

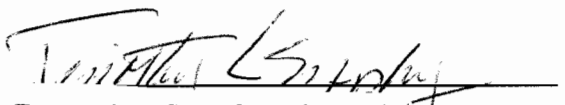
ORDER 2007-10

**AN ORDER OF THE INDIANA GAMING COMMISSION
CONCERNING THE REQUEST FOR WAIVER OF
FELONY DISQUALIFICATION OF ANTHONY LOUIS BARBA
FW-07-01**

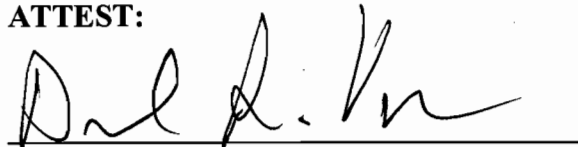
The Indiana Gaming Commission having reviewed this matter and the attached Findings of Fact hereby **ADOPTS THE RECOMMENDATION** of the review officer granting Mr. Barba's request for a waiver of his felony disqualification.

IT IS SO ORDERED, THIS THE 8th DAY OF MARCH, 2007.

THE INDIANA GAMING COMMISSION:


Timothy L. Murphy, Vice-Chair

ATTEST:


Donald R. Vowels, Secretary

**INDIANA GAMING COMMISSION
REQUEST FOR WAIVER OF FELONY CONVICTION DISQUALIFICATION
OF ANTHONY LOUIS BARBA
FW-07-01**

FINDINGS OF FACT AND RECOMMENDATION

Adam F. Packer, Staff Attorney for the Indiana Gaming Commission ("Commission") and review officer for the request for a felony waiver of Mr. Anthony Louis Barba hereby makes the following report:

LEGAL AND PROCEDURAL BACKGROUND

1. On or about November 29, 2006, the Petitioner, Anthony Barba, submitted to the Commission an application for a level 3 occupational license to work as a cook at French Lick Resort • Casino. In February, 2007, Mr. Barba was offered a level 2 position, as a casino host.
2. Mr. Barba disclosed in his application that, in 1995, he pled guilty to a felony crime involving a controlled substance in Brooklyn, New York.
3. Mr. Barba pled guilty to third degree attempted sale of a controlled substance and was sentenced to sixty (60) days imprisonment and five (5) years of probation. Additionally, his driver's license was suspended for six (6) months.
4. Pursuant to Indiana Code 4-33-8-3, the Commission may not issue a license to an individual who has been convicted of a felony. On that basis, Commission staff denied Mr. Barba's application on November 29, 2006.
5. On or about December 8, 2006, the Commission received Mr. Self's petition for a waiver of his felony disqualification pursuant to Indiana Code 4-33-8-11.
6. Executive Director Ernest Yelton appointed the undersigned, an attorney on the staff of the Commission, to serve as a review officer in this matter.
7. On December 27, 2006, Commission staff received a letter from Keith Schnulle, Vice President of Human Resources at French Lick Resort • Casino, in satisfaction of Indiana Code 4-33-8-11(c)(10) and 68 IAC 2-4-1(c).
8. On February 1, 2007, the undersigned conducted a hearing regarding Mr. Barba's request.
9. At the hearing, Mr. Barba appeared *pro se*, offered testimony, and presented evidence in support of his request.

10. The undersigned recorded the hearing. The recording is part of the record in this matter.
11. The Commission may only waive a felony disqualification if the individual qualifies for a waiver in accordance with Indiana Code 4-33-8-11. Mr. Barba will qualify for a waiver under subsection (e) of that section as of May 14, 2007, at which time it will have been ten (10) years since the discharge of his probation.
12. Pursuant to Indiana Code 4-33-8-11 (b), the Commission may only waive a felony disqualification if the individual has demonstrated by clear and convincing evidence the individual's rehabilitation.
13. In accordance with Indiana Code 4-33-8-11 (c), in determining whether the Petitioner has demonstrated rehabilitation, the commission shall consider the following factors:
 - a. The nature and duties of the position applied for by the individual.
 - b. The nature and seriousness of the offense or conduct.
 - c. The circumstances under which the offense or conduct occurred.
 - d. The date of the offense or conduct.
 - e. The age of the individual when the offense or conduct was committed.
 - f. Whether the offense or conduct was an isolated or a repeated incident.
 - g. A social condition that may have contributed to the offense or conduct.
 - h. Evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational education, successful participation in a correctional work release program, or the recommendation of a person who has or has had the individual under the person's supervision.
 - i. The complete criminal record of the individual.
 - j. The prospective employer's written statement that:
 - i. the employer has been advised of all of the facts and circumstances of the individual's criminal record; and
 - ii. after having considered the facts and circumstances, the prospective employer will hire the individual if the commission grants a waiver.

FINDINGS OF FACT

1. French Lick Resort • Casino has been advised of the facts regarding Mr. Barba's criminal history and would employ him in a licensed position as a cook "if the commission grants a waiver of the 'felony disqualification'" and issues him a license.

2. Mr. Barba is currently a cook at French Lick Resort • Casino but only works in the non-licensed areas of the facility. He has been employed at the French Lick Resort property since May 3, 2005.
3. Mr. Barba is currently thirty-nine years old. He resides in Celestine, Indiana. He has resided in Indiana since 1997. When he first moved to Indiana, he opened a Bronx Bagel store in Jasper, Indiana. Except for a short period of time in which Mr. Barba returned to New York to assist in opening two bagel franchises, he has remained in Indiana since moving to the state in 1997. Following his ownership of the Bronx Bagel in Jasper, Mr. Barba worked as a chef at a country club in Santa Claus, IN from 2000-2003. He then moved to the Beechwood Inn near French Lick Resort • Casino and worked there as a chef from 2003-2005. Citing a desire to find a stable company where he could work until retirement, he next took employment at French Lick Resort • Casino.
4. Mr. Barba described his duties as cook as currently being the pizza chef for the resort property. Mr. Barba explained that he has extensive experience in pizza-making, both in his native New York and since moving to Indiana. If he was licensed as a casino host, he would be in the licensed area a significant amount of time, working as a customer service professional and ensuring the comfort of high-dollar patrons. Mr. Barba is a colorful and outgoing person and cited a desire to be more involved with personal service when he informed the undersigned of his new prospective position.
5. Mr. Barba was convicted of attempted sale of controlled substance in 1995. He testified that he was driving his vehicle with friends in a neighborhood of Brooklyn, New York when he was suddenly pulled over by a police officer. Mr. Barba testified that the officer was very aggressive in his initial approach to Mr. Barba. At the time, Mr. Barba did not know why he had been pulled over or why the officer was being aggressive. He later found out that one of his friends had been using cocaine off of the rear seat, in plain view of a police officer parked on a cross street. Once Mr. Barba pulled his car over, the friend placed his drugs and paraphernalia under Mr. Barba's seat. Upon searching the car, the officer found the drugs. Mr. Barba testified that "in the Italian culture," people don't say much to police and don't testify against their friends, so he was arrested despite the fact that the drugs weren't his. According to Mr. Barba, none of his passengers were charged.
6. Mr. Barba pled guilty and was sentenced to sixty (60) days in prison, five (5) years of probation, and six (6) months suspended driver's license. He served forty (40) days in prison and his probation was discharged on May 14, 1997.
7. Mr. Barba was twenty-seven when he committed the offense.

8. This was an isolated incident in Mr. Barba's life. He has had no criminal activity in the years since the 1995 drug arrest.
9. Mr. Barba built and owns his Celestine home and has acclimated himself to life in Southern Indiana. He has a history in French Lick that pre-dates the casino, and is well-regarded by the French Lick Resort • Casino community.
10. Nothing indicates that Mr. Barba is likely to commit any offense that would make him a regulatory risk at French Lick Resort • Casino. He took responsibility for the 1995 incident and testified that he is more careful when picking his friends than he was at the time.

RECOMMENDATION

Based on the foregoing, Mr. Barba has demonstrated by clear and convincing evidence that he has been rehabilitated and should be granted a waiver of his felony disqualification. The statutory guidelines are useful in evaluating Mr. Barba's case:

1. Mr. Barba applied for a position as a casino host, which requires extensive contact with casino patrons, but does not require him to work in the pit, cage, or surveillance.
2. While the nature of the conviction was serious, the nature of the actual offense is not so serious. Mr. Barba presented clear and convincing evidence that he was not a user or dealer, and evidence that the drugs were not his.
3. The offense occurred in Brooklyn, New York, with Mr. Barba driving his car and a group of his friends riding along. At this time, Mr. Barba was working a regular job and had not yet moved to Indiana.
4. The offense occurred in 1995.
5. Mr. Barba was twenty-seven when the offense occurred.
6. Of particular persuasive weight is the isolated nature of this offense. Mr. Barba has no other criminal record; a fact that belies analysis of him as a licensure risk.
7. Mr. Barba did not testify as to a social condition that contributed to his offense.
8. Mr. Barba has not had to participate in any formal rehabilitation despite the nature of his conviction as a drug offense. He testified that he has never been a user, so he did not need treatment or counseling.
9. His criminal record is unblemished but for this offense.
10. Finally, French Lick Resort • Casino has indicated that they will hire Mr. Barba even after being made aware of his criminal history.

One factor complicates this recommendation. Mr. Barba's probation was not discharged until May 14, 1997. Controlled substance felonies bar the applicant from obtaining a felony waiver for ten (10) years following, in his case, the discharge of his probation. That date has not yet passed. Therefore, I recommend that the Commission grant a waiver of felony disqualification to Anthony Louis Barba, effective May 14, 2007.

Respectfully Submitted,

Adam F. Packer
Staff Attorney

DATE: _____