

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:

Tyler Menard,

Respondent.

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DBR No.: 16RA002

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause why Application Should Not be Denied, Notice of Pre-hearing Conference, and Appointment of Hearing Officer (“Order to Show Cause”)¹ issued to Tyler Menard (“Respondent”) by the Department of Business Regulation (“Department”) on April 29, 2015. Pursuant to R.I. Gen. Laws § 41-4-9.1 and R.I. Gen. Laws § 41-7-10, the Respondent applied for a Concessionaires and Vendor Employee license at Newport Grand and Twin River. A hearing was scheduled for May 25, 2016 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.² Since the Respondent was adequately noticed of hearing, a hearing was

¹ At hearing, the Order to Show Cause was amended on a motion by the Department and paragraph eight (8) was stricken.

² See Department’s Exhibit One (1) (Order to Show Cause and print-out of the United States Post Office tracking indicating that the certified mail was delivered to the Respondent). The address used for the Order to Show Cause was the address the Respondent used in his application. See Department’s Exhibit Two (2). In addition, the Department represented that the first class mail was not returned to the Department.

held before the undersigned on May 25, 2016.³ 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.*, R.I. Gen. Laws § 41-7-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*, and CMR2.

III. ISSUE

Whether the Respondent's application for license should be denied pursuant to R.I. Gen. Laws § 41-4-9.1 and R.I. Gen. Laws § 41-7-10.

IV. MATERIAL FACTS AND TESTIMONY

Based on the evidence at hearing, the following facts can be ascertained. The Respondent applied for a Concessionaires and Vendor Employee license to work at Twin River and Newport Grand. In his application, the Respondent was asked if he had ever been arrested in the last ten (10) years and he replied "yes." The Respondent disclosed an arrest in 2007 related to attaching plates to an unregistered car. A criminal background check showed that the Respondent had also been arrested for failure to appear in court in 2007 and for the possession of marijuana in 2008. See Department's Exhibits Two (2) (application) and Three (3) (national criminal background check).⁴

Detective Robert Laurelli, Rhode Island State Police, testified on behalf of the Department. He testified that he has been attached to the gaming enforcement unit for three (3) years. He testified that he interviewed the Respondent regarding his criminal history and asked the

³ Pursuant to a delegation of authority by the Director of the Department of Business Regulation.

⁴ Department's Exhibit Three (3) is sealed pursuant to an order by the undersigned.

Respondent if he had any arrests that he had not included in his application. He testified that the Respondent denied he had any other arrests and when asked about the criminal background record showing that he had other arrests, the Respondent was confrontational and argumentative. He testified that the disclosure by applicants of facts such as credit history or criminal history is key to the gaming industry and failure to disclose is indicative of lack of integrity and honesty which is important to regulating the gaming industry.

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 (R.I. 1998).

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.

R.I. Gen. Laws § 41-7-10 provides in part as follows:

Licensing of concessionaires, vendors, pari-mutuel totalizator companies. – (a) All persons, firms, partnerships, associations, or corporations desiring to operate any concession allied to any fronton, shall apply for a license to the division of racing and athletics, on such forms and in such a manner as prescribed by regulations. 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 fronton management.

(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; subject to further appeal procedures provided by § 41-2-3.

Section 5 of the RAR9 provides in part as follows:

CRITERIA TO BE USED IN DETERMINING WHETHER BASED
ON A CHRI [criminal history record information], APPLICATION FOR A
LICENSE OR PERMIT OR RENEWAL THEREOF WILL BE APPROVED

- A. Types of CHRI That May Warrant Denial of Application for License or Permit or renewal of a license or Permit
 - 1. Convictions of Offenses that occurred within the last twenty (20) years; and
 - 2. Arrests and/or Charges that occurred within the last ten (10) years

- B. Aggravating factors related to the CHRI to be considered by the Department in connection with an application for a license or permit or a renewal thereof include, but are not limited to:
 - ***
 - 5. Applicant's refusal, delay, or inadequate explanation of facts and circumstances of information reflected on CHRI or obtained during the investigation of information on the CHRI;
 - ***
 - 8. Applicant's submission of false or misleading statements or evidence to the department.

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

The Department sought denial of the Respondent's application pursuant to R.I. Gen. Laws § 41-4-9.1(c), R.I. Gen. Laws § 41-7-10(c), and Section 5 of RAR9 which provide that the Department may consider moral character and criminal record(s) in determining whether there is good cause to deny an application for license. Section 5(A) of RAR9 provides that an arrest within the last ten (10) years may warrant a denial of application. Section 5(B)(5) of RAR9 provides that an inadequate explanation of a criminal conviction or arrest may warrant denial of application.

Section 5(B)(8) of RAR9 provides that false or misleading statements may warrant denial of an application.

Based on the pleadings and exhibits and testimony, it is undisputed that the Respondent falsely answered the question on his application related to prior arrests within the last ten (10) years by only disclosing one (1) arrest when in fact he had been arrested two (2) other times and he failed to disclose those two (2) other arrests.

VI. FINDINGS OF FACT

1. Pursuant to R.I. Gen. Laws § 41-4-9.1 and R.I. Gen. Laws § 41-7-10, the Respondent applied for a Concessionaires and Vendors Employee license to work at Twin River and Newport Grand.

2. On April 29, 2016, the Department issued an Order to Show Cause to Respondent.

3. A hearing was held on May 25, 2016. The Respondent did not appear at the hearing. As the Respondent was adequately notified of the hearing, the hearing was held. The Department was represented by counsel who rested on the record.

4. The Respondent only disclosed one (1) arrest when asked on the application whether he had ever been arrested in the last ten (10) years.

5. The Respondent had been arrested two (2) other times, once in 2007 and once in 2008.

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

VII. CONCLUSIONS OF LAW

Based on the testimony and facts presented:

1. The Department has jurisdiction pursuant to R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 41-4-1 *et seq.*, R.I. Gen. Laws § 41-7-1 *et seq.*, and R.I. Gen. Laws § 42-35-1 *et seq.*

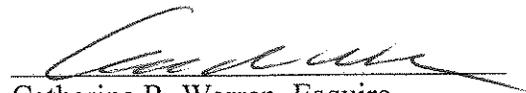
2. The Respondent made a false statement on his application by failing to disclose two (2) arrests in addition to the one (1) arrest that he did disclose.

3. The Department met its burden to deny the Respondent's application for said license.

VIII. RECOMMENDATION

Based on the forgoing, the undersigned recommends that the Respondent's application for said license be denied pursuant to R.I. Gen. Laws § 41-4-9.1 and R.I. Gen. Laws § 41-7-10 and Section 5 of the RAR9.

Entered this day 6th June, 2016.


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: 6/7/16

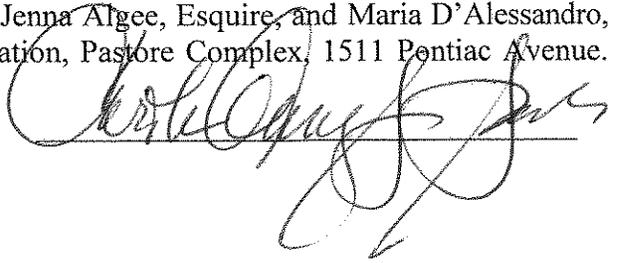

Macky McCleary
Director

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 8th day of June, 2016, that a copy of the within decision was sent by first class mail, postage prepaid and certified mail to Mr. Tyler Menard, 50 Rock Avenue, Pascoag, RI 02859 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.

A handwritten signature in black ink, appearing to be "Charles J. ...", written over a horizontal line.