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GAMBLING COMMISSION
COMM & LEGAL DIVISION

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE GAMBLING COMMISSION

In the Matter of the Revocation of the License to Conduct Gambling Activities of:	)	GC No. CR 2008-01738 OAH No. 2009-GMB-0024
FLORENCE OELKE	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND INITIAL ORDER
Licensee	)	

STATEMENT OF THE CASE

Pursuant to notice duly given, an administrative hearing was held before Terry A. Schuh, duly appointed administrative law judge, by telephone, on the on the 25th day of June 2009, in the matter of the revocation of the license to act as a Class B Card Room Employee of Florence Oelke, license number 68-13139.

The Washington State Gambling Commission (commission) was represented by H. Bruce Marvin, assistant attorney general. Florence C. Oelke (licensee) was represented by Brian M. Sullivan, attorney at law.

On January 15, 2009, the director of the commission caused a notice of administrative charges to be issued against the licensee alleging that her card room employee license was subject to revocation because she allegedly colluded with Yevgery "Eugene" Rubinchikov, a licensed cardroom employee employed at Great American Casino in Everett, to inflate her "comp" points earned at Great American Casino and redeem those points for a "Coach" purse. At that time, the licensee was employed at Goldies Shoreline Casino in Shoreline, Washington. Presently, she is employed at Caribbean Casino in Kirkland, Washington. The licensee timely applied for an adjudicative proceeding. The commission duly notified the licensee of the time and the place of the administrative hearing. Hearing was originally scheduled and held at the Gambling Commission Office at 4565 7th Ave SE, Lacey, Washington, on May 18, 2009. However, the recorded hearing record was defective, and so the administrative law judge ordered a hearing *de novo* by telephone conducted on June 25, 2009. There were 18 exhibits admitted and testimony offered by four witnesses: Lori Wangeman, manager of Great American Casino in Everett; Special Agent Edward L. Ward, Washington State Gambling Commission; Yevgery "Eugene" Rubinchikov; and Florence Oekle, the licensee.

The administrative law judge, having considered the evidence, now enters the following findings of fact pursuant to the preponderance of the evidence standard:

FINDINGS OF FACT

1. The licensee, Florence C. Oelke, is the holder of a class B card room employee license, license number 68-13139, issued by the commission while employed as a dealer at Caribbean Casino, located in Kirkland, Washington. At the time of the events at issue herein, the licensee was licensed at Goldies Shoreline Casino, in Shoreline, Washington.

2. On January 14, 2008, the licensee attempted to redeem "comp" points for a Coach purse at the Great American Casino in Everett, Washington.

3. Casino management believed that the licensee had not gambled there sufficiently to have generated the "comp" points attributed by the casino's "comp" system to the licensee. So casino management advised the licensee that the casino would order the purse for her. Meanwhile, casino management investigated the matter.

4. As a result of the investigation, casino management determined that one of its card room employees, floor supervisor Yevgery "Eugene" Rubinchikov, had awarded the licensee "comp" points when she was not present and inflated those she earned when she was present from October 2007 through January 2008. The casino also determined that Mr. Rubinchikov was a friend of the licensee, and a very good friend of the licensee's sister. Accordingly, the casino believed that Mr. Rubinchikov and the licensee had colluded to defraud the casino. Therefore, on February 1, 2008, the casino discharged Mr. Rubinchikov. Moreover, that same day, the casino reported the matter to the Washington State Gambling Commission.

5. On at least two occasions after January 14, 2008, the licensee inquired at the casino regarding the purse ostensibly ordered for her. However, after Mr. Rubinchikov was discharged, the licensee made no further attempt thereafter to redeem her "comp" points.

6. Special Agent Edward L. Ward investigated and concurred with the casino's conclusion that the licensee had colluded with Mr. Rubinchikov to defraud the casino.

7. The fulcrum upon which both the casino's investigation and that of Special Agent Ward balanced was the casino's Sonoma records.

8. Sonoma is an electronic system with which the casino tracks the gambling activities of its patrons, both regarding duration played and amounts bet, to award and track "comp" points earned by patrons as they played. A player can redeem "comp" points

for beverages, food, or merchandise. Typically, 300 points has a redemption value of approximately $1.00. Only floor and shift supervisors are authorized to award and track "comp" points. Typically, only one or two floor supervisors and one shift supervisor are on duty at the same time at Great American Casino in Everett. When a player arrives at a table to play, he or she is entered into the Sonoma system by the supervisor swiping the player's unique Sonoma card or entering the player's name. The supervisor records what table the player is playing at and enters the average bet. When the player leaves the table, the supervisor signs the player out and, if the player moves to another table, signs the player in at the new table. By this means, the Sonoma system tracks the amount of time played and the amount of money wagered and calculates the relevant "comp" points, which are stored in the player's "account", and continue to accumulate until redeemed. A supervisor can review a player's Sonoma history and point total by swiping the player's card or entering the player's name. After doing so, to log the player out, the supervisor must assign the player to a table but does *not* report an amount bet. Supervisors sometimes fail close the player out of the Sonoma system when the player ceases playing. Such errors are corrected later when observed.

9. Most of the points reflected in the licensee's Sonoma account were earned when Mr. Rubinchikov was present and when the licensee was not.

10. At the hearing, a review of Exhibit 14 suggested that the Sonoma system recorded the licensee playing at more than one table simultaneously, raising questions regarding the accuracy of the Sonoma evidence in the record. However, the observation at the hearing was predicated upon presuming the meaning of the time expressed in the far-left column. A review of Exhibit 13, which clearly notes times in and out, demonstrates that no such simultaneous play was recorded by the system. Accordingly, I find the Sonoma records in evidence to be trustworthy.

11. With one exception, the "comp" points credited to the licensee's account when she was not present and playing occurred when Mr. Rubinchikov was working. When Mr. Rubinchikov was working, no more than one or two other supervisors were working. Only supervisors can make the entries that result in "comp" points. Therefore, it is more likely than not that Mr. Rubinchikov was responsible for the unearned "comp" points credited to the licensee's account.

12. Mr. Rubichikov told Special Agent Ward that he would enter the licensee into system in order to check her gambling history and point total, and that to log her out he assigned her to a table and reported a bet. Mr. Rubinchikov testified that he now knows that his doing so may have occasionally credited the licensee with points, but that at the time relevant herein he did not understand specifically how "comp" points were awarded through the Sonoma system. However, Exhibits 13 and 14 demonstrate that after he logged the licensee in, she often remained logged in for hours at a time, and even was moved from table to table. Thus, I find that it is more likely than not that Mr. Rubinchikov

purposely logged the licensee in and maintained her presence in the system in order to generate "comp" points.

13. Nevertheless, both Mr. Rubinchikov and the licensee denied that they colluded in this activity. Special Agent Ward suspected collusion based upon primarily three circumstances: they were friends, they "colluded" to credit points to the licensee's account for gambling activity produced by the licensee's friend Tanya, and the licensee repeatedly called to review her account balance. Both Mr. Rubinchikov asserted that their's was a casual friendship only, although Mr. Rubinchikov was closer to the licensee's sister, with whom the licensee resided. The evidence in the record is inconsistent regarding whether the licensee received points predicated on Tanya's gambling. Special Ward testified that both of them told him that this occurred. Both testified that it did not occur and that neither of them told Special Ward that it occurred. Therefore, I find it more likely than not that it the licensee did not receive "comp" points predicated on Tanya's play. Regarding the licensee repeatedly inquiring regarding her account total, Mr. Rubinchikov testified that this is what primarily caused him to log the licensee into the system when she was not present, but then backed away from that testimony somewhat, and said that the licensee only called a couple of times. The licensee testified that she only called a couple of times. I give more weight to Mr. Rubinchikov's initial testimony. Thus, by a preponderance of the evidence, I find that the licensee called in several times to check her account total. Moreover, as found above, Mr. Rubinchikov was purposely inflating the licensee's account total. The only reasonably believable purpose in doing so was to benefit the licensee and, indirectly, Mr. Rubinchikov. Accordingly, more likely than not, Mr. Rubinchikov told the licensee well before January 14, 2008, what he was doing. Collusion typically means an agreement or conspiracy to defraud. *Black's Law Dictionary* 264 (6th ed. 1990). Here, the licensee did not report what Mr. Rubinchikov was doing. On the contrary, she took advantage of it. She colluded. At the very least, she knew.

From the foregoing Findings of Fact, the administrative law judge now enters the following Conclusions of Law:

CONCLUSIONS OF LAW

1. The undersigned administrative law judge has jurisdiction to hear and initially decide this matter. RCW 9.46.140(2) and (4), 34.05.485(1)(c) and 34.12.030(1) and WAC 230-17-010 and 230-17-025. The commission has the broad purpose of protecting the public by insuring that those activities authorized by chapter 9.46 RCW do not maliciously affect the public and do not breach the peace. RCW 9.46.010.

2. The licensee, Florence Oelke, is the holder of a license to act as a public card room employee and is subject to the provisions of RCW 9.46.075 and WAC 230-03-085.

3. It is the affirmative responsibility of each licensee to establish by clear and convincing evidence her continuing qualifications for licensure. RCW 9.46.153(1). Each holder of a license issued pursuant to chapter 9.46 RCW is subject to continuous scrutiny regarding her general character, integrity and ability to engage in or participate in, or associate with, gambling or related activities impacting this state. RCW 9.46.153(7).

4. The commission may suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest when a licensee has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the commission pursuant thereto. RCW 9.46.075(1). We (the commission) may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075. WAC 230-03-085(1).

5. The Commission may revoke a license if the licensee violated, failed, or refused to comply with the provisions, requirements, conditions, limitations, or duties imposed by Chapter 9.46 RCW. RCW 9.46.075(1).

6. The Commission may revoke a license if the licensee "[k]nowingly causes, aids, abets, or conspires with another to cause any person to violate may of the laws of this state or the rules of the Commission." RCW 9.46.075(2).

7. It is illegal in a gambling activity to employ a scheme to defraud another. RCW 9.46.190.

8. It is illegal to cheat. RCW 9.46.196.

9. Cheating includes a scheme or practice designed to defraud a gambling operator. RCW 9.46.196.

10. Here, in coordination, if not actual collusion, with Yevgery "Eugene" Rubinchikov, the licensee engaged in a scheme or practice to receive credit for unearned "comp" points which she subsequently attempted to redeem for a Coach purse worth at least $200.00, to the harm and detriment of the Great American Casino located in Everett, Washington.

11. Thus, a preponderance of the credible evidence established that the actions of the licensee violated provisions requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and that grounds exist to revoke his cardroom employee license under RCW 9.46.075(1) and WAC 230-03-085(1).

From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED That, in the public interest, the license of Florence C. Oelke to act as a card room employee, #68-13139, be and the same is hereby revoked.

DATED at Olympia, Washington, this 7th day of August, 2009.

TERRY A. SCHUH
Administrative Law Judge
Office of Administrative Hearings
2420 Bristol Ct SW
PO Box 9046
Olympia, WA 98507-9046

NOTICE TO THE PARTIES

Initial orders must be entered in accordance with RCW 34.05.461(3). WAC 230-17-085(1). An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-560. WAC 230-17-085(2).

RCW 34.05.464 governs the review of initial orders. WAC 230-17-090(1). Any party to an adjudicative proceeding may file a petition for review of an initial order. Parties must file the petition for review with us within twenty days of the date of service of the initial order unless otherwise stated. An initial order becomes the final order unless a party files a petition for review of the initial order. We must receive the request from the applicant, licensee, or permittee at our administrative office within twenty-three days after we or the administrative law judge mails the initial order by regular mail. WAC 230-17-010(2)(a). Parties must serve copies of the petition to all other parties or their representatives at the time the petition for review is filed. WAC 230-17-090(2). Petitions must specify the portions of the initial order the parties disagree with and refer to the evidence in the record on which they rely to support their petition. WAC 230-17-090(3). Any party to an adjudicative proceeding may file a reply to a petition for review of an initial order. Parties must file the reply with us within thirty days of the date of service of the petition and must serve copies of the reply to all other parties or their representatives at the time the reply is filed. WAC 230-17-090(4). Any party may file a cross appeal. Parties must file cross

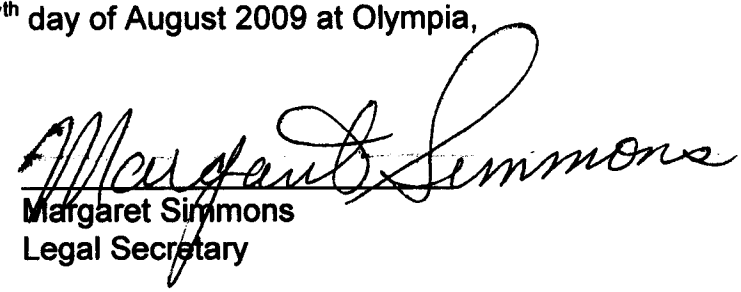
appeals with us within ten days of the date the petition for review was filed with us. WAC 230-17-090(5). Copies of the petition or the cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed. WAC 230-17-090(6). After we receive the petition or appeal, the commissioners review it at a regularly scheduled commission meeting within one hundred twenty days and make a final order. WAC 230-17-090(7).

A party may file a petition for reconsideration of a final order. The presiding officer administers petitions for reconsideration according to RCW 34.05.470. WAC 230-17-140(1). A party may file a response to the petition for reconsideration. Parties must file responses with us within ten days of the date the petition was filed with us. WAC 230-17-140(2). If the petition is received at least fifteen business days before the next regularly scheduled commission meeting, we schedule the petition to be heard at that next meeting. WAC 230-17-140(3). If the petition is received less than fifteen business days before that next meeting, we schedule the petition at the following regularly scheduled meeting. WAC 230-17-140(4).

Any party may petition the commission for a stay of a final order in accordance with RCW 34.05.467. WAC 230-17-145(1). For purposes of this rule, the commission hereby delegates to the director the authority to deny a stay or issue a temporary stay until the reviewing court can rule on a permanent stay. The decision of the director denying a stay is not subject to judicial review. WAC 230-17-145(2).

CERTIFICATION OF MAILING

I certify that I mailed a copy of the Findings of Fact, Conclusions of Law and Initial Order to the following parties, postage prepaid this 7th day of August 2009 at Olympia, Washington.



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