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GAMBLING COMMISSION
COMM & LEGAL DIVISION

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE GAMBLING COMMISSION

In the Matter of the Revocation of the)	
License to Conduct)	GC No. CR 2009-01009
Gambling Activities of:)	OAH No. 2009-GMB-0062
)	
ROBERT J. MERCADO, III)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Licensee)	AND INITIAL ORDER AND DEFAULT
)	ORDER
)	

STATEMENT OF THE CASE

Pursuant to notice duly given, an administrative hearing was held before Sherry Clark Peterson, duly appointed Administrative Law Judge, in the Gambling Commission Office, 4565 7th Avenue SE, Lacey, Washington, on September 21, 2009, in the matter of the revocation of the Card Room Employee license of Robert J. Mercado, III, license number 68-25641.

The Washington State Gambling Commission (Commission) was represented by H. Bruce Marvin, Assistant Attorney General. Special Agent Julie Sullivan appeared as a witness for the Gambling Commission. Robert J. Mercado, III (Licensee) failed to appear.

On July 15, 2009, the Director of the Gambling Commission caused a Notice of Administrative Charges to be issued against Robert J. Mercado, III alleging that his license to act as a public card room employee was subject to revocation based upon his plea of guilty in the Superior Court of Washington for Walla Walla County, Cause No. 08-1-00475-6, of VUCSA-Delivery of Marijuana, on April 6, 2009. Robert J. Mercado, III timely applied for an Adjudicative Proceeding. The Commission duly notified Robert J. Mercado, III of the time and the place of the Administrative Hearing. There were seven (7) exhibits admitted and testimony was offered by one witness, Special Agent Julie Stewart.

The Administrative Law Judge, having considered the evidence, now enters the following findings of fact:

FINDINGS OF FACT

1. Card Room Employee Licensee Robert J. Mercado, III was employed by Blue Mountain Casino in Walla Walla, Washington. On May 16, 2009 Mr. Penn submitted a Card Room Employee Renewal Application. The renewal application asks:

During the past twelve (12) months have you:

1. Forfeited bail or paid a fine over \$25 (incl. traffic fines)
2. Been arrested?
3. Been charged with a crime:
4. Been convicted?
5. Been jailed?
6. Been placed on probation?
7. Been under court supervision?

Mr. Mercado disclosed that in April 2009 he pled guilty to and was convicted of Delivery of Marijuana, a Class C Felony. He indicated he was sentenced to 30 days of work crew and 12 months probation as well as fines.

2. On or about May 27, 2009, Commission Special Agent Patrick Parmer was assigned to Mr. Mercado's case after Mr. Mercado applied for renewal of his Public Card Room Employee license. Special Agent Parmer was specifically investigating the disclosure of the Class C felony Delivery of Marijuana.

3. As part of his investigation, Special Agent Parmer reviewed the Information on Probable Cause filed in Superior Court. The Information on Probable Cause contains the alleged facts that form the basis for the criminal charge. The Probable Cause statement indicated Mr. Mercado sold marijuana to a confidential informant on two occasions. Mr. Mercado was an active licensed public card room employee at the time he sold marijuana to the confidential informant.

4. Mr. Mercado did not appear for the hearing scheduled for September 21, 2009 at 9 a.m. The lobby for the Gambling Commission was checked as was the parking lot. Mr. Penn did not call in nor did he provide written notice requesting a continuance in this hearing.

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 in an adjudicative proceeding. RCW 34.05.485(1)(c), 34.12.030(1), 9.46.095 and WAC 230-17-025.
2. During the time material hereto, the licensee, Robert J. Mercado, III, has been the holder of a public card room employee license authorizing him 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. 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. The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control. All factors incident to the activities authorized in chapter 9.46 RCW shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end. RCW 9.46.010.
4. It is the affirmative responsibility of each licensee to establish by clear and convincing evidence his 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 his 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).
5. Any person who attempts or conspires to commit any offense defined in this chapter, conspires with another to violate to manufacture, deliver, or possess any controlled substance classified in Schedule I, II, or III, RCW 69.50.401(1) and (2) is guilty of a class C felony punishable according to chapter 9A.20 RCW. It is well established that a conviction in the Superior Court is deemed conclusive evidence of the crime. *In Re Kindschi*, 52 Wn.2d 8, 319 P.2d 824 (1958), *In Re Mcgrath*, 98 Wn.2d 337, 655 P.2d 232 (1982). A clear preponderance of the credible evidence, establishes that Mr. Mercado has been convicted of violating RCW 69.50.401 for which he was incarcerated for thirty (30) days which was converted to three (3) months of the Washington State Corrections Work Crew and placed upon community custody for a period of twelve months. The licensee is currently actively serving his sentence.
6. 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 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 and WAC 230-03-085(1). The record establishes that Mr. Mercado, while he was the holder of a card room employee license, sold a controlled substance, marijuana, to a confidential informant which was a felony. The Commission may suspend or revoke Robert J. Mercado, III's card room employee license under RCW 9.46.075 (1) and(4) and WAC 230-03-085(1).

7. 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 is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4). WAC 230-03-085(5). Because Mr. Penn is under probation for one years commencing April 6, 2009 the Commission may suspend or revoke Robert J. Mercado, III's Card Room Employee license under WAC 230-03-085(5).

8. The Commission may deny an application, or 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 fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter. RCW 9.46.075(8). The record establishes that the licensee, Robert J. Mercado, III, committed the crime of VUCSA-Delivery of Marijuana and pled guilty to that crime in April 2009, and that Robert J. Mercado, III is currently serving a period of community custody. The commission may revoke Robert J. Mercado, III's card room employee license under RCW 9.46.075(8).

9. To closely control all factors incident to the activities authorized in chapter 9.46 RCW, the provisions of the chapter shall be liberally construed to achieve such ends. The general public can find itself in a particularly vulnerable position should a person licensed to conduct gambling activities fail to discharge his occupation with a sense of justice and honesty. The evidence of the commission has established that in the public interest, the revocation of the license to act as a public card room employee of the licensee, Robert J. Mercado, III, is in the public interest.

11. RCW 34.05.440(2) provides in relevant part: "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding . . . the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order." The Licensee, Robert J. Mercado, III, is in default for his failed to appear for the September 21, 2009, hearing.

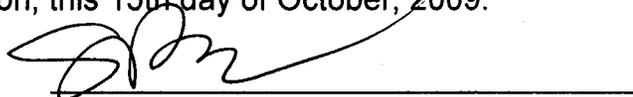
From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED That the card room employee license of Robert J. Mercado, III be and the same is hereby revoked.

That the Licensee, Robert J. Mercado, III, is in DEFAULT. A request that this order be vacated must be filed within seven days of service of this order, stating the grounds relied upon. RCW 34.05.440(3).

DATED at Olympia, Washington, this 15th day of October, 2009.



Sherry Clark Peterson
Administrative Law Judge
Office of Administrative Hearings

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 230-17-090. 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. 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).

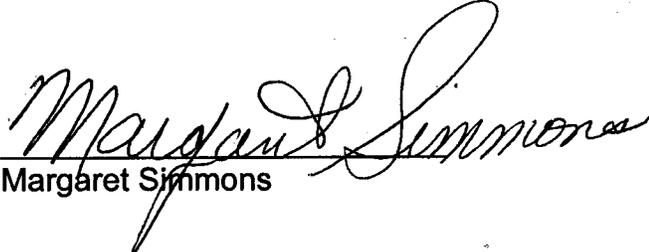
Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us. WAC 230-17-090(5).

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).

Certification of Mailing

I certify that I mailed a true and exact copy of the **Findings of Fact, Conclusions of Laws and Initial Order and Default Order** to the following parties, postage prepaid this 15th day of October 2009 at Olympia, Washington.


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