

ORDER 2008-133

**REGARDING THE PETITION
FOR EXCLUSION REMOVAL OF
MARK T. KILLERMAN**

On May 6, 2005, the Executive Director took action pursuant to IC 4-33-4-7(a) to exclude Mr. Mark T. Killerman from riverboat gambling facilities in Indiana. Mr. Killerman, pursuant to 68 IAC 6-1-5, petitioned for removal from the exclusion list on July 14, 2008. Commission staff attorney, Joseph Hoage, was appointed hearing officer. A hearing was held on August 20, 2008 in Michigan City, Indiana. Mr. Hoage submitted his findings of fact and conclusions of law to the Commission on September 22, 2008. This document is attached.

Mr. Hoage's findings of fact and conclusions of law recommend that the Commission **DENY** the application for exclusion removal of Mark T. Killerman from riverboat gambling facilities under Indiana Code 4-33-4-7 (a).

COMMISSION ACTION

After reviewing the foregoing and the attached Findings of Fact and Conclusions of Law, the Commission hereby

Adopts

ADOPTS or REJECTS

the findings of fact of the hearing officer denying Mr. Killerman's application for exclusion removal.

IT IS SO ORDERED THIS THE 13th DAY OF NOVEMBER, 2008:

THE INDIANA GAMING COMMISSION:



William Barrett, Chair

ATTEST:



Thomas Swihart, Secretary

**INDIANA GAMING COMMISSION
REQUEST FOR REMOVAL FROM EXCLUSION LIST
OF MARK TIMOTHY KILLERMAN**

FINDINGS OF FACT AND RECOMMENDATION

Joe Hoage, Staff Attorney for the Indiana Gaming Commission ("Commission") and review officer for the request for removal from the Gaming Exclusion List of Mr. Mark Timothy Killerman, hereby makes the following report:

LEGAL AND PROCEDURAL BACKGROUND

1. On or about November 21, 2004 at approximately 4:24 a.m. at the Blue Chip Casino in Michigan City, Indiana, Mr. Killerman was observed via surveillance capping a bet at a Three-Card Poker Table, which resulted in overpayment of \$150. Surveillance Shift Supervisor, Theodore Cholewa, Casino Shift Supervisor, Tyrone Lancaster, and Indiana State Trooper, John Riley, all observed Mr. Killerman's actions via surveillance tape. (*Appendix A*).
2. Capping a bet is defined as illegally adding more chips to a bet that has already won and is a violation of Indiana Code 4-33-10-2(4), which states: A person who knowingly or intentionally cheats at a gambling game commits a Class D Felony. In regards to this incident, Mr. Killerman looked at the cards dealt to him and then added a \$25 chip to his original bet, resulting in an overpayment of \$150.
3. On the night of November 21, 2004, Blue Chip Casino Security were unable to confront Mr. Killerman. Tyrone Lancaster, Casino Shift Supervisor, recognized Mr. Killerman as an owner of a local club in Michigan City. Mr. Lancaster notified Blue Chip Personnel that he would confront Mr. Killerman the next time he was on the casino premises, seek return of the overpayment, and evict him from the Blue Chip for life. (*Appendix A*).
4. On December 1, 2004 at approximately 2:30 a.m., Mr. Lancaster spotted Mr. Killerman on the Blue Chip Casino premises. Mr. Lancaster confronted Mr. Killerman about the incident. Mr. Killerman was initially hesitant to admit to what happened and return the money, due to said action would result in an admission of guilt. However, later Mr. Killerman did inform Mr. Lancaster that he did cap his bet on November 21, 2004 and returned the \$150 overpayment to Mr. Lancaster, who deposited the money in the casino cage. Mr. Lancaster then escorted Mr. Killerman off the casino premises. (*Appendix A*).

5. On November 21, 2004, Mr. Killerman was charged with two felony counts of Cheating at a Gambling Game in LaPorte County Superior Court No. 4.¹ On October 7, 2005, he pled guilty to Criminal Conversion, as an A Misdemeanor. Mr. Killerman was sentenced to 180 days in the LaPorte County Jail (all suspended), 180 days probation, restitution, \$1 fine, and \$156 in court costs. (*Appendix B*).
6. Mr. Killerman successfully completed all terms of his probation agreement and was given a letter of recommendation from his probation officer, Curtis Jackson. (*Appendix C*).
7. In response to this incident, on May 6, 2005 the Commission, by and through its Executive Director, Ernest E. Yelton, placed Mr. Killerman on the Exclusion List pursuant to Indiana Code 4-33-4-7 and 68 Indiana Administrative Code 6-1. Mr. Killerman was notified by certified mail. The director's placement of Mr. Killerman on the Exclusion List was supported by the following measures:
 - i. I.C. 4-33-4-7(a) states that the Commission may exclude a person from riverboat gambling facilities if the person violates this article or if the person's conduct is such that the person's presence within the riverboat gambling facilities may call into question the honesty and integrity of the gaming operations.
 - ii. Pursuant to 68 I.A.C. 6-1-3(2), the Executive Director of the Commission may place a person on the Exclusion List if the person has violated the Riverboat Gambling Act as established in I.C. 4-33.
 - iii. Pursuant to 68 I.A.C. 6-1-3(4), the Executive Director of the Commission may place a person on the Exclusion List if the person has performed any act that would adversely affect public confidence and trust in gaming. (*Appendix D*).
8. After completing the terms of his probation, Mr. Killerman contacted Commission staff a number of times in regard to his removal from the Exclusion List. He was informed of the exclusion removal process via certified letter on June 25, 2008. (*Appendix E*).
9. On or about July 14, 2008, the Commission received Mr. Killerman's application for removal from the Exclusion List. (*Appendix F*).
10. Executive Director Ernest Yelton appointed the undersigned, an attorney on the staff of the Commission, to serve as a review officer in this matter.

¹ The LaPorte Country Superior Court lists the date of arrest as November 21, 2004. Mr. Killerman stated during the August 20, 2008 interview that he was not arrested on the night of the incident but turned himself in sometime in late January 2005.

11. On August 20, 2008, the undersigned conducted a hearing regarding Mr. Killerman's request. (*Appendix G*).
12. At the hearing, Mr. Killerman appeared *pro se*, offered testimony, and presented evidence in support of his request.
13. The burden is on Mr. Killerman, by clear and convincing evidence, to establish that he should be removed from the Exclusion List. In determining whether the Petitioner has demonstrated rehabilitation, the Commission shall consider the following factors:
 - a. If the applicant's admission to the casino in Indiana would threaten the honesty and integrity of gambling operation or interfere with the orderly conduct of gambling operations.
 - b. The nature of the offense underlying the original placement on the Exclusion List.
 - c. The circumstances under which the offense occurred.
 - d. The time elapsed since the offense.
 - e. Age of the offender when the offense was committed.
 - f. Whether the offense was an isolated or a repeated incident.
 - g. A social condition that contributed to the offense.
 - h. Applicant's complete criminal record.
 - i. Other evidence of rehabilitation, including good conduct in prison or the community, counseling or psychiatric treatment, or the recommendation of a person who has or had the person under supervision.

FINDINGS OF FACT

1. Mr. Killerman was born on February 9, 1955 and graduated from Niles East High School in Skokie, Illinois in 1972. He graduated from the Culinary Institute of America in High Park, New York in 1975.
2. Mr. Killerman has resided in Michigan City, Indiana for the past three years. Prior to that he lived in New Buffalo, Michigan for ten years. Before living in New Buffalo, Michigan, he resided in Union Pierce, Michigan for ten years.
3. Mr. Killerman is married and has one son.
4. Mr. Killerman currently owns two restaurant/bars. He has owned Sullivan's, in Michigan City, Indiana for the past six years. He has owned O'Malley's in Richard, Michigan for the last eleven years. As the owner, he supervises approximately fifteen employees at Sullivan's and twenty employees at O'Malley's.
5. Prior to owning the respective establishments, Mr. Killerman worked as an Executive Chef in Hawaii for eight years and in the restaurant industry in California for ten years.

6. Mr. Killerman files a business tax return for both establishments; all of his records are current, both state and federal, and has never had any fines, disputes, late payments, or penalties.
7. Mr. Killerman is current on his personal tax returns, both state and federal, and has never had any fines, disputes, late payments, or penalties.
8. In regards to his criminal record, outside of the A Misdemeanor conviction in connection with this investigation, Mr. Killerman could only remember being arrested on one prior occasion for Driving While Intoxicated in 1996, for which he successfully completed a Diversion Agreement. He has provided to Commission staff a criminal history report from LaPorte County, Indiana verifying this information. (*Appendix H*).
9. Prior to the incident at the Blue Chip Casino on November, 21, 2004, Mr. Killerman stated that he had been to the Blue Chip over one-hundred times. He stated that he had never had any problems with anyone at the Blue Chip, been asked to leave, or been the target of any investigation. Mr. Killerman also stated that he has never had any problems at any other casinos he had visited. Mr. Killerman stated in his application for removal from the Exclusion List that the incident that led to his removal was a one-time incident and that he was not aware that placing a chip on the table after receiving cards was not allowed. (*Appendix F*).
10. Regarding the November 21, 2004 incident, Mr. Killerman admitted during the hearing that he capped his bet at the Three-Card Poker Table and this was not the first time he had done it. He knew most, if not all of the dealers at the Blue Chip at the time, due to his active attendance at the casino. He stated in his application that he was intoxicated that night and felt that it affected his decision making. Mr. Killerman stated he had capped his bets at the Blue Chip a handful of times before and he was not the only person doing it, either that night or on prior visits. Mr. Killerman acknowledged that capping his bet was considered cheating. Mr. Killerman's testimony at the hearing regarding his knowledge that his actions on November 21, 2004 were considered cheating are in direct opposite to his statement in his application for Exclusion Removal where he stated that he was not aware that placing a chip on the table after receiving his cards was not allowed. Further, Mr. Killerman stated in his application that this was a one-time incident is again contrary to his statement at the hearing where he acknowledged that he had capped his bets a handful of times prior. These contradictions as to material elements of the investigation significantly damage Mr. Killerman's credibility in regards to his removal from the Exclusion List. (*Appendix A & F*).
11. Mr. Killerman is remorseful for his actions in regards to the incident and acknowledged that it was a stupid thing to do.

12. Since the incident, Mr. Killerman has been to the Four Winds Casino in nearby New Buffalo, Michigan roughly ten times. Killerman stated that he has not capped his bets or cheated in any manner while at the Four Winds.
13. Mr. Killerman is active in the community, and has made the following charitable contributions since the incident:
 - i. Donation of \$1600 to WNIT, a local non-for-profit television station, for which he received the benefit of advertising.
 - ii. Donation of \$1000 to the St. Stanislaus Parish for which he received no economic benefit.
 - iii. Donation of \$1200-\$1500 to a local family with a young child who has cancer via a fundraiser held at his establishment, Sullivan's. He received no economic benefit for the fundraiser. (*Appendix F*).
14. Mr. Killerman stated the reasons he wants to be removed from the Exclusion List are due to his standing in the local community, not only for himself but for his business. Further, the embarrassment of not being able to go to the casinos factored into his decision to petition the Commission for removal.
15. Mr. Killerman was forty-eight years old at the time of the incident.
16. In regards to cheating at the Blue Chip by Mr. Killerman, this was not an isolated incident. The November 21, 2004 incident was the first time he was caught. Killerman stated he had capped his bets at the Blue Chip Casino a handful of times prior to November 21, 2004, but could not recollect the exact amounts wagered or the dates of when these prior incidents occurred. He stated he knew of others that he had visited the Blue Chip Casino with who had also followed the same practice of capping bets. When asked for their names, Mr. Killerman declined to elaborate and wanted the investigation to focus on his removal from the Exclusion List.

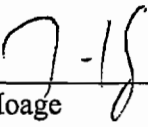
RECOMMENDATION

Based on the foregoing, Mr. Killerman has not demonstrated by clear and convincing evidence that he has been rehabilitated and therefore should not be removed from the Exclusion List.

Mr. Killerman, by his own admission, stated that he capped his bets on November 21, 2004 and a number of times prior to this incident. He further acknowledged that he was aware that capping his bets was considered cheating. His testimony at the hearing was in direct contrast with his application for removal, where he stated this had been a one-time incident and that he was not aware that his conduct was considered cheating. Mr. Killerman admitted that he was intoxicated at the time of the incident, which affected his judgment. Despite his belief that alcohol played a factor in his decision making, should he be removed from the Exclusion List, there is nothing that would keep him from not

indulging in alcohol, either before or during, any subsequent trip to any casino in Indiana. Mr. Killerman's inconsistent statements during this investigation and his past actions at the Blue Chip Casino would threaten the honesty and integrity of the gambling operations in Indiana and therefore he should not be removed from the Commission Exclusion List.

Respectfully Submitted,



Joe B. Hoage
Staff Attorney

DATE: 9/22/8