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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE GAMBLING COMMISSION

Gambling Commission
Comm. & Legal Division

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

KIEN KIM
SeaTac, Washington,

Licensee.

OAH Docket No. 2013-GMB-0031
WSGC No. CR 2013-00083

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
INITIAL ORDER

If Kien Kim needs an oral translation of this order into Cambodian, he may obtain such a translation at no cost to him by calling Morales Dimmick Translators at (208) 365-2622, Monday through Friday, between 8:00 a.m. and 5:00 p.m., Pacific Time.

I. ISSUES PRESENTED

- 1.1 Whether the conduct attributed to the Licensee asserted in the Notice of Administrative Charges signed March 6, 2013, occurred.
- 1.2 If so, whether the conduct constituted a basis or bases for revocation by the Washington State Gambling Commission of the Licensee's public card room employee license.
- 1.3 If so, whether the Licensee nevertheless proved by clear and convincing evidence that he is qualified to hold his license.

II. ORDER SUMMARY

- 2.1 The conduct attributed to the Licensee asserted in the Notice of Charges signed March 6, 2013, occurred.
- 2.2 That conduct constituted a basis for revocation by the Washington State Gambling Commission of the Licensee's card room employee license.
- 2.3 The Licensee failed to prove by clear and convincing evidence that he is qualified to hold his license.

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III. HEARING

- 3.1 **Hearing Date:** July 17, 2013
- 3.2 **Administrative Law Judge:** Terry A. Schuh
- 3.3 **Licensee:** Kien Kim (appearing *pro se*)
- 3.4 **Agency:** Washington State Gambling Commission
- 3.4.1 **Representative:** Gregory J. Rosen, Assistant Attorney General
- 3.4.2 **Witness:** Special Agent Kevin Maxwell, Washington State Gambling Commission
- 3.5 **Interpreter:** Vannara Lim
- 3.6 **Exhibits:** Exhibits 1 through 16 were admitted into the record.
- 3.7 **Close of record:** Gregory J. Rosen, Assistant Attorney General, representing the Washington State Gambling Commission, requested that the record remain open until 5:00 p.m. on July 19, 2013, for submission of a post-hearing brief. The request was granted. The record closed at 5:00 p.m. on July 19, 2013.

IV. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

- 4.1 On March 6, 2013, the Washington State Gambling Commission ("the Commission") issued a Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding ("the Notice of Charges") seeking to revoke Kien Kim's Card Room Employee gambling license. Testimony of Special Agent Kevin Maxwell ("Special Agent Maxwell" or "Maxwell").
- 4.2 The Notice of Charges was served on Mr. Kim by mailing it on March 7, 2013, by both regular and certified mail. Testimony of Maxwell.
- 4.3 On March 21, 2013, the Commission received Mr. Kim's request for hearing signed on March 17, 2013. Testimony of Maxwell.

Mr. Kim's Card Room Employee gambling license

4.4 Mr. Kim holds a Class B Public Card Room Employee gambling license, number 68-17260, issued by the Commission. Ex. 1, pp. 1, 4. He has been so licensed since January 23, 2003, and "he has no previous administrative case history." Ex. 1, p. 4.

The criminal charge

4.5 On October 16, 2012, Mr. Kim was with friends gambling at the Muckleshoot Casino in Auburn. Testimony of Maxwell; Testimony of Kim; Ex. 3.

4.6 One of Mr. Kim's friends argued with casino employees and was disorderly to the point that he was escorted from the casino and told to leave the premises. Testimony of Maxwell; Testimony of Kim; Ex. 3; Ex. 6.

4.7 During that event, Mr. Kim supported his friend vocally and yelled profanities. Ex. 3. Nevertheless, he was not disciplined by casino security. Ex. 3. Mr. Kim followed when his friend was escorted outside. Testimony of Maxwell; Ex. 3.

4.8 Once outside, Mr. Kim's friend's disagreement with casino security continued and an Auburn police officer intervened. Testimony of Maxwell; Ex. 3; Ex. 6. During that confrontation, Mr. Kim made physical contact with the Auburn police officer. Testimony of Maxwell; Ex. 3; Ex. 6; Ex. 4; Ex. 5; Ex. 7; Ex. 8.

4.9 Mr. Kim said that he did not intend to strike the officer and was merely trying to protect his friend. Testimony of Kim. However, several witnesses reported that Mr. Kim approached the officer from behind and shoved him. Exs. 4-8. Moreover, Mr. Kim admitted to the criminal court that he shoved the officer. Ex. 15. Mr. Kim said that his statement to the criminal court was a statement of convenience, encouraged by his court-appointed attorney, offered to resolve the criminal matter. Testimony of Kim. I do not find credible Mr. Kim's assertion that he did not strike the officer, much less that he did not do so intentionally – for three reasons. One, statements from multiple witnesses to the event show otherwise. Two, Mr. Kim has specifically demonstrated that he will tell a tribunal what he believes is to his immediate benefit. Three, Mr. Kim was upset and stressed on October 16, 2012, and so his perspective and memory of what happened then is diminished. Therefore, I find that Mr. Kim shoved the police officer and that he did so intentionally.

4.10 Auburn police arrested Mr. Kim and he was charged with attempted assault third degree. Testimony of Maxwell; Ex. 2; Ex. 3; Ex. 12.

4.11 On December 18, 2012, Mr. Kim filed with the King County District Court, South Division, Auburn Courthouse, in Cause No. 220444328, his Statement of Defendant on Plea of Guilty. Ex. 15. It was signed by Mr. Kim, his attorney, the judge, and the interpreter. Ex. 15, p. 5; Testimony of Kim. Mr. Kim signed the following statement, under advice of counsel: "On October 16, 2012, in the city of Auburn, Washington, I took a substantial step toward that crime by intentionally trying to touch or strike Auburn Police Officer A. Gould in a harmful or offensive manner." *Id.* Mr. Kim entered his plea freely and voluntarily, absent threats or promises and with the advice of counsel. Ex. 15, pp. 4-5. The document contains no statement regarding Mr. Kim's gambling license. Ex. 15. On December 18, 2012, the judge entered an Order of Judgment & Sentence for the Crime of Attempted Assault 3rd Degree. Ex. 14. That Order made no mention of Mr. Kim's gambling license. *Id.*; Testimony of Maxwell; Testimony of Kim.

4.12 Mr. Kim determined to plead guilty in order to resolve the criminal matter promptly. Testimony of Kim. He told his court-appointed attorney and the judge that he had a gambling license and that he needed to know if pleading guilty would cause him to lose that license. Testimony of Kim. They told him it would not. Testimony of Kim. However, there is no evidence in the record other than Mr. Kim's testimony regarding that exchange; there is no evidence in the record that either the attorney or the judge knew or should have known that the Commission might rely on the criminal conviction to revoke Mr. Kim's license; and the court made no provision in its order attempting to insulate Mr. Kim from such third-party discipline. Moreover, it is doubtful that the criminal court would have authority to preclude the Commission from exercising its privileges and responsibilities regarding revocation. Thus, I find that Mr. Kim believed that the court promised him he would not lose his gambling license. However, I find that all that the court promised was that the criminal court would not suspend or revoke his gambling license.

The Commission's investigation

4.13 The Commission learned about Mr. Kim's criminal charge when Mr. Kim reported it on his gambling license renewal application on or about January 6, 2013. Testimony of Maxwell; Ex. 2; Ex. 1, p. 4.

4.14 Special Agent Maxwell investigated the matter and learned about the circumstances discussed in the preceding Findings of Fact. Testimony of Maxwell.

4.15 Accordingly, the Commission determined to revoke Mr. Kim's Card Room Employee gambling license and issued the Notice of Charges discussed above.

V. CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law:

Jurisdiction

5.1 I have jurisdiction over the persons and subject matter herein pursuant to RCW 9.46.140, RCW 34.05.413, RCW 34.12.030(1), and WAC 230-17-025.

Revocation

5.2 "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", including failure to comply with Washington state gambling laws. RCW 9.46.075(1); WAC 230-03-085(1).

5.3 The Commission may revoke a gambling license if the licensee "has been convicted of . . . or pleaded guilty to . . . a felony or misdemeanor involving . . . physical harm to individuals". RCW 9.46.075(4).

5.4 The Commission may revoke a gambling license if 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, as demonstrated by prior activities or criminal record". WAC 230-03-085(8)(a) and (b).

5.5 The Commission may revoke a gambling license if the licensee "fails to prove, by clear and convincing evidence, that he . . . is qualified in accordance with the provisions of this chapter." RCW 9.46.075(8); *see also* RCW 9.46.153(1).

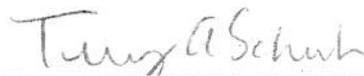
5.6 Here, Mr. Kim was a disorderly patron in a casino and assaulted a police officer involved in dealing with another disorderly patron. Mr. Kim pleaded guilty to the subsequent assault charge and judgment and sentence were entered. Not only did Mr. Kim commit a crime involving physical harm to an individual, the victim was a police officer, the location was a casino, and Mr. Kim's conduct was designed specifically to interfere with the police officer's involvement with a disturbance at the casino. Accordingly, Mr. Kim's conduct violated the public interest and posed a threat to the effective regulation of gambling in the state of Washington. Moreover, Mr. Kim has failed to prove by clear and convincing evidence that he is qualified to be licensed. Therefore, the Commission has established a basis sufficient upon which to revoke Mr. Kim's gambling license. Thus, Mr. Kim's gambling license should be revoked.

INITIAL ORDER

IT IS HEREBY ORDERED THAT:

Kien Kim's Public Card Room Employee Gambling License No. 68-17260 is **REVOKED**.

Signed and Issued at Tacoma, Washington, on the date of mailing.



Terry A. Schuh
Lead 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 the Washington State Gambling Commission 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 the Washington State Gambling Commission 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 the Washington State Gambling Commission within ten days of the date the petition for review was filed with the Washington State Gambling Commission. WAC 230-17-090(5).

Copies of the petition or 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 the Washington State Gambling Commission receives 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).

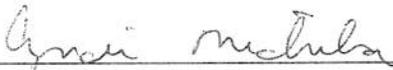
CERTIFICATION OF MAILING IS ATTACHED

Certificate of Service – OAH Docket No. 2013-GMB-0031

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Kien Kim 14623 29 Lane South SeaTac, WA 98168-4204	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt
Chad C. Standifer Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia, WA 98504-0100	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt
Washington State Gambling Commission ATTN: Legal Department PO Box 42400 Olympia, WA 98504	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt

Date: September 12, 2013



Cyndi Michelena
Office of Administrative Hearings