

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

IN THE MATTER OF: :
 :
 :
Alexis Tate, : **DBR No.: 15RA002**
 :
Respondent. :
 :

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DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause why License Should not be Revoked, Notice of Pre-hearing Conference, and Appointment of Hearing Officer (“Order to Show Cause”) issued to Alexis Tate (“Respondent”) by the Department of Business Regulation (“Department”) on April 3, 2015. Pursuant to R.I. Gen. Laws § 42-4-9.1, the Respondent holds a Non-Facility/Vendor Employee license (“License”) to work at a retail business at Twin River Casino. A hearing was scheduled for April 22, 2015 at which time the Respondent did not appear at hearing. Pursuant to Section 9 of *Central Management Regulation 2 Rules of Procedure for Administrative Hearing* (“CMR2”), 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.¹ Since the Respondent was adequately noticed of hearing, a hearing was held

¹ Department’s Exhibit One (1) included the United States Post Office tracking sheet that shows that the Order to Show Cause had been delivered by certified mail to the Respondent. Christina Tobiasz, Chief Licensing Examiner, testified for the Department that the Order to Show Cause was sent to the Respondent’s most recent address on record with the Department.

before the undersigned on April 22, 2015.² Additionally, Section 21 of the CMR2 provides that a default 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.*, and CMR2.

III. ISSUE

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

IV. TESTIMONY AND MATERIAL FACTS

Christina Tobiasz ("Tobiasz"), Chief Licensing Examiner, testified on behalf of the Department. She testified that the Respondent holds a Non-Facility/Vendor Employee License to work at a retail business at Twin River Casino. She testified that when the Respondent's License was approved, she was notified that the approval of the License had certain conditions including that a licensee must inform the Department within three (3) days if his or her employment is terminated. See Department's Exhibit Two (2) (notice of license approval). Tobiasz testified that the Respondent was caught on a surveillance video at the retail establishment where she worked at Twin River stealing a food voucher and was terminated from employment. See Department's Exhibits Three (3) (termination report) and Four (4) (incident report from Twin River).

² Pursuant to a delegation of authority by the Director of the Department of Business Regulation.

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 Should be Revoked

The Department sought to revoke the Respondent's License pursuant to R.I. Gen. Laws § 41-4-9.1. The Department argued that while the Respondent was not arrested for her theft, she did steal the voucher and was terminated from her employment and failed to notify the Department of her termination. The Department also argued that a Non-Facility/Vendor Employee License issued pursuant to R.I. Gen. Laws § 41-4-9.1 is conditioned on a licensee's employment at a non-facility/vendor at Twin River Casino.

R.I. Gen. Laws § 41-4-9.1 provides that the Department may consider moral character in determining whether there is good cause to revoke the License. In this matter it is undisputed that the Respondent did not ring up a food voucher but concealed it on her person and used it at

another vendor at Twin River Casino. See Department's Exhibit Four (4) (incident report). Thus, the Respondent stole property from her employer and used it for herself. She also failed to abide by the condition of her License approval in that she failed to notify the Department of her termination from employment. These are grounds pursuant to R.I. Gen. Laws § 41-4-9.1 (moral character) to revoke the License.

Furthermore, R.I. Gen. Laws §41-4-9.1 and *Racing and Athletics Regulation 8 – Licensing Application* (“RAR8”) provide that the Department shall establish occupational licensing for all employees of concessions at gaming facilities.³ RAR8 defines a Non-Facility/Vendor License as follows:

Non-Facility/Vendor Employee License – All individuals working on the premises of (but not employed by) a Dog Racing Track or Gaming Facility are required to hold a Non-Facility/Vendor Employee License. The application form for the initial licensing of Non-Facility/Vendor Employee is contained herein at Appendix F. All Non-Facility/Vendor Employees must use the Application in Appendix G to renew their existing Licenses but only after initially filing the Application contained in Appendix F.

The purpose of said license is to license employees of non-facility/vendors at gaming facilities (such as Twin River Casino). Without employment at such a concession or vendor, an applicant/employee cannot obtain a Non-Facility/Vendor Employee License. Indeed, obtaining such a license is required for anyone employed by a non-facility/vendor at a gaming facility. Unlike a license that allows the holder to practice in specified field (often after demonstrating certain specified knowledge) without a condition of employment in that field, this type of license is tied to employment. Thus, some licenses do not require employment to be held by a licensee. However, the Respondent's License is required upon employment at non-facility/vendor at a gaming facility in Rhode Island. Without employment, such a license cannot be held. Thus,

³ RAR8 defines “gaming facility” as “any building, enclosure, or premises at which pari-mutuel, simulcast, or slot operations are conducted.”

employment at a non-facility/vendor is condition of licensing. The Respondent was terminated from such employment so cannot hold the License.

VI. FINDINGS OF FACT

1. Pursuant to Section 21 of CMR2, the Respondent is declared to be in default for failing to appear at the hearing.

2. Pursuant to Section 21 of the CMR2 and based on the testimony at hearing, the allegations in the Order to Show Cause are found to be true.

3. An Order to Show Cause was sent by the Department to the Respondent on April 3, 2015 to the Respondent's address on record with the Department.

4. A hearing was scheduled for April 22, 2015 at which time the Respondent did not appear. As the Respondent had adequate notice of hearing, the undersigned held the hearing that day.

5. The Respondent was terminated for theft by employer and failed to notify the Department. She is no longer employed by a non-facility/vendor at Twin River.

6. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the forgoing, the undersigned recommends that the Respondent's License be revoked pursuant to R.I. Gen. Laws § 41-4-9.

Entered this day 5th May, 2015.


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: 5/6/15



Macky McCleary
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 6th day of May, 2015, that a copy of the within decision was sent by first class mail, postage prepaid to Ms. Alexis Tate, 44 Barbara Street, Providence, RI 02909 and by electronic delivery to Jenna Algee, Esquire, and Maria D'Alessandro, Deputy Director, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, RI.


