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

IN THE MATTER OF	:	
DIOVANNI IRIZARRY,	:	**DBR No. 14RA019**
RESPONDENT.	:	

DECISION

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: January 7, 2015

Appearances: For the Respondent: *Failed to appear.*

For the Department: Jenna R. Algee, Esq.

I. INTRODUCTION

On January 8, 2015, this matter came on for a pre-hearing conference pursuant to an Order to Show Cause Why License Application Should Not Be Denied, Notice of Hearing and Appointment of Hearing Officer ("Order "), issued by the Director of the Department of Business Regulation ("Department") on or about December 4, 2014. The Order required Diovanni Irizarry ("Respondent") to appear at a Department hearing and answer why his application for Non-Facility /Vendor Employee license for employment at Johnny Rockets Restaurant at the Twin River Casino facility should not be denied pursuant to the authority granted under R.I. Gen. Laws § 41-4-9.1(a).

On that date, neither the Respondent nor anyone acting on his behalf appeared at the Department for hearing. Counsel for the Department requested that the Respondent be defaulted, and proof was given as to the allegations contained in the Order to Show Cause. On that date, the

undersigned Hearing Officer noted on the record that the Respondent failed to appear, and indicated that he was defaulted after reasonable notice provided by the Department. This Decision issues from the Hearing Officer's findings of fact and conclusions of law made at that hearing.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 41-1-1, *et seq.*, R. I. Gen. Laws § 42-14-1, *et seq.*, and R.I. Gen. Laws § 42-35-1, *et seq.*

III. ISSUE

The issue presented in this matter is whether or not Respondent's application for a Non-Facility/Vendor Employee license for a restaurant at the Twin River Casino facility was rightfully denied by the Department's Racing and Athletics Division.

IV. FINDINGS OF FACT AND EVIDENCE PRESENTED

On August 29, 2014, the Respondent in this matter filed an application for a Non-Facility/Vendor employee license for a position at Johnny Rockets restaurant in the Twin River facility. In his application, the Respondent answered "No" in each of his answers to the questions "Have you ever been arrested or charged with any crime or offense in Rhode Island or any other jurisdiction within the last 10 years", and the same as to the "last 20 years". The instructions on the Application form clearly instruct that an applicant should answer "yes" to these questions if "the charges were dismissed or subsequently downgraded to a lesser charge."

In the section titled Statement of Applicant on the application form completed by the Respondent, it is clearly stated that "I hereby certify that I have read the foregoing application and affirm that every statement contained therein is true, complete and correct. I understand that if I misstate or omit any fact, [...] my application may be denied." (Application presented and marked as Department's full Exhibit #1 at hearing.)

As part of the usual application screening process, the Division obtained this Respondent's national Criminal History Record from the Federal Bureau of Investigation through the Rhode Island Department of Attorney General. (Respondent's Criminal History Record was presented and marked as Department's full Exhibit #2 at hearing.) That document revealed that the Respondent had been arrested and charged with Obstructing a Police Officer, Disorderly Conduct and Resisting Arrest by the Providence Police on July 7, 2012; with Shoplifting by the East Providence Police Department on October 29, 2013. The Respondent's record did indicate that these charges had been dismissed pursuant to the Rhode Island Superior Court Rules of Criminal Procedure, Rule 48(A).

As a result of the information obtained by the Division in its application process, an Order to Show Cause Why Application Should not be Denied and Notice of Hearing was filed by Department's counsel on December 4, 2014.

Counsel for the Department presented the Division's Chief Racing and Athletics Examiner as a witness, who testified that she had processed the Respondent's application in the normal course of her duties. Additional documents presented as evidence included Providence Police Incident Report from July 16, 2012 (Department's full Exhibit #3), East Providence Police Witness Statements dated October 29, 2013 (Department's full Exhibit #4) and printouts detailing the Respondent's criminal charges as outlined above from the Court Connect website (Department's full Exhibits #5 and #6).

Counsel represented that the Order to Show Cause, Notice of Hearing and Appointment of Hearing Officer was served on the Respondent by both certified mail, return receipt requested, and by regular mail at his last known address on file with the Department. The certified mail notice was returned to the Department as undelivered, but the regular mail copy was not returned, and is therefore assumed to have been delivered and received by the Respondent. The Respondent has not made contact with any party at the Department since his application was received.

V. CONCLUSIONS OF LAW AND RECOMMENDATION

R.I. Gen. Laws § 41-4-9.1(c) provides that the Division of Racing and Athletics may reject for good cause an application for a license. That statute further provides that, in determining whether to grant a license pursuant to this section, the division may require the applicant to submit information as to moral character and criminal record.

Racing and Athletics Regulation 9, Section 5(A) *Criminal Background Investigation* states that arrests and/or charges that occurred within the last ten (10) years are types that may warrant denial of application for license or permit, or renewal of a license or permit.

It is undisputed that the Respondent provided untrue, incomplete and inaccurate information and omitted material facts regarding his criminal history on the application. The Respondent's untruthful answers to the application questions regarding his criminal history is evidence of untrustworthiness and dishonesty.

The false information provided on his application shows that the Respondent lacks good moral character, and as such, he does not meet the requirements for licensing. Based on the documentary and testimonial evidence presented at hearing by the Department, and the foregoing findings of fact, the Division of Racing and Athletics has established good cause within the meaning of R.I. Gen. Laws § 41-4-9.1(c) to revoke the license of the Respondent.

The Respondent was defaulted in accordance with the provisions of Central Management Regulation 2 – *Rules of Procedure for Administrative Hearings*, Section 21, by his failure to appear at hearing and/or defend this administrative enforcement action.

The Department has complied with the requirements of R.I. Gen. Laws 42-35-9 regarding notice in contested cases, and has sustained its burden in establishing that the Division has "good cause" to deny the Respondent's license application, as set forth in R.I. Gen. Laws 41-4-9.1(c), by proving that he lied on his application regarding his arrests.

There is sufficient cause to deny the Respondent's license application based on the existence of four (4) reportable offenses in his Criminal History Record pursuant to Racing and Athletics Regulation 9 – Criminal Background Investigation, Section 5(A), which states that arrests and/or charges that occurred within the last ten (10) years are "types of [criminal records] that may warrant denial of application for license"

A default judgment against Respondent is appropriate given his failure to appear and/or defend this action pursuant to Section 21 of *Central Management Regulation 2 – Rules of Procedure for Administrative Hearings.*

It is the considered opinion of the undersigned Hearing Officer, based on the testimony adduced at hearing and the documentary evidence presented, that the Department has sustained its burden of proving that the Respondent does not meet the necessary requirements to hold a Non-Facility/Vendor license, and it had good cause to deny his application.

Therefore, the undersigned Hearing Officer recommends that the Director issue an Order denying the Vendor/Non-Facility Employee application of the Respondent.

Dated: April 21, 2015

Ellen R. Balasco, Esq.
Hearing Officer

ORDER

I have read the Hearing Officer's Decision and Order in this matter, and I hereby take the following action with respect to her recommendations.

☒ ADOPT ☐ REJECT ☐ MODIFY

Dated: 4/22/15

Macky McCleary
Director

THIS DECISION CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO RHODE ISLAND GENERAL LAWS TITLE 42, CHAPTER 35. AS SUCH, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW IN SAID COURT.

CERTIFICATION

I hereby certify on this 23rd day of April, 2015, that a copy of the within Decision was sent by first class mail, postage prepaid to: Diovanni Irizarry, 579 Park Avenue, Cranston, Rhode Island 02910 and at diovanni.irizarry@gmail.com and by electronic mail to the following parties at the Department of Business Regulation: Maria D'Alessandro, Esq., Deputy Director of Commercial Licensing and Racing and Athletics; Christina Tobiasz, Chief Licensing Examiner – Racing & Athletics; Jenna Algee, Legal Counsel, Ellen Balasco, Hearing Officer.