

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Suspension of the) No. CR 2013-00281
License to Conduct Gambling Activities of:)
)

Feliks Fayerberg)
Mountlake Terrace, Washington,) **NOTICE OF ADMINISTRATIVE**
) **CHARGES AND OPPORTUNITY**
) **FOR AN ADJUDICATIVE**
) **PROCEEDING**
Licensee.)
_____)

I.

The Washington State Gambling Commission issued Feliks Fayerberg the following license: Number 68-18714, authorizing Card Room Employee activity with the Silver Dollar Casino in Mill Creek. The license expires on November 30, 2013, and was issued subject to Mr. Fayerberg's compliance with state gambling laws and rules.

II.

David Trujillo, Interim Director of the Washington State Gambling Commission, charges the licensee with the following violations of Chapter 9.46 RCW, and WAC Title 230.

SUMMARY:

Feliks Fayerberg under-reported \$1,806.50 in tips from January 19, 2013, to February 2, 2013.

FACTS:

1) On December 17, 2012, a Washington State Gambling Commission Special Agent (agent) met with Todd Marshall, General Manager of Silver Dollar Casino. During the meeting, Mr. Marshall and the agent reviewed the card room's internal controls section regarding the requirement for employees to accurately report all tips they received. Mr. Marshall said all dealers had recently received a letter from Washington Gold¹ management reminding them they are required to report all tips received. The letter included WAC 230-15-475 6(d), which provides that all employees must: "Accurately report all tips to their employer as described in the licensee's internal controls." Mr. Marshall said Mr. Fayerberg signed a copy of the Washington Gold tip letter on October 25, 2012.

¹ Washington Gold, located in Renton, manages Coyote Bob's Roadhouse Casino, Crazy Moose Casino, Golden Nugget Casino, Club Hollywood Casino, Red Dragon Casino, Royal Casino, and Silver Dollar Casino.

- 2) The Silver Dollar Casino's internal control regarding tips was revised on January 14, 2013. The current policy states: "Card room employees will report tips earned utilizing the Aloha computer program. Tips earned will be reported on the day they are received." The previous internal control policy dated June 14, 2010, stated: "All dealers will redeem their tips under surveillance at the cashier's cage. All toke² earnings will be reported to management."
- 3) On January 18, 2013, the agent conducted a payroll module review at the Silver Dollar Casino. Zehn Valdez, of Accounting, was the primary point of contact. The payroll records include the amount of tips reported by the dealers. The dealers take their toke boxes to the cashier's cage. The cashier unlocks the toke box, places all of the casino chips inside on the counter, and gives the dealers cash for the chips. The dealers then log out of duty. The Aloha POS³ computer tracker asks the dealers how much they collected in tips, and the dealers input the amount they received for that shift.
- 4) The agent noticed numerous dealers reporting what appeared to be an unusually low amount of tips while reviewing the payroll records. On January 18, 2013, the agent met with Christian Singer, Surveillance Observer, and requested the Silver Dollar Casino surveillance staff document the amount dealers received in tips. This would be done by recording with surveillance cameras how much dealers cashed in from their locked toke boxes at the cashier's cage.
- 5) On February 4, 2013, the agent compared the tip amount surveillance staff documented for Mr. Fayerberg with the payroll report the agent received from Ms. Valdez. The agent determined Mr. Fayerberg cashed in \$1,940 in tips at the cashier's cage from January 19, 2013, to February 2, 2013. Mr. Fayerberg reported \$134 in tips, a difference of \$1,806.50, in violation of WAC 230-15-475(6)(d).
- 6) Ms. Valdez provided the agent a copy of the Washington Gold letter Mr. Fayerberg signed, dated October 25, 2012, indicating he was notified of the requirement to report all of his tips and was given a copy.
- 7) The agent reviewed the Washington Gold Team Member Handbook. On page fifteen, the handbook states: "All tipped team members are required to declare 100% of their tipped income." Ms. Valdez provided the agent with a copy of the receipt Mr. Fayerberg signed on July 22, 2011, indicating he had received the handbook.
- 8) Ms. Valdez provided the agent a copy of Mr. Fayerberg's payroll records, including the amount of tips he reported for the period of January 19, 2013, to February 2, 2013. The tips Mr. Fayerberg received on January 26, 2013, were not recorded by surveillance and not included in this case.

² Tokens are gratuity received by card room employees who are dealers from players or patrons.

³ Computer based software where employees log in at the start of their shift, and log out at the end of their shift. The program requires each employee to input the last four numbers of their social security number. The program has an icon labeled "Tips." When the tips icon is pressed the user is presented a screen similar to the number keys on a calculator, they are then required to input a tip amount and hit the enter key before the program will allow them to log out.

9) The agent observed the surveillance recordings of each incident. Mr. Fayerberg was readily identifiable handing his token box to the cage cashier and receiving cash back. The agent saw the cage cashier open the token boxes, remove the tips, count the tips, and cash the chips in for U.S. currency, which was then given to Mr. Fayerberg. The agent compared the amount of tips cashed by the cage cashier to amounts reported by surveillance staff. They appeared to be materially accurate. The agent used the Silver Dollar Casino internal controls documentation of house-banked and poker chips color and marks to confirm amounts.

10) On February 13, 2013, the agent interviewed Mr. Fayerberg, who wrote a sworn statement indicating he received a copy of the Washington Gold letter and WAC rules reminding him to report all of his tips. He stated he under-reported the amount of tips he received in order to be eligible for state low income health insurance. He said his wife needed medical care he could only afford with the insurance. Mr. Fayerberg also said he knew fewer tips reported would reduce the amount of federal income taxes he was paying and increase the size of his pay check.

11) Mr. Fayerberg said he heard agents were checking the amount of tips dealers had reported. He described reporting a larger amount of tips received than he had to make up for the tips he did not report. The agent looked on his payroll report and noted on February 5, 2013, he reported \$756 when the actual amount was \$61.

VIOLATIONS:

RCW 9.46.075 Denial, suspension, or revocation of license, application, or permit

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 certified employee, or any person with any interest therein:

(The following subsection applies.)

(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.

WAC 230-03-085 Denying, suspending, or revoking an application, license or permit

We may deny, suspend, or revoke any application, license or permit, when the applicant, certified employee, or anyone holding a substantial interest in the applicant's or certified employee's business or organization:

(The following subsections apply.)

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

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

(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.

WAC 230-15-425 Internal controls

(The following subsection applies.)

(2) Licensed card room employees must follow the internal control procedures for their individual functions.

WAC 230-15-475 Tips from players and patrons to card room employees

(The following subsection applies.)

(6) Employees must...

(d) accurately report all tips to their employer as described in the licensee's internal controls.

RCW 9.46.153 Applicants and licensees — Responsibilities and duties — Waiver of liability — Investigation statement as privileged.

(The following subsection applies.)

(1) It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted.

Feliks Fayerberg failed to comply with internal control procedures by not accurately reporting his tips, in violation of WAC 230-425 and WAC 230-15-475. On October 25, 2012, Mr. Fayerberg signed a copy of WAC 230-15-475 from Silver Dollar Casino, acknowledging he must accurately report tips as described in the internal controls. As a result, he has demonstrated willful disregard for complying with Commission rules. Mr. Fayerberg has failed to establish by clear and convincing evidence, as required by RCW 9.46.153(1), that he is qualified to be licensed. In addition, failure to comply with internal controls and accurately report tips establishes 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 activities based on his activities. As a result, there are grounds to suspend or revoke Feliks Fayerberg's license based on RCW 9.46.075(1), and WAC 230-03-085(1), (3) and (8).

III.

Jurisdiction of this proceeding is based on 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, and WAC Title 230.

The licensee will have the opportunity to have a hearing on the alleged violations. In order to have a hearing, the enclosed REQUEST FOR HEARING must be completed in full by the licensee or representative and returned to the Gambling Commission within **23 days** from the date of the mailing of this notice.

Based on RCW 34.05.440, FAILURE TO RETURN THIS DOCUMENT WILL RESULT IN THE ENTRY OF A DEFAULT ORDER FOR A 30-DAY SUSPENSION YOUR LICENSE.

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

David Trujillo, being first duly sworn on oath, deposes and says: He has read this Notice of Administrative Charges and Opportunity for An Adjudicative Proceeding, knows the contents, and believes the same to be true, and that he is the duly appointed and qualified Interim Director of the Washington State Gambling Commission and in that capacity has executed these Charges.

David Trujillo

DAVID TRUJILLO, INTERIM DIRECTOR

SUBSCRIBED AND SWORN TO before me
this 15 day of March, 2013.

Maureen Pretell

NOTARY PUBLIC in and for the State of
Washington residing at Thurston County
My Commission expires on December 2, 2015



STATE OF WASHINGTON)
)
COUNTY OF THURSTON)

I certify I have this day served a copy of the document upon all parties of record in the proceeding by mailing a copy, property addressed with postage prepaid, by regular and certified mail to each party to the proceeding or his or her attorney or authorized agent.

Dated at Olympia, Washington this 18 day of March, 2013

Maureen Pretell
