

NOV 03 2010

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

GAMBLING COMMISSION
COMM & LEGAL DIVISION

In the Matter of the Suspension or
Revocation of the License to Conduct
Gambling Activities of:

Ratpaja Phetmixay
Pasco, Washington

LICENSEE

License No. 68-13847

OAH DOCKET NO. 2010-GMB-0047

WSGC No. CR 2010-00607

INITIAL ORDER OF DEFAULT
(Failure to Appear at Hearing)

1. **Introduction And Order Summary:**

- 1.1. The Gambling Commission ("Commission") asked the Office of Administrative Hearings ("OAH") to suspend or revoke the Washington State gambling license of Ratpaja Phetmixay ("Licensee") due to criminal convictions against him, and his related failure to report the convictions timely and truthfully.
- 1.2. A hearing was scheduled for September 21, 2010, so that the Commission and the Licensee could present evidence of whether or not the Licensee's gambling license should be suspended or revoked. The Licensee and the Commission were given written notice of the hearing. The Licensee failed to attend the hearing and was in default. Because the Licensee defaulted, the hearing went on without him. The Commission established, on unopposed evidence, that the Licensee's gambling license should be revoked. That will be the Order in this case.

2. **Hearing:**

- 2.1. Administrative Law Judge: Steven C. Smith
- 2.2. Date, Time and Location of Hearing: September 21, 2010 at 1:00 pm at Gambling Commission Offices, Lacey, Washington. The hearing was digitally recorded.
- 2.3. Licensee:
- 2.3.1 Ratpaja Phetmixay of Pasco, Washington: No Appearance
- 2.3.2 Licensee Representative: None of Record/None Appeared

2.4 Agency:

2.4.1 Gambling Commission

2.4.2 Agency Representative: H. Bruce Marvin, Assist. Attorney General
Appeared and Presented Agency Case

2.4.3 Agency Witnesses:

2.4.2.1 Julie Sullivan, Special Agent, Gambling Commission,
Appeared and Testified Under Oath

2.4.2.2 Christopher Littrell, Detective, Kennewick Police
Department, Appeared by Telephone and Testified Under Oath

3. Statement Of The Case:

- 3.1 A hearing was scheduled and held on this matter at the above referenced date, time and location. The Notice of Hearing informed the Licensee that he was required to attend a hearing before an Administrative Law Judge of OAH at the above date, time and location. The Notice of Hearing also provided a short statement of the facts upon which the Gambling Commission relied in seeking suspension or revocation of Phetmixay's gambling license.
- 3.2 The Notice of Hearing also told the Licensee that, if he failed to attend the hearing, the Administrative Law Judge could enter a default order revoking Licensee's gambling license under to RCW 34.05.440.¹
- 3.3 The Administrative Law Judge timely convened the hearing as scheduled in the Notice of Hearing. The Commission timely appeared through its above-named representative. The Administrative Law Judge then waited an additional 30 minutes past the scheduled hearing start for the Licensee to appear, but he did not.
- 3.4 When the Licensee failed to appear, the Commission requested a default order against the Licensee. The Commission's request was granted.

¹ / RCW stands for Revised Code of Washington and can be found on the Internet at <http://apps.leg.wa.gov/rcw/>; and, the other main legal authority used in this case is WAC which stands for Washington Administrative Code located on the Internet at <http://apps.leg.wa.gov/wac/>.

- 3.5 In addition to requesting and receiving a default order against the Licensee, Commission, requested an opportunity to present evidence to establish a *prima facie* case (that is, a “basic” case) of misconduct by the Licensee to justify revoking the Licensee’s gambling license. The Commission’s request was granted, so the Commission put on evidence that established the Commission’s basic case as set out below in the sections entitled Findings of Fact and Conclusions of Law.
- 3.6 In establishing its case, the Commission presented 10 exhibits, all of which were admitted without opposition. The Commission’s exhibits were supplemented in some instances with certified copies of the same documents, with each supplement marked with the identical exhibit number and the letter “a”.
- 3.7 At the end of the Commission’s evidence, approximately 1½ hours following the scheduled start time for the hearing, the Licensee had still not appeared.

4. **Statement Of The Issues:**

The issues about which the Commission requested to present evidence were:

- 4.1 Whether, under RCW 9.46.075(1) and WAC 230-03-085(1), the Commission has grounds to suspend or revoke Licensee’s gambling license for any reason the Commission deems in the public interest, including the Licensee’s failure to comply with Washington State laws and regulations governing gambling, especially Chapter 9.46 RCW and Chapter 230 WAC.
- 4.2 Whether the Commission has grounds to suspend or revoke Licensee’s gambling license under RCW 9.46.075(4), which says that the Commission may suspend or revoke a license if the holder has pleaded guilty to a crime involving physical harm to an individual.
- 4.3 Whether the Commission has grounds to suspend or revoke Licensee’s gambling license under WAC 230–03–085 (2), which clarifies that a crime involving physical harm to an individual includes any form of criminal assault, any crime involving a threat of physical harm against another person, and any crime involving an intention to inflict physical harm on another person.
- 4.4 Whether the Commission has grounds to suspend or revoke Licensee’s gambling license under WAC 230–03–085 (5), which says that the Commission may revoke a gambling license if the holder is

-serving a term of probation or community supervision imposed as a sentence for any criminal offense.

- 4.5 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under WAC 230-03-085 (8), which says that the Commission may revoke a gambling license if the holder poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, or activities in the conduct of gambling activities, as demonstrated by: (a) prior activities, (b) criminal record, (c) reputation, (d) habits, or (e) associations.
- 4.6 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under RCW 9.75.075 (7) which authorizes the Commission to revoke a license when the Licensee makes a misrepresentation of, or fails to disclose, a material fact to the Commission.
- 4.7 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under RCW 9.75.075(11) based on Licensee's membership in, or association with, a career offender cartel in a manner which creates probable cause to believe that the Licensee's association is contrary to the policy or purpose or operation of authorized gambling or related activities in Washington. For the purposes of this issue and RCW 9.75.075(11), "career offender" is defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain using methods that are criminal in Washington. A "career offender cartel" is defined as any group of people who work together as career offenders.
- 4.8 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under WAC 230-06-085 (1) and (2) which require licensees to report all criminal actions filed against them to the Commission within 30 days and that licensees report the final disposition of any criminal charges to the Commission within 30 days.
- 4.9 Whether the Commission has grounds to suspend or revoke Licensee's gambling license under WAC 230-06-085(7) which authorizes the Commission to revoke a license when a licensee fails to provide any information required under Commission rules within the time specified.
- 4.10 Whether the Licensee can establish that he is qualified to hold a gambling license in conformance with Washington's gambling laws and

regulations by clear and convincing evidence, as required by RCW 9.46.075 (8) and .153 (1).

The Administrative Law Judge, having considered all of the evidence presented in this case, makes the following Findings Of Fact and Conclusions of Law:

5.0 Findings of Fact:

- 5.1 Ratpaja Phetmixay was issued his first gambling license in 2001 (Number 68-13847) and has held that license off and on since that time.
- 5.2 At the time of hearing, the Licensee's gambling license enabled him to work at Cable Bridge Casino in Kennewick, Washington.
- 5.3 On April 30, 2009, the Commission received a Card Room Employee Renewal Application (renewal) from the Licensee. On this application, the Licensee was asked whether or not he had been arrested or charged or convicted of a crime. The Licensee responded "yes" and indicated that he had a new criminal history which he stated as "I have been charged with 2 counts of Assault 2 in October of 2008. I am still currently going to court for th[ese] charges." There was no evidence that prior to his renewal application, the Licensee informed the Commission of the pending criminal charges. Therefore, Licensee's report of charges was approximately 5 months late.
- 5.4 On April 29, 2010, the Commission received a renewal from Licensee in which the Licensee was asked the same criminal history questions as set forth in paragraph 5.3 above, to which the Licensee again responded "yes". The Licensee then indicated that he had a new criminal history and in a handwritten statement disclosed, "I, [Licensee] was convicted of 4th degree assault. I was given time served. This was in May of 2009." Assault 4 is a gross misdemeanor (RCW 9A.36.041). There was no evidence that prior to his renewal application, the Licensee informed the Commission of conviction on criminal charges. Therefore, Licensee's report of conviction was approximately 10 months late.
- 5.5 The charges and conviction referenced in paragraphs 5.3 and 5.4 above were based on the Benton County Superior Court cause number 08-1-01085-0. Count One of the Information stated, "on or about October 18, 2008, [Licensee] intentionally assaulted another

person, [victim 1] by recklessly inflicting substantial bodily harm to wit: causing him to suffer a concussion and extensive bruising.” Count two of the Information stated, “on or about October 18, 2008, [Licensee] intentionally assaulted another person, [victim 2] by recklessly inflicting substantial bodily harm to wit: causing him to suffer a concussion and extensive bruising.”

- 5.6 A summary of the details of the assaults described above were set out in the criminal case file as follows: “On October 18, 2008, [wife of victim 1], who was several months pregnant, starting throwing up outside when five unknown adult males started harassing her for being sick. [Husband, victim 1] told the males to leave his wife alone and they began hitting him. ‘The males threw [victim 1] to the ground and began kicking him in the head and torso.’ [Sister of wife of victim 1] tried to stop the attack on [victim 1] when the men grabbed her by the hair and threw her back. A bystander, [victim 2] who did not know any of the parties involved, try to intervene when the men attacked him. ‘[victim 2] was hit and kicked by the five men until he was unconscious.’ The men then fled the scene. [victim 2], the sister and [victim 1] were all transported to the hospital for the injuries. Both [victim 2] and [victim 1] were treated for concussions and extensive bruising and the sister was treated for extensive bruising. When the police stopped the vehicle the suspects fled in, they [again] attempted to flee before they were detained. Once detained ‘the men claimed to be part of a criminal gang called Oriental Loco Bloods ... [and] had clothing and tattoos indicating their membership in the gang.’ [victim 1] positively identified the five men as well as numerous witnesses who were unaffiliated with any of the parties.”
- 5.7 The Licensee was among the five men identified as the assailants by a victim 1.
- 5.8 On June 4, 2009, the Licensee pled guilty to an amended felony charge of third-degree assault based on the foregoing events. As part of his guilty plea, the Licensee wrote, “On 10/18/08 in Benton County I & others, through criminal negligence injured another person in a physical confrontation.”
- 5.9 On July 30, 2009, a Felony Judgment and Sentence Was filed in Benton County Superior Court for cause number 08–1–01085–0. It states that Phetmixay was found guilty of 3d Degree Assault; not, 4th Degree Assault as represented by the Licensee when he

completed his renewal form for the Commission to reissue his gambling license. The Licensee was sentenced to 30 days confinement and 12 months community supervision.

- 5.10 Fourth degree assault is a gross misdemeanor (RCW 9A.36.041), while third-degree assault is a class C felony (RCW 9A.36.031). From the totality of the evidence, as partially summarized above, the Licensee intentionally misrepresented his criminal conviction as one of a lesser degree in order to hide from the Commission that he was a convicted felon.
- 5.11 During the arrest process of the Licensee for the crimes discussed above, the Licensee told one of the arresting officers that he (the Licensee) "he was a Crip from Visalia, California", and that the other participants in the assaults described above were Oriental Loco Bloods.
- 5.12 Detective Christopher Littrell of the Kennewick Police Department, who appeared by telephone and testified under oath, was established as a gang expert based on his training and experience in law enforcement, including his extensive experience with gangs. Through Detective Littrell, it was well established that both the Crips and the Oriental Local Bloods were gangs and "career offender cartels" as the latter term was above defined (para. 4.7).
- 5.13 In addition to the Licensee's Admission of gang affiliation, further evidence established that he had gang-related tattoos, gang-related clothing, and engaged in the type of criminal activity associated with such gangs. Based upon the foregoing, the evidence is persuasive that the Licensee was, at all relevant times, a member of one gang (Crips) and affiliated with another gang (Oriental Loco Bloods), both of which were career offender cartels.
- 5.14 Special Agent Sullivan has been with the Gambling Commission investigation unit since 2001. She has been part of the criminal history unit for the past three years. She has received extensive relevant training in the relevant fields. Based on her training and experience, as well as her personal investigation in this matter, it was her opinion that Licensee's foregoing criminal history, failure to timely or truthfully report that history, and his acknowledged affiliation with one career offender cartel (Oriental Local Bloods) and direct membership in another career offender cartel (Crips), rendered the Licensee a threat to the effective regulation of gambling and justified the revocation of his gambling license.

5.15 The Administrative Law Judge's review of the documentary evidence revealed no mitigating factors to be considered on behalf of the Licensee in this matter.

6.0 Conclusions of Law:

Jurisdiction

6.1 Office of Administrative Hearings has jurisdiction over the person and subject matter herein pursuant to RCW 9.46.140, Chapter 34.05 RCW, and Title 230 WAC, including especially, whether to deny a gambling license or permit application, or to suspend or revoke any gambling license or permit held by such person at the time the Commission issued the subject charges. WAC 230-17-001.

Burden Of Proof

6.2 Licensees bear the burden of establishing their qualifications by clear and convincing evidence. RCW 9.46.153(1). Each applicant and holder of a license issued pursuant to Chapter 9.46 RCW is subject to continuous scrutiny regarding his/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.

Legislative Intent

6.3 The legislative intent expressed in RCW 9.46.010 justifies the high burden on licensees to demonstrate their qualifications and states in relevant part: "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 by strict regulation and control." The statute further states: "All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end." In short, those persons who wish to work in this highly regulated industry are, by law, to be held to the very highest character and integrity standards.

License Suspension And Revocation

6.4 RCW 9.46.075(1) and (8) and WAC 230-03-085(1), (3), and (8), provide that the Commission may revoke a license for any reason which it finds is in the public interest, including where Licensee has violated or failed or

refused to comply with the provisions, requirements, conditions, limitations, or duties imposed under Chapter 9.46 RCW or any rules adopted by the Commission under law. Likewise, WAC 230-04-400(1) and (11) provide that the Commission may revoke a license for any action which violates 9.46 RCW. The Commission may, therefore, revoke the license(s) of any individual who fails to prove by clear and convincing evidence that he or she meets the character requirements for a gambling license. RCW 9.46.075(8).

6.5 WAC 230-03-085 sets out with particularity the comprehensive authority of the Commission with regard to the denial, suspension, or revocation of gambling licenses and permits for individuals and businesses:

"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:

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or

(2) Has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person; or

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or

(4) Has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned us to take action; or

(5) 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); or

(6) Is the subject of an outstanding gross misdemeanor or felony arrest warrant; or

(7) Fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us; or

(8) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:

(a) Prior activities; or (b) Criminal record; or (c) Reputation; or (d) Habits; or (e) Associations; or

(9) Knowingly provides or provided goods or services to an entity that illegally operates gambling activities.”

6.6 WAC 230–06–085 (1) and (2), require a licensee to report all criminal actions filed against the licensee to the Commission within 30 days and require the licensee to supply the Commission with a copy of the final written decision or settlement of any criminal charges within 30 days after the case is resolved.

6.7 RCW 9.75.075(11) based on Licensee’s membership in, or association with, a career offender cartel in a manner which creates probable cause to believe that the Licensee’s association is contrary to the policy or purpose or operation of authorized gambling or related activities in Washington. For the purposes of this issue and RCW 9.75.075(11), “career offender” is defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain using methods that are criminal in Washington. A “career offender cartel” is defined as any group of people who work together as career offenders.

Analysis

6.8 As the following discussion will explain, by his absence, Licensee has failed to bear his burden of establishing his qualifications for a gambling license by clear and convincing evidence. RCW 9.46.153(1). Additionally, although the Commission would not have had the burden of proof, even if the Licensee had appeared for hearing, nonetheless, the Commission presented clear and convincing evidence of the Licensee’s lack of qualifications to continue holding a gambling license in Washington.

6.9 Based on the foregoing Findings of Fact, Licensee committed, and pled guilty to crimes of physical violence against others. Specifically, the Licensee participated in the gang harassment of a pregnant woman in distress, then beat her husband into unconsciousness when he asked them to quit harassing his wife. The Licensee and his gang then assaulted the woman's sister, following which, the Licensee and his gang beat another man (a bystander) to unconsciousness for having attempted to intervene in the assault of the previously mentioned two victims. Then, the Licensee failed to timely and truthfully report his criminal history to the Commission. Additionally, the Licensee acknowledged his membership in a career offender cartel (Crips) and his association with another career offender cartel (Oriental Loco Bloods). By the foregoing, the Licensee demonstrated willful and flagrant disregard for the law.

6.10 Based on such circumstances, the Commission's position that the Licensee "poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling" was clearly and convincingly established. WAC 230-03-085.

6.11 Because Licensee poses a present threat to the effective regulation of gaming and a present threat to the public in his position as a gambling licensee, it is in the public interest that his gambling license be revoked. Based on the foregoing legal authorities, the Gambling Commission therefore has the power to suspend or revoke the Licensee's gambling license, and has delegated the initial decision regarding suspension or revocation to the Office of Administrative Hearings through the provisions of RCW 9.46.140.

6.12 Accordingly, pursuant to the above Findings of Fact and Conclusions of Law, the gambling license of Ratpaja Phetmixay shall be revoked. RCW 9.46.075, WAC 230-03-085 and WAC 230-06-085.

7.0

IT IS ORDERED:

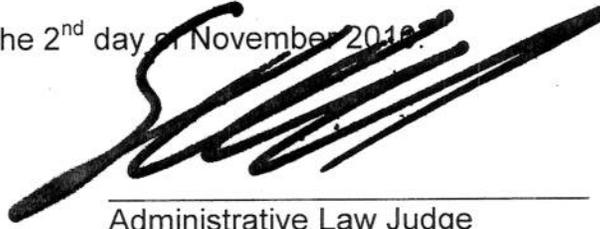
7.1 Licensee, Ratpaja Phetmixay, is in DEFAULT.

7.2 Ratpaja Phetmixay's gambling license (License No. 68-13847) is hereby revoked, effective immediately, subject to further action by the Gambling Commission.

7.3 Should any reviewing authority determine the default alone in this case to be inadequate for revocation of Licensee's gambling license, despite that, by reason of his default, he was incapable of meeting his burden of proof of qualification for such license, then the revocation of Ratpaja Phetmixay's gambling license shall immediately be deemed adequate based upon the unopposed *prima facie* case presented by the Commission.

7.4 Licensee's Application for Hearing is dismissed.

Signed at Olympia, Washington the 2nd day of November 2010.



Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES OF APPEAL RIGHTS

RCW 34.05.440 provides, "(3) Within seven days after service of a default order under subsection (2) of this section, or such longer period as provided by agency rule, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings." By agency rule (WAC 230-17-035 (2)), service is complete three days after mailing of this order; therefore, any motion to vacate a default order must be made within a total of ten days after the date of mailing the default order.

Alternatively, you may file an appeal of this order within twenty three days from the day OAH mails this initial order to you. WAC 230-17-090(2); see also WAC 230 -17 -030(2), WAC 230 -17 -035(2) [Service by first class mail is complete three days after mailing.]. An appeal from an initial order is known as a "petition for review". Your petition for review should (a) identify the parts of the initial order you disagree with and (b) refer to the evidence in the record that supports your position. If you decide to petition for review, you must serve copies of your petition on all parties or their representatives at the same time you file it with the Gambling Commission. If the Commission does not receive a petition for review within 23 days, the Commission will automatically make this order its final order.

Any party may file a written response to a petition for review, known as a reply. If you wish to file a reply, it must be filed with the Commission within thirty days of the date you are served with the petition. You must serve copies of the reply on all parties or their representatives at the same time you file your reply.

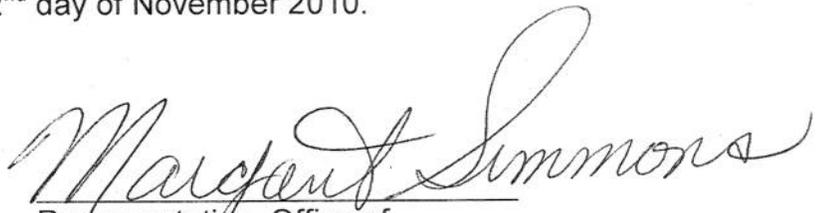
Any party may file a cross appeal. Cross appeals must be filed with the commission within ten days of the date when the petition for review is filed with the Commission. WAC 230 -17 -090(5). If you wish to make a cross appeal, you must serve copies of the cross appeal upon all other parties or their representatives at the same time you file your cross appeal.

If a party timely files a petition for review, then at least a majority of the Commission members shall review the petition within 120 days and render a final order.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, addressed as follows, with postage prepaid, or by personal delivery, as indicated.

Signed at Olympia, Washington, this 2nd day of November 2010.


Representative, Office of
Administrative Hearings

Ratpaja Phetmixay
4207 Desert Plateau Dr,
Pasco, WA 99301

H. Bruce Marvin
Assistant Attorney General
Attorney General's Office - GCE Div.
PO Box 40100
Olympia, WA 98504-0100

Washington State Gambling
Commission
Communications and Legal Dept
PO Box 42400
Lacey, WA 98504-2400