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AND ITS MANAGING MEMBER,
STEVEN C. AYERS,

FILED
Superior Court Of California,
Sacramento
05/09/2019
hportalanza
By _____, Deputy
Case Number:
34-2019-80003142

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

KRIS KAT, LLC AND ITS MANAGING MEMBER,
STEVEN C. AYERS
Petitioners/ Plaintiff,
v.

Case No.

PETITION FOR WRIT OF MANDATE,
COMPLAINT FOR DECLARATORY
RELIEF, INJUNCTIVE RELIEF AND
FOR DAMAGES

CALIFORNIA GAMBLING CONTROL
COMMISSION; and DOES I-XX,
inclusive
Defendants

INTRODUCTION

1. This action seeks to set aside Defendant California Gambling Control Commission's ("Defendant" or "Commission") Decision to not issue Petitioner Steven Ayers a license to own and operate a gaming establishment. The Decision bristles with unfair inferences and suspect assumptions about "alcohol use disorder" ("AUD") that lack medical foundation and are contrary to expert medical opinion. Neither the Statement of Issues nor the investigatory process itself provide notice that the Commission would consider and ultimately base its Decision on medical issues and issues that were outside of the Application inquiries. However, the Commission determined that AYERS was not suitable for licensing related entirely to his AUD, misdemeanor incidents that have occurred while AYERS was intoxicated, and issues outside of the Application process. The Decision ignores the law, a bevy of judicial opinions, legal scholarship, medical science, current treatment for AUD, as well as express legislative policy positions contrary to its conclusions.

1 13. AYERS was exhaustive and thorough in his disclosures on the Applications, both
2 individually and on behalf of Kris Kat. Again, no medical information, including anything about
3 AUD or other chronic diseases was requested and was therefore not provided.

4 14. Alcohol Use Disorder (AUD) is the preferred name for what used to be referred to
5 as alcoholism. AUD is a chronic relapsing brain disease. It is estimated in the medical literature
6 that approximately sixteen million people in America suffer from AUD.

7 15. The aberrant behavioral manifestations of AUD have been viewed by many as
8 “choices” of the individual, but current scientific studies have shown that there is an underlying
9 disruption to brain regions that are important for the normal processes of motivation, reward,
10 inhibition and behavioral control in addicted individuals. This provides the basis for the current
11 view that addiction is a disease of the brain and the associated maladaptive behavior is the result
12 of brain dysfunction, just as other chronic medical diseases: diabetes is the result of pancreas
13 dysfunction/other metabolic problems and hypertension is the result of cardiovascular
14 dysfunction. The adaptations in the brain that result from chronic alcohol exposure are long
15 lasting. Therefore, addiction must be viewed as a chronic disease, just like diabetes or
16 hypertension. Like diabetes or hypertension, it is a manageable disease that may occasionally
17 become symptomatic.

18 16. AUD is not a moral failure but is recognized as a disease in current medical
19 practice, teaching, and in the law. AUD is a chronic brain disorder related to numerous genetic,
20 social and psychological factors. This is not a moral failing, or a failure of will, or a simple
21 choice, but a complex disease. Alcohol intoxication can result in impulsive behavior, exercising
22 poor judgment, and being uncooperative. These behaviors represent the acute effects of alcohol
23 on the brain, not a well-thought out, willful and intentional choice. Patients who are intoxicated
24 may not have the cognitive capacity to be fully, intentionally and knowingly dishonest or to form
25 the requisite *mens rea* of criminal intent.

26 17. On February 8, 2017, Ayers submitted a formal request for a temporary State
27 License to the Bureau as previously directed by Bureau personnel via email. Ayers sought a
28 temporary license from the State in order to meet the time-lines imposed by the City that

1 required him to complete construction and open the cardroom before the State could complete its
2 full background investigation and issue an initial license. Ayers understood he could not open
3 the cardroom without an initial license but believed the temporary license would protect his
4 investment and allow him to sell the license in the event he was not granted an initial license by
5 the Defendant Commission. Ayers believed temporary licenses were handled administratively by
6 the Bureau and did not require a vote of the Commission. Notably, no regulations or guidelines
7 exist on the issuance of temporary licenses for cardroom owners.

8 18. On February 23, 2017, the City of Sacramento Planning and Design Committee
9 approved The Elks Tower Casino and Lounge ("Elks Tower") plans. On April 11, 2017, the
10 Sacramento City Council approved a conditional-use permit for The Elks Tower to allow
11 AYERS to operate a 23,650-square ft. gambling establishment at 921 11th Street, Sacramento,
12 CA. Receipt of the permit was conditioned upon the issuance of a state gambling license by the
13 Commission.

14 19. AYERS involved the Bureau in the construction plans from the very beginning.
15 This included: providing the Bureau with The Elks Tower Security and Surveillance Plan on
16 May 7, 2017, and the Bureau conducting a site visit of The Elks Tower with AYERS on May 18,
17 2017 in which surveillance, count room, and security requirements for the gambling
18 establishment were discussed. There was no discussion of the possibility of medical issues, or
19 misdemeanor convictions related to AYERS medical condition barring AYERS from owning a
20 casino. AYERS provided the Bureau with the City of Sacramento's Finance Department letter
21 stating the gambling establishment's permit application has been approved pending receipt of a
22 state gambling license on May 24, 2017.

23 20. AYERS submitted applications and fees for games to be offered at the new
24 Casino to the Bureau in May of 2017.

25 21. On May 26, 2017, AYERS was arrested at his home following a domestic dispute
26 with his wife. Ayers was intoxicated. AYERS was convicted of violating Penal Code section
27 415(I), disturbing the peace, a misdemeanor, on June 28, 2017.

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1 22. Between September 20 and October 4, 2017, AYERS, his wife, and his attorney
2 were requested by the Bureau to provide information surrounding the June 2017 conviction and
3 2013 DUI convictions. All information was provided. The Bureau did not ask for any medical
4 information, including whether AYERS had been diagnosed with, or treated for any disease that
5 may have been related to these events, including AUD.

6 23. In late October 2017, The Bureau requested a Pre-Denial Meeting with AYERS.
7 This request marked the first time the Bureau alerted AYERS to the possibility that concerns
8 regarding his suitability could result in a denial recommendation from the Bureau and the
9 inability to open the gambling establishment in time to meet the City's deadline of February 28,
10 2018. At this point, AYERS had expended millions of dollars and hired personnel, including a
11 casino manager, in preparation for meeting the City's time limitations and opening in early 2018.

12 24. AYERS and his attorney attend a pre-denial meeting with the Bureau on
13 November 2, 2017. Thereafter, the Bureau recommended to the Commission it deny AYERS'
14 License application based on his past criminal convictions.

15 26. The Commission held a hearing regarding AYERS license on December 18,
16 2017. A Sacramento City representative testified that the City was prepared to grant a City
17 license subject to Commission approval of a State Gambling License. The City representative
18 also expressed concern that if a license was not approved for AYERS the City was in jeopardy of
19 losing one of its four licenses for gambling establishments.

20 27. At the December 18, 2017 Commission meeting Chairman Jim Evans made a
21 motion to refer the Initial License to a hearing in front of the Commission. This motion did not
22 receive a second from the other two Commissioners. The Commission, which is supposed to
23 have five members, only had three members at this time. The Governor of the State of California
24 had failed to make appointments to fill the empty seats. The remaining two Commissioners
25 moved to approve a temporary license for AYERS in order to preserve the City's fourth license
26 but could not pass the motion with only two votes. The matter was continued until January 11,
27 2018 when the Commission voted to refer AYERS' license to an evidentiary hearing in front of
28 the Commission.

1 28. The Bureau issued a Statement of Reasons on August 9, 2018. This charging
2 document listed three reasons the Bureau was seeking denial of AYERS' license application.
3 Two of these reasons involved AYERS' misdemeanor convictions that occurred while AYERS
4 was under the influence. The Statement of Reasons stated nothing about AYERS' medical
5 issues, including AUD. Rather, AYERS was asked to defend misdemeanors that were related to
6 alcohol consumption for which AYERS had already successfully completed treatment,
7 performed public service, and paid his fines and penalties.

8 29. The hearing regarding AYERS licenses was held in front of the Commission on
9 October 19, 2018, October 22-25, 2018, and October 29, 2018. AYERS presented thirteen
10 supporting witnesses and forty-eight letters of reference. AYERS presented evidence of his
11 extensive philanthropic service and contributions to the community. The testimony established
12 that AYERS is diligent, committed, hardworking, honest and skillful in business. He is
13 philanthropic, a man of his word, with an exceptional business acumen. He has been successful
14 in running large companies. There was no evidence that AYERS' medical condition has ever
15 affected his business dealings or ability to run a company.

16 30. AYERS did not provide medical testimony as nothing had put him on-notice that
17 the nature of AUD, the capability to form *mens rea* while under the influence, or the use of past
18 incidents of being predictive of future incidents would be at issue. AYERS further asserts that
19 this was a reasonable position to take as he had not been informed of any other gambling
20 establishment owner being questioned regarding medical issues, including substance abuse and
21 was not aware of the State of California denying any person the ability to own a business due to
22 a medical diagnosis or because they are afflicted with a well-recognized and common disease.
23 AYERS was not placed on notice that his personal medical condition and struggle with AUD,
24 which has not affected his ability to successfully run any of his other business ventures would be
25 at issue.

26 31. Further, the Commission has frequently granted licenses to work within
27 controlled gaming to individuals with misdemeanor convictions, including drunk driving and
28 disturbing the peace. AYERS had no reason to believe that the Commission would treat him

1 differently than other applicants.

2 32. During the hearing, the Commission was presented with evidence outside of the
3 Application process that AYERS was not aware he was going to have to defend. This included
4 prior arrests that did not result in convictions or even in charges being filed. Thus, AYERS was
5 asked to defend and explain these matters without the Constitutional protections required for
6 criminal convictions.

7 33. Plaintiff is informed and believes that during the hearing the Commissioners
8 received Ex Parte Communications about this matter. Plaintiff is further informed and believes
9 that evidence of these communications were destroyed by Commissioners.

10 34. The Hearing was also irregular as one of the Commissioners, who were sitting as
11 a judicial body, exceeded his role as an impartial judge and actively introduced evidence against
12 Plaintiff in this matter.

13 35. The Decision of the Commission was issued January 12, 2019 and is attached to
14 this Complaint as EXHIBIT A. The Commission denied AYERS license upon the grounds that
15 AYERS failed to meet his burden of demonstrating that his criminal record, prior activities, and
16 habits of excessively consuming alcohol, and exercising poor judgment once intoxicated, are not
17 a threat to the public interest of this state. The Decision noted at Paragraph 103 that AYERS has
18 been diagnosed with "AUD, mild". The Commission only concerned itself with incidents
19 involving alcohol. The Commission held that AYERS did not offer convincing evidence that
20 his, "habit of excessively consuming alcohol and making poor decisions once intoxicated is
21 under control and will not be a factor in how he owns and operates the Elks Tower Casino and
22 Lounge." ¶125

23 36. The Decision of the Commission specifically stated that no conditions on the
24 license could protect the public from the risks AYERS posed to the public and controlled
25 gaming, stated: "Ayers's habits related to alcohol, and the resulting poor judgment, pose a threat
26 to the public interest and to the effective regulation and control of controlled gambling." ¶126.

27 37. A Request for Reconsideration was filed and heard on April 11, 2019. The
28 Request for Reconsideration stated that AYERS was denied adequate notice that his AUD and

1 non-work-related incidents that were secondary to AUD would be the primary reason for
2 denying him a license to own and operate a gambling establishment. The Statement of Reasons,
3 dated August 8, 2018, does not state that AYERS' AUD was being put at issue. Only two
4 references to applicant's consumption of alcohol were mentioned in the Statement of Reasons,
5 both in connection with misdemeanor convictions entered April 15, 2013 for DUI. The
6 Application and Supplemental questionnaire did not ask applicants to disclose any personal,
7 private health information. Nowhere in the statutes or regulations defining what constitutes
8 grounds for denying a gambling license is "alcoholism" mentioned.

9 38. The Request for Reconsideration presented the Declaration of Dr. Steven Batki, a
10 board-certified physician who practices in Psychiatry and Addiction Psychiatry at the University
11 of California San Francisco. Dr. Batki serves as the Chief of the Substance Abuse Programs and
12 Director of the Addiction Psychiatry Research Program at the San Francisco VA Medical Center
13 and directs the UCSF Addiction Psychiatry Fellowship Program. Dr. Batki is well qualified to
14 offer expert medical opinion pertinent to applicant AYERS flawed assumptions and
15 misunderstandings in the Decision about the Disease of AUD. The Decision unfairly denied
16 AYERS a license by ignoring current medical knowledge about AUD. A decision premised on
17 false assumptions cannot be reasonable.

18 39. The Request for Reconsideration also raised the issue of Equal Protection and that
19 AYERS had been treated differently than similarly situated applicants.

20 40. On April 11, 2019, the Commission, in a California Code of Regulations, Title 4,
21 Division 18, §12054 hearing, denied the request for Reconsideration. At the hearing the
22 Commissioners may have misunderstood the standard for Reconsideration as one Commissioner
23 misstated the standard on the record.

24 41. AYERS made specific requests that the Request for Reconsideration and
25 documents associated with that hearing be included in the record of the Commission for purposes
26 of appeal. The Commission asserted that the record was closed in October 2018 and refused to
27 include any of the reconsideration documents in the record. No reason for this position was
28 stated.

1 42. AYERS has been injured by the Commission's Decision due to the significant
2 financial investment he made in The Elks Tower Casino and Lounge. AYERS has hired people
3 to work in the Casino and they too have been injured by the Commission's discriminatory
4 decision to deny a license. AYERS has also been injured reputationally as none of his AUD
5 related incidents have been related to his ability to run a successful business.

6
7 **FIRST CAUSE OF ACTION**
(Writ of Mandate, Code of Civil Procedure §1085.)

8 43. Petitioner re-alleges and incorporates by reference each and every allegation made
9 in Paragraphs 1 through 42 as if fully set forth herein.

10 44. Defendant Commission has a legal duty to not make decisions in an arbitrary or
11 capricious manner. Nor can its actions exceed its jurisdiction. (Bus. & Prof. Code §19870(e).)
12 The Commission violated its legal duties in denying AYERS' application for a State Gaming
13 License for the following reasons:

14 a. The Commission acted in excess of its jurisdiction, denied Petitioner a fair
15 trial and did not proceed in the manner required by law, in that it adjudicated this matter
16 on issues that Petitioner was not given fair notice would be at issue; the Commission's
17 actions violated Petitioner's right to due process of law and a fair hearing and,
18 additionally, violated 4CCR§12054(a).

19 b. The Commission based its decision on Petitioner's alcohol related
20 incidents, but failed to put Petitioner on notice that his affliction with AUD, a medically
21 recognized disease, would be at issue or that Petitioner should prepare and present
22 medical evidence on AUD. AUD is not an issue of good character, honesty or integrity,
23 Petitioner had insufficient notice from the Statement of Issues that this would be at issue
24 and the basis for the denial of his license application.

25 c. The Commission's decision was arbitrary and capricious in that it denied
26 Petitioner's license based upon flawed reasoning, prejudice, and speculation. The
27 Commission's refusal to consider relevant medical evidence upon reconsideration and
28 instead substituted inaccurate lay opinion of a complex disease.

1 d. The Commission's Decision failed to treat all applicants for owners'
2 licenses similarly. There is no precedent for the Commission singling an applicant out for
3 having a disease unless it can show that the disease somehow prevents that individual
4 from owning and responsibly operating a gambling establishment. Equating the
5 symptoms of an applicant suffering from AUD with bad character, dishonesty and a lack
6 of integrity (B & P Code § 19857), is illogical and a denial of fundamental fairness.

7 e. AUD is a recognized disability under the Americans with Disabilities Act
8 and the California Fair Employment and Housing Act. The Decision of the Commission
9 was discriminatory against AYERS as a protected individual.

10 45. A writ of mandate must therefore issue compelling the Commission to set aside
11 its Decision regarding AYERS' application and reconsider their Decision.

12 46. AYERS does not have a plain, speedy, and adequate remedy at law, as there are
13 no other legal procedures to redress the harm that AYERS and his business will suffer by the
14 denial of license.

15 47. A copy of the Commission's Decision and Order is attached hereto as Exhibit A.

16 **SECOND CAUSE OF ACTION-**

17 **(Violation of The Due Process Clause of The California Constitution)**

18 48. The allegations set forth above in paragraphs 1 through 47 inclusive, are
19 incorporated into this cause of action by reference as if set forth in full.

20 49. By denying AYERS an opportunity to be fully informed of what the Commission
21 would consider, and not making him aware that medical issues would be considered by the
22 Commission in making a decision, defendant Commission deprived Plaintiff of due process of
23 law in violation of Cal. Const. art. I, § 7(a).

24 50. An actual controversy now exists between plaintiff and defendants as to whether
25 defendant's failure to provide adequate notice of the issues that would be considered in
26 determining an application to own a gambling establishment in California violates Due Process
27 of law as guaranteed by the California Constitution.

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1 51. Unless the court issues an appropriate declaration of rights, the parties will not
2 know whether defendants consideration of medical issues without notice complies with the due
3 process clause of the California Constitution, and there will continue to be disputes and
4 controversy surrounding the Defendant's provision of notice to applicants for licenses that the
5 Commission will consider medical information without any medical expert testimony and will
6 decide such issues based upon their lay understanding of complex diseases.

7 52. Defendants have a mandatory duty not to infringe upon plaintiff's due process
8 rights.

9 53. Unless compelled to refrain from interfering with plaintiff's due process rights,
10 defendant will continue to do so.

11 54. Plaintiff has no plain, speedy, or adequate remedy at law to correct defendants'
12 conduct.

13 55. Plaintiff has suffered damages as a proximate result of defendants' conduct
14 towards him.

15 56. Plaintiff presently does not know the full nature and extent of his damages but
16 will amend this complaint to state them once they have been ascertained with particularity.

17 **THIRD CAUSE OF ACTION**

18 (Violation of The Equal Protection Clause Of The California Constitution.)

19 57. The allegations stated above in paragraphs 1 through 56, inclusive, are
20 incorporated herein by this reference as if set forth in full.

21 58. Defendants have issued a Decision denying a California-citizen the right to own a
22 business because he is afflicted with a well-known and recognized disease, AUD. Defendants
23 have determined that past behavior due to intoxication disqualifies Plaintiff from owning a
24 gambling establishment in California. Defendants have not barred similarly situated applicants
25 for a license to own a gambling establishment based upon AUD. Defendants have issued licenses
26 for applicants to own and work in controlled gaming that, like Plaintiff, have DUI's and other
27 alcohol related misdemeanor convictions. Plaintiff has been treated in a disparate manner based
28 upon the fact he is afflicted with AUD.

1 **As to the Second Cause of Action:**

2 1. Issuance of a temporary restraining order, followed by a preliminary injunction,
3 and ultimately by a permanent injunction:

4 a. Ordering that Defendants provide notice of all issues to be considered at
5 hearing regarding license qualifications, including medical issues, so that applicants can
6 prepare accordingly;

7 b. Alternatively, for immediate issuance of an appropriate Writ of Mandate,
8 commanding that Defendants: Provide Applicant with a reasonable opportunity to be
9 heard in his own defense regarding medical issues so they can provide medical expert
10 testimony rather than the Commission basing their decisions on medical diseases based
11 upon prejudice, stigma, and lay opinion.

12 2. Immediately cease and desist from enforcing their Decision until Defendant
13 provides notice and hearing procedures such as comport with the requirements of the due process
14 clause of the California Constitution.

15 3. A declaration of rights stating that Defendant's actions violate the due process
16 clause of the California Constitution;

17 4. An award of costs, including attorney's fees pursuant to Code Civ. Proc. §
18 1021.5;

19 5. Such other and further relief as the court finds proper.

20 **As to the Third Cause of Action:**

21 1. Issuance of a temporary restraining order, followed by a preliminary injunction,
22 and ultimately by a permanent injunction commanding Defendants to cease and desist their
23 practice of discriminating against individuals with medical conditions that are protected by the
24 Americans with Disabilities Act.

25 2. Issuance of a declaration of rights declaring that defendants' practice of
26 discrimination, as alleged herein, violates plaintiff's right, and the rights of those with well
27 recognized diseases to the equal protection of the laws as guaranteed by Article I, Section 7 of
28 the California Constitution.

1 3. An award of reasonable attorney's fees pursuant to Code Civ. Proc. § 1021.5.
2 4. Such other and further relief as the court considers proper under the circumstances
3 of this case.

4 **As To the Fourth Cause of Action:**

5 1. For a preliminary injunction against Defendants, and each of them, enjoining
6 defendants from discriminating against applicants on the basis of their disease status and setting
7 aside the Decision in this case, or ordering Reconsideration of the Case so that the Decision is
8 not based upon improper discrimination against those with AUD;

9 2. For a permanent injunction against defendants, and each of them, enjoining
10 defendants from basing licensing decisions on discriminatory bases;

11 3. Issuance of a declaration of rights declaring that defendants' practice of
12 discrimination, as alleged herein, violates plaintiff's rights pursuant to Civil Code §51.

13 4. For general damages according to proof;

14 5. For special damages according to proof;

15 6. For reasonable attorney's fees, according to proof, pursuant to Civ. Code § 52,
16 subd. (a);

17 7. For plaintiff's cost of suit;

18 8. For damages pursuant to Civ. Code § 52, subd. (a);

19 9. For such other relief as the court may deem just and proper.
20
21

22 Dated: May 9th, 2019

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24 By 
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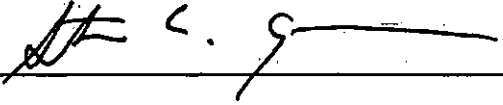
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VERIFICATION

I am STEVEN AYERS, Petitioner/Plaintiff in this action. I have read the foregoing PETITION FOR WRIT OF MANDATE, COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES. The facts alleged in the petition are complaint are true and of my own personal knowledge, except those matters which are stated upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of May 2019 at Sacramento, California.



STEVEN AYERS

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