

JAN 21 2011

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE GAMBLING COMMISSION

GAMBLING COMMISSION  
COMM & LEGAL DEPT

In the Matter of the License to Conduct  
Gambling Activities of:

GARRY B. ROTH,  
  
Licensee.

OAH No. 2011-GMB-0002  
GC No. CR 2010-01315

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND INITIAL ORDER

**I. ISSUE**

- 1.1 Whether the Commission should revoke Mr. Roth's gambling license.

**II. ORDER SUMMARY**

- 2.1 The Commission shall revoke Mr. Roth's gambling license.

**III. HEARING**

- 3.1 **Administrative Law Judge:** Robert C. Krabill
- 3.2 **Licensee:** Garry B. Roth – Failed to Appear
- 3.3 **Agency:** Washington State Gambling Commission (the "Commission")
- 3.3.1 **Commission Representative:** Brian J. Considine, AAG
- 3.3.2 **Commission Witness:** Special Agent Julie Sullivan
- 3.3.3 **Commission Observer:** Special Agent Sean Merritt
- 3.4 **Hearing Date:** January 20, 2011
- 3.5 **Hearing Location:** Gambling Commission Office, 4565 7th Avenue SE, Lacey, Washington
- 3.6 **Exhibits:** The Commission's Exhibits 2-10 were presented and admitted to the record. The tribunal watched the relevant portions of the surveillance video marked Exhibit 10.

#### IV. FINDINGS OF FACT

I find the following facts more probable than not under the preponderance of the evidence standard, unless otherwise noted:

##### Jurisdiction

4.1 Mr. Roth currently holds a Public Card Room Employee gambling license. It is suspended pending the outcome of this hearing.

4.2 On January 7, 2011, the Director of the Commission issued a Notice of Hearing. The Notice alleged grounds for revocation of Mr. Roth's gambling license under RCW 9.46.075(1), RCW 9.46.075(4), RCW 9.46.075(7), RCW 9.46.075(8), WAC 230-03-085(1), WAC 230-03-085(2), WAC 230-03-085(5), WAC 230-03-085(7), WAC 230-03-085(8), and RCW 9.46.153(1).

##### Convictions

4.3 On October 23, 2010, Mr. Roth entered the Cadillac Island Casino, a licensed card room in Longview, Washington. He confronted his former girlfriend, Sinang Mao, a licensed card room employee who was dealing at the time. Terry Doty with Cadillac Island Casino asked him to leave. On leaving, Mr. Roth broke a panel in the left of two entry doors when he slammed the door especially hard. He lit a cigarette and twice attacked a cigarette butt stand on the wall outside the casino. As a result of his hitting, kicking, and yanking the stand off the wall, he significantly damaged the stand leaving it bent off the wall. The video surveillance tape marked Exhibit 10 captures his actions and shows the destruction. Mr. Roth admits these acts. Statement of Defendant on Plea of Guilty to Non-Sex Offense, November 30, 2010, *State v. Roth*, Cowlitz Cy. Sup. Ct., Cause No. 10-1-01073-1, Exhibit 8.

4.4 Earlier, Mr. Roth had left a voicemail for Ms. Mao. In the voicemail, he threatened to kill her three times. At least one time he said, "I'll fucking kill you." The voicemail put Ms. Mao in fear for her life. Mr. Roth admits these acts. Exhibit 8. He denies actually intending to kill her. *Id.*

4.5 On suspicion of committing these acts, the Longview Police arrested Mr. Roth on October 30, 2010. Officer Report Incident No. L10-26694, Ofc. C. Trevino, November 2, 2010, Exhibit 2. Mr. Roth admitted the acts to Ofc. Trevino. *Id.* The Cowlitz County Prosecutor charged Mr. Roth with Malicious Mischief in the Third Degree and Felony Harassment – Threat to Kill (Domestic Violence). Information, October 27, 2010, *State v. Roth*, Exhibit 5. Mr. Roth plead guilty to both counts. Exhibit 8. The Cowlitz County Superior Court convicted Mr. Roth of both counts on December 8, 2010. Felony Judgment and

Sentence, December 8, 2010, *State v. Roth*, Exhibit 7. It sentenced Mr. Roth to (a) a \$1723.69 legal financial obligation, (b) a five year no contact order restricting him from contact with Ms. Mao, (c) 30 days of confinement in the County Jail, and (d) 24 months of community custody. Exhibit 7. Mr. Roth has served his jail time, but he remains in community custody.

4.6 Mr. Roth has never reported his arrest or conviction to the Commission in writing.

## V. CONCLUSIONS OF LAW

Based on the foregoing findings of fact, I make the following conclusions of law:

### Jurisdiction

5.1 I have jurisdiction over in this matter under RCW 9.46.140; Chapter 34.05 RCW and Title 230 WAC.

### Revocation

5.2 The Commission may revoke a gambling license for any reason it deems to be in the public interest. RCW 9.46.075. Among those reasons is when a licensee has violated Chapter 9.46 RCW or the Commission's rules. RCW 9.46.075(1). The Commission may revoke a gambling license for any act that constitutes grounds for revocation under RCW 9.46.075. WAC 230-03-085(1). The Commission may revoke a gambling license when the licensee "has been convicted of...or pleaded guilty to...any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals", which includes threats of bodily harm. RCW 9.46.075(4); WAC 230-03-085(2). The Commission may revoke a gambling license whenever the license fails to disclose in writing when a criminal action has been filed against him or fails to provide a copy of the final written decision within 30 days after the matter is resolved. RCW 9.46.075(7); WAC 230-03-085(7); WAC 230-06-085. The Commission may revoke a gambling license whenever the licensee fails to prove by clear and convincing evidence that he is qualified. RCW 9.46.075(8); RCW 9.46.153(1). Finally, the Commission may suspend or revoke a gambling license poses a threat to the effective regulation of gambling. WAC 230-03-085(8).

5.3 Here, Cowlitz County filed a criminal action against Mr. Roth on October 27, 2010. He knew about the criminal action no later than his arrest October 30, 2010. Mr. Roth failed to report the criminal action to the Commission in writing within 30 days. Cowlitz County Superior Court resolved the matter by Judgment and Sentence on December 8, 2010, but Mr. Roth failed to provide the Commission with a copy of the Judgment. Therefore, he twice violated the reporting requirements of WAC 230-06-085(1). Because he failed to report as

required, the Commission may revoke his license under RCW 9.46.075(7) and WAC 230-03-085(7). Because Mr. Roth violated these gambling rules and statute, the Commission may revoke his license under RCW 9.46.075(1) and WAC 230-03-085(1).

5.4 Cowlitz County Superior Court convicted Mr. Roth of felony harassment – threat to kill. Harassment – threat to kill is a crime involving physical harm to an individual under WAC 230-03-085(2). Because he has been convicted of a crime involving physical harm to individuals, the Commission may revoke his license under RCW 9.46.075(4) and WAC 230-03-085(2).

5.5 Because Mr. Roth is serving a community supervision sentence, the Commission may revoke his license under WAC 230-03-085(5).

5.6 Because Mr. Roth has been convicted of a serious violent crime and malicious mischief at a licensed casino, he presents a threat to the effective regulation of gambling. Therefore, the Commission may revoke his license under WAC 230-03-085(8).

5.7 Because of the multiple grounds for revoking Mr. Roth's license, he has failed to establish by clear and convincing evidence that he qualifies for a gambling license by clear and convincing evidence. Therefore, the Commission may revoke his license under RCW 9.46.075(8).

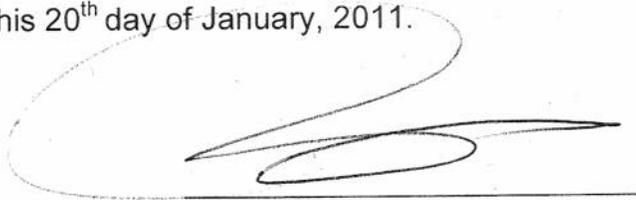
5.8 Because of the multiple separate grounds for revoking Mr. Roth's license, the Commission should revoke his license under RCW 9.46.075 and WAC 230-03-085.

## VI. ORDER

IT IS HEREBY ORDERED:

6.1 The Commission shall revoke Mr. Roth's gambling license.

DATED at Olympia, Washington, this 20<sup>th</sup> day of January, 2011.



Robert C. Krabill  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE TO THE PARTIES

Under the Washington State Gambling Commission Rules, WAC 230-17-035 and WAC 230-17-090, you have twenty-three days from the date this initial order was mailed to file an appeal of this order known as a "petition for review". The petition for review should specify the parts of the initial order which you disagree with and should 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 a petition for review is not received by the Gambling Commission within 23 days of the date this initial order was mailed, the Commission will automatically adopt this order, and it will thereby become final.

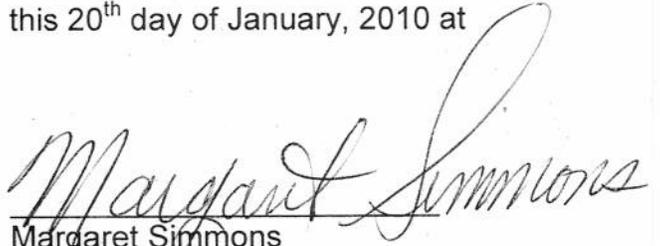
Any party may file a written response to a petition for review, known as a reply. If you wish to file a reply, it must be filed with the Commission within thirty days of the date you are served with the petition. You must serve copies of the reply on all parties or their representatives at the same time 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 was filed with the Commission, under WAC 230-17-090 and WAC 230-17-040. 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 petition for review is timely filed with the Commission, then the Commission shall review the petition within 120 days after the petition is filed and render a final order.

## Mailing Certification

I certify that I mailed the **Findings of Fact, Conclusions of Law and Initial Order** to the following parties, postage prepaid this 20<sup>th</sup> day of January, 2010 at Olympia, Washington.

  
Margaret Simmons  
Legal Secretary

Garry B. Roth  
2332 Howard Ave., Apt. C  
Everett, WA 98203

H. Bruce Marvin  
Assistant Attorney General  
Office of the Attorney General  
PO Box 40100  
Olympia WA 98504-0100

Washington State Gambling Commission  
Communications and Legal Department  
PO Box 42400  
Olympia, WA 98504-2400