

**STATE OF OHIO
CASINO CONTROL COMMISSION**

In re:

Case No. 2012-0046

**DAVID CICHRA,
CASINO GAMING EMPLOYEE LICENSE
APPLICANT**

Respondent.

ORDER DENYING CASINO GAMING EMPLOYEE LICENSE APPLICATION

On March 22, 2012, Respondent David J. Cichra filed an application for a casino gaming employee license with the Ohio Casino Control Commission ("Commission"). (Hr'g Ex. G.) Thereafter, the Commission conducted a suitability investigation of Cichra 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 17, 2012. (Hr'g Ex. B.) Cichra received the Notice, sent via certified mail, on May 19, 2012. (Hr'g Ex. C.) Pursuant to R.C. 119.07 and 3772.04, Cichra had the right to a hearing if requested within 30 days of the Notice's mailing. Cichra so requested and the Commission scheduled a hearing for June 5, 2012; and upon its own motion, the Commission continued the hearing until June 28, 2012. (Hr'g Ex. D.) Upon Cichra's request, and without objection from the Commission, the hearing was continued until July 16, 2012. (Hr'g Ex. F-1.) Cichra 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. 69), which he submitted on August 13, 2012. Therein, the Examiner found that Cichra: 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); and 2) proved, by clear and convincing evidence, his suitability for licensure as a casino gaming employee, as required by R.C. 3772.10(B) and (C)(7). As a result of these findings, the Examiner recommended that the Commission deny Cichra's Application.

On August 14, 2012, the Commission sent Cichra, via certified mail, a copy of the R&R. (App. #1; App. #2.) Cichra received the R&R on August 16, 2012, (App. #2), giving him until September 15, 2012, to file objections, see R.C. 3772.04(A)(2) and 1.14. Cichra did so on August 17 (App. #3) and August 18, 2012, (App. #4), and the Commission considered his filings before rendering this decision.

In accordance with R.C. 119.07 and 3772.04, the matter was submitted to the Commission on October 17, 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 recommendation of denial based on his findings regarding Notice Allegation #1 (i.e., Cichra's failure to disclose) is adopted without modification, his findings regarding Allegations #1 and #2 (i.e., Cichra's suitability for licensure) are hereby modified and included as a basis for denying Cichra's Application.

Cichra submitted to the Commission an application containing false information. Consequently, he is unable to prove his suitability for licensure by clear and convincing evidence. Thus, in addition to being denied licensure for providing false information in violation of R.C. 3772.10(C)(2), Cichra is denied for failing to prove his suitability as required by R.C. 3772.10(B) and (C)(7).

- A. Along with his failure to disclose a 1974 arrest for non-support of minor children, Cichra failed to disclose multiple financial liens and judgments filed or entered against him in the last ten years; thus, Cichra filed an Application that contained false information, in violation of R.C. 3772.10(C)(2).**

As the Examiner found and the record supports, Cichra did not disclose a 1974 arrest for non-support of a minor child in response to Application Question #8, which asks whether the applicant has "ever been arrested for, charged with, or convicted of any offense in any jurisdiction (**including Ohio**)." Cichra failed to do so even though he acknowledges that the arrest occurred, he spent three days in jail, and that the incident has shown up on at least five separate criminal background checks conducted by police agencies and school districts. (Tr. 9-11, 56-57.) In addition, Cichra failed to disclose tax liens, default judgments, and garnishments filed against him in the last ten years, in response to Application Question #16, which asks whether the applicant has ever "had any financial liens or judgments filed against him in the last ten years." Cichra submitted an Application containing false information, in violation of R.C. 3772.10(C)(2). Thus, the Examiner's finding that by failing to disclose the 1974 arrest for non-support of minor children, Cichra submitted an Application containing false information in violation of R.C. 3772.10(C)(2), and the Examiner's recommendation to deny on that basis remain undisturbed.

Cichra also failed to disclose multiple liens and judgments filed against him in the last ten years. Specifically, there were three tax liens filed in the Cuyahoga County Court of Common Pleas, two default judgments filed in the Cleveland Municipal Court, and one default judgment entry filed in the Rocky River Municipal Court. (Hr'g Exs. J, K, L, M, N, O.) Cichra did not deny any of these actions. While he testified that "[a]s far as liens go on our home . . . there has never been paperwork or telephone calls or anything . . . I have no knowledge except after receiving this packet that any liens were on our home . . .," he acknowledged he knew of the other financial judgments against him and that "[t]his is [his] fault, [his] error filling out this application too quickly." (Tr. 11.) Consequently, regarding the financial judgments, the Examiner's finding that Cichra submitted an Application containing false information and recommendation to deny is not modified; however, it is supplemented with a finding that Cichra failed to disclose tax liens filed against him that he was required to disclose in response to Application Question #16.

The Examiner extended to Cichra “the benefit of the doubt regarding his unawareness of the judgment or tax liens.” (R&R ¶19.) In so doing, the Examiner relied upon the testimony of Cichra and his wife, both of whom testified that they had no knowledge of any liens filed on their real property but that they did have knowledge of judgments and garnishments filed against them. (Tr. 11, 16-18.) Under Ohio law, the term “false” has “two distinct and well-recognized meanings: (1) intentionally or knowingly or negligently untrue; (2) untrue by mistake, accident or honestly after the exercise of reasonable care.” *Fouts v. State*, 113 Ohio St. 450, 462 (1925). In prohibiting the Commission from issuing a license to an applicant who submits an application containing false information, the General Assembly did not limit the prohibition to those who do so intentionally, knowingly, or negligently. See R.C. 3772.10(C)(2). Both meanings of the term apply to license applications submitted under R.C. Chapter 3772; thus, regardless of the reason, an applicant must be denied if they submit to the Commission an application that includes untruthful information.

Here, Cichra knowingly provided untrue information when he failed to disclose the judgments he and his wife testified they were aware of. Moreover, though Cichra may have honestly been unaware of the liens, the fact remains that his application contained false information because it did not contain the liens filed and judgments entered against him. Therefore, Cichra’s Application is also denied because he failed to disclose all of the financial liens and judgments against him in the last ten years, as required by R.C. 3772.10(C)(2).

B. Because Cichra failed to disclose information required by Application Questions #8 and #16, he cannot prove his suitability for licensure under R.C. Chapter 3772 by clear and convincing evidence.

Notwithstanding the Examiner’s finding and recommendation for denial based on Cichra submitting a false application, the Examiner found that Cichra 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 unsuitable for licensure under R.C. Chapter 3772.

The Examiner stated that there was no concern over Cichra’s financial situation that would render him unsuitable for a casino gaming employee license because the undisclosed judgments and resulting garnishments were paid in full. (R&R ¶17.) The Examiner also considered Cichra’s “background in law enforcement and security, his straight-forward demeanor, testimony of his wife regarding his personality and his obvious excitement for the opportunity to work at the Horseshoe Casino” as evidence of Cichra’s suitability for the license. (Id. ¶15.)

To be eligible for licensure under R.C. Chapter 3772, 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), because 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 such a license, the General Assembly determined that the applicant is inherently unsuitable for licensure. As a result, Cichra’s failure to truthfully disclose the 1974 arrest and all liens and judgments filed or entered against him in the last ten years 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 Cichra's suitability for licensure because Cichra provided an Application that contained false information. In so doing, the Commission finds that Cichra 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, Cichra is unsuitable for licensure as a casino gaming employee.

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

- 1) Cichra's Application is **DENIED**;
- 2) Cichra is **PROHIBITED** from working or otherwise serving in any capacity that requires a license under R.C. Chapter 3772;
- 3) Cichra 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 Cichra, via certified mail, return receipt requested, and his counsel of record, if any, via ordinary mail.

IT IS SO ORDERED.



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.