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Office of Administrative Hearings
Spokane

BEFORE THE 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:

FABIAN M. GREEN
Tukwila, Washington

Licensee.

OAH Case No. 2011-GMB-0051
Agency No. CR2011-00730

INITIAL ORDER

STATEMENT OF THE CASE

A hearing in the above-entitled matter was conducted on April 17, 2012 before Mark H. Kim, Administrative Law Judge, with the Washington State Office of Administrative Hearings in Spokane, Washington. Fabian M. Green, the Licensee, appeared and was represented by Matt Phillips, Attorney at Law. Stephanie Happold, Assistant Attorney General, appeared and represented the Gambling Commission ("Commission"). Commission's Exhibits 1 through 6 were admitted into the record, and on April 17, 2012 the hearing record was closed.

The following witnesses were called by the Commission and provided testimony:

Jack Duncan, former owner of Cactus Jack's Casino.

Joy Lovett, former accounting manager for Cactus Jack's Casino.

Teresa Reed, Special Agent with the Commission.

The following witnesses were called by the Licensee and provided testimony:

Fabian M. Green, Licensee.

Tim Gorrell, former pit manager for Cactus Jack's Casino.

Joy Lovett, former accounting manager for Cactus Jack's Casino.

On November 07, 2011, the Director of the Commission caused a Notice of Administrative Charges to be issued against the Licensee to revoke the Licensee's license/certification alleging that the Licensee defrauded his employer in violation of RCW 9.46.190, and demonstrated that he has failed to establish by clear and convincing evidence the necessary qualifications for certification under RCW 9.46.153. The Licensee timely filed a request for administrative hearing.

BASED ON THE EVIDENCE IN THIS MATTER, THE UNDERSIGNED MAKES THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INITIAL ORDER:

FINDINGS OF FACT

1. The Licensee is Fabian M. Green, former employee of Cactus Jack's Casino ("Cactus Jack's") located in Washington State. He is licensed by the Washington State Gambling Commission ("Commission") to conduct activities as a Card Room Employee.
2. Jack Duncan is the owner of Cactus Jack's. He has been in the gaming industry since 1997 and has owned several casinos.
3. In December 2010, Mr. Duncan and the Licensee discussed the employment of the Licensee by Mr. Duncan at Cactus Jack's as the general manager. Tim Gorrell, was also present during the discussion with the anticipation of being employed as the card room supervisor.
4. Both the Licensee and Mr. Gorrell were hired by Mr. Duncan as the general

manager and card room supervisor, respectively. As the general manager, the Licensee was given signatory authority on Cactus Jack's bank account.

5. The Licensee and Mr. Duncan agreed upon a salary of \$55,000 per year with a review after ninety days. They did not memorialize this agreement in writing which is Mr. Duncan's common business practice in the past.

6. The Licensee asserts that in December 2010, a discussion was had with Mr. Duncan regarding a bonus structure for the Licensee. Mr. Duncan disagrees.

7. Cactus Jack's business revenue was good during the months of January through March 2011. For this period, the business grossed approximately a million dollars, and netted approximately \$270,000.

8. In March 2011, the Licensee attempted to finalize his bonus structure with Mr. Duncan without success. Then in late March early April, the Licensee gave Mr. Duncan his proposals on the bonus structure.

9. The Licensee asserts that the verbal agreement for the bonus structure was for 4% of the business' net revenue, and that it covered the first quarter of 2011. Mr. Duncan denies such an agreement.

10. The Licensee asserts that in early 2011, he and Mr. Duncan agreed to a cell phone allowance of \$100 per month. Mr. Duncan disagrees with this assertion.

11. On March 03, 2011, the Licensee caused Cactus Jack's accounting manager, Joy Lovett, to draft a check for \$200 to the Licensee as his cell phone allowance. The Licensee signed the check.

12. The Cactus Jack's business revenue decreased significantly at the end of March 2011 and continued to do so until closure of the business in August 2011.

13. Sometime around April 2011, the Licensee attempted to discuss with Mr. Duncan about payment of his bonus. The Licensee asserts that after some discussion he asked Mr. Duncan for a draw of \$1000 on his bonus and to discuss the balance at a later date. He asserts that Mr. Duncan had authorized the draw. Mr. Duncan denies this assertion.

14. In April 2011, both the Licensee and Mr. Duncan requested the business' profit and loss statement for the purpose of calculating the Licensee's bonus.

15. On April 14, 2011, the Licensee caused Ms. Lovett to draft a check for \$1000 to the Licensee as a draw on his bonus. The Licensee signed the check.

16. The Licensee asserts that sometime in April 2011 he attempted to discuss with Mr. Duncan about the finalization of the bonus. He asserts that Mr. Duncan denied owing the Licensee any bonus for the first quarter but authorized him to keep the \$1000 draw he had taken on April 14, 2011. Mr. Duncan denies this assertion.

17. At the beginning of May 2011, the Licensee submitted his two week notice of resignation as general manager to Mr. Duncan. At or about the same time, the Licensee received a letter of termination. His employment terminated on May 02, 2011.

18. In May 2011 after the departure of the Licensee from Cactus Jack's, Mr. Duncan obtained the profit and loss statements from Ms. Lovett. Mr. Duncan informed Ms. Lovett about the 4% bonus structure but did not inform her of what periods the bonus covered. However, Mr. Duncan informed Ms. Lovett that the \$1000 bonus check was not authorized by him.

19. On May 27, 2011, Mr. Duncan contacted Teresa Reed, Special Agent with the Commission, and alleged that the Licensee had committed a theft from Cactus Jack's by issuing the two checks to himself totaling \$1200.

20. Special Agent Reed conducted an investigation of the allegation and concluded that the Licensee had violated the Commission's regulations.

21. Mr. Duncan asserts that the agreement he had with the Licensee was for a trial basis of \$55,000 per year with a bonus beginning the second quarter of 2011, and a \$100 per month cell phone allowance.

22. On November 7, 2011, the Director of the Commission issued a Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding to the Licensee number CR 2011-00730 (Notice). The Notice alleged that the Licensee violated the Commissions laws and regulations. The Notice also informed the Licensee that the Commission intended to revoke the Licensee's license number 68-05696.

23. On November 28, 2011, the Licensee filed his request for an administrative hearing.

24. Based on the testimony and observation of the Licensee, Mr. Duncan, and other witnesses at hearing, the undersigned finds the Licensee's testimony as credible. Specifically, the undersigned finds that the Licensee and Mr. Duncan entered into an agreement for payment of bonuses and cell phone allowance for the Licensee encompassing the first quarter of 2011.

CONCLUSIONS OF LAW

1. The undersigned Administrative Law Judge has jurisdiction to hear and decide this matter pursuant to Revised Code of Washington (RCW) 9.46.140(2) & (4), chapter 34.05 RCW, Washing Administrative Code (WAC) 230-170-010, and WAC 230-170-025.

2. The Washington State Gambling Commission has the broad purpose and responsibility 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*. To discharge this responsibility, the legislature has granted the Commission with broad and extensive powers as outlined in *RCW 9.46.070*. These powers include, but not limited to, the authority to deny or revoke licenses or permits related to gambling activities. See *RCWs 9.46.070 and 9.46.075*.

3. *RCW 9.46.075* provides in pertinent part:

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. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein:

(1) 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, or when a violation of any provision of chapter 9.46 RCW, or any commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

...

(8) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter;

...

(10) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain;

....

4. Further, committing an act of fraud or deceit is a gross misdemeanor. *RCW 9.46.190(3)*.

5. Similarly, the Commission may revoke a license if the licensee commits an act that constitutes grounds for revocation under *RCW 9.46.075* or poses a threat to the effective regulation of gambling. *WAC 230-03-085 (1) & (8)*. Additionally, it is the licensee's affirmative responsibility to establish by clear and convincing evidence that he or she meets the qualifications for licensure. *RCW 9.46.153(1)*.

6. In the present matter, the preponderance of the credible evidence shows that the Licensee, Fabian M. Green, did not violate the laws and regulations cited by the Commission in its Notice. The preponderance of the evidence shows that the Licensee and the owner of Cactus Jack's had agreed upon a bonus and cell phone allowance. The checks issues and signed by the Licensee to himself in the total amount of \$1200 were based on that agreement. The preponderance of the evidence shows that Licensee did not commit fraud or deceit. In fact, there is clear and convincing evidence that the Licensee's actions during the period in issue meets the qualification for licensure. Therefore, it is concluded that the preponderance of the evidence does not provide grounds to revoke the Licensee's license as alleged in the Commissions Notice number CR 2011-00730. Accordingly, the license of Fabian M. Green should not be revoked.

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INITIAL ORDER

IT IS HEREBY ORDERED that license number 68-05696 of Fabian M. Green is not revoked.

DATED at Spokane, Washington, this 6th day of June, 2012.



MARK H. KIM
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF MAILING IS ATTACHED

NOTICE TO THE PARTIES

An initial order becomes the final order unless a party files a petition for review of the initial order.

RCW 34.05.464 governs the review of initial orders. 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 representative at the time the petition for review is filed.

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. 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. 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. 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.

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.

CERTIFICATE OF MAILING

The undersigned certifies that true copies of the foregoing document(s) were served from Spokane, Washington by First Class US Mail, postage prepaid on the date indicated below upon the following:

Licensee

Fabian M. Green
11415 E 17th Ave, Unit A
Spokane WA 99206
(509) 998-6121

Licensee's Attorney

Matt Phillips
Neighborhood Resource Attorney
1428 W Broadway
Spokane, WA 99201

Commission Representative

Stephanie U. Happold
Assistant Attorney General
Office of the Attorney General
PO Box 40100
Olympia WA 98504

Dated this 6th day of June, 2012.

ATTORNEY GENERAL
OF WASHINGTON

JUN - 8 2012

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O. Kristofyer

Olga A. Kristofyer, Legal Secretary
Office of Administrative Hearings