2012. Therein, the Examiner found that Fell: 1) submitted to the Commission a Casino Gaming Employee License Application (“Application”) that contained false information, in violation of R.C. 3772.10(C)(2); 2) has not been convicted of, or pleaded guilty or no contest to, one or more offenses having an element of moral turpitude and, therefore, is not disqualified from licensure under R.C. 3772.07(D) and 3772.10(C)(1); and 3) proved, by clear and convincing evidence, his suitability for licensure as a casino gaming employee, as required by R.C. 3772.10(B). As a result of these findings, the Examiner recommended that the Commission deny Fell’s Application.

On July 23, 2012, the Commission sent Fell, via certified mail, a copy of the R&R. (App. #1; App. #2.) Fell received the R&R on July 26, 2012, (App. #2), giving him until August 27, 2012, to file objections, see R.C. 3772.04(A)(2) and 1.14. Fell did so on July 26, 2012, (App. #3), and the Commission considered his filing before rendering this decision.

In accordance with R.C. 119.07 and 3772.04, the matter was submitted to the Commission on September 12, 2012, for final adjudication.

**WHEREFORE**, in consideration of the foregoing and upon a quorum and majority vote of the members, the Commission, as explained below, **ADOPTS IN PART AND MODIFIES IN PART** the Examiner's Report and Recommendation.

While the Examiner's findings regarding Notice Allegations #1 and #2 and his recommendation of denial can be adopted without modification, his finding regarding Allegation #3 (i.e., Fell's suitability for licensure) is hereby modified and included as a basis for denying Fell's Application.

Fell submitted to the Commission an Application containing false information. And because he did so, he is unable to prove his suitability for licensure by clear and convincing evidence. Therefore, in addition to being denied licensure for providing false information in violation of R.C. 3772.10(C)(2), Fell is denied for failing to prove his suitability as required by R.C. 3772.10(B).

As the Examiner found and the record supports, Fell did not disclose, in response to Application Question #8, his 2002 arrest for passing bad checks, which asks whether the applicant has "ever been arrested for, charged with, or convicted of any offense in any jurisdiction (**including Ohio**)." Fell failed to do so even though he acknowledges that arrest occurred. To justify his omission, Fell stated, among other things, that he followed a link to a website where he was able to search public records and the arrest did not appear, that he misread the Application, and that he did not think that he had to include the 2002 incident on his Application. These statements, however, do not negate Fell's lack of candor on his Application, especially since he knew he had been arrested for the offense—to be sure, he was arrested during a traffic stop because a bench warrant had been issued, he posted bond, and there were several court dates set regarding the matter—and the Application makes clear that disclosure of the arrest was required. Thus, the Examiner's finding that Fell submitted an Application containing false information and recommendation to deny on that basis remains undisturbed.

Notwithstanding this finding and recommendation, the Examiner also found that Fell proved his suitability for licensure by clear and convincing evidence. Such a finding cannot be approved, however, because submission of an application containing false information statutorily renders an applicant ineligible for licensure under R.C. Chapter 3772. To be eligible for such licensure, an applicant must prove their suitability by clear and convincing evidence. An applicant cannot do so, however, when they violate R.C. 3772.10(C), as the General Assembly expressly prohibited the Commission from licensing any such violator. In essence, by declaring an applicant who provides false information on a Commission license application ineligible to receive a license under R.C. Chapter 3772, the General Assembly determined that such an applicant is inherently unsuitable for licensure. As a result, regardless of Fell's suitability before, during, or after the 2002 incident, his failure to truthfully disclose his past transgression precludes a finding that he proved his suitability by clear and convincing evidence.

Consequently, the Commission modifies the Examiner's R&R as it relates to Fell's suitability for licensure because Fell provided an Application that contained false information. In so doing, the Commission finds that Fell did not prove his suitability for licensure by clear and convincing evidence, as required by R.C. 3772.10(B). Therefore, in addition to his ineligibility for falsifying his Application, Fell is not suitable to hold a casino gaming employee license in this state.

**WHEREFORE**, in consideration of the foregoing and upon a quorum and majority vote of the members, the Commission **ORDERS** as follows:

- 1) Fell's Application is **DENIED**;
- 2) Fell is **PROHIBITED** from working or otherwise serving in any capacity that requires a license under R.C. Chapter 3772;
- 3) Fell is **PROHIBITED** from reapplying for licensure under R.C. Chapter 3772 for three years from the date this Order is served upon him, absent a waiver granted by the Commission commensurate with Ohio Adm. Code 3772-1-04; and
- 4) A certified copy of this Order shall be served upon Fell, via certified mail, return receipt requested, and his counsel of record, if any, via ordinary mail.

**IT IS SO ORDERED.**

  
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Jo Ann Davidson, Chair  
Ohio Casino Control Commission

**NOTICE OF APPEAL RIGHTS**

Respondent is hereby notified that pursuant to R.C. 119.12, this Commission Order may be appealed by filing a Notice of Appeal with the Commission setting forth the Order that Respondent is appealing from and stating that the Commission's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notice of Appeal may also include, but is not required to include, the specific grounds for the appeal. The Notice of Appeal must also be filed with the appropriate court of common pleas in accordance with R.C. 119.12. In filing the Notice of Appeal with the Commission or court, the notice that is filed may be either the original Notice of Appeal or a copy thereof. The Notice of Appeal must be filed within 15 days after the date of mailing of this Commission Order.