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

Gambling Commission
Comm. & Legal Division

In The Matter Of:

OAH Docket No. 2013-GMB-0057
GMB No. CR 2013-00356

LINDA L. SCHAEFER
Lynnwood, Washington

INITIAL ORDER REVOKING
GAMBLING LICENSE

CRE License No: 68-18922

Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on November 5, 2013, at the Gambling Commission Office, 4565 7th Avenue, Lacey, Washington.

Gregory J. Rosen, Assistant Attorney General, Attorney General's Office, appeared and represented the Washington State Gambling Commission ("Commission"). Cassie Voss, Customer Service Specialist 3, Gambling Commission, and William McGregor, Special Agent, appeared and testified as witnesses for the Commission.

Linda L. Schaefer ("Ms. Schaefer") failed to appear at the November 5 hearing. No other person appeared representing Ms. Schaefer.

All witnesses were sworn.

On May 14, 2013, the Director of the Commission caused two copies of a Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding ("Notice of Administrative Charges") to be issued against Ms. Schaefer, one by regular mail and the other by certified mail. The Director alleged the Commission inadvertently issued a public card room employee license to Ms. Schaefer despite the January 12, 2011

Settlement Order between Ms. Schaefer and the Commission in which Ms. Schaefer agreed to have (among other things) no direct or indirect involvement "with any gambling activity." Ms. Schaefer had been a substantial interest holder in Ringo's Little Vegas, a business in which her husband, Thomas Schaefer had been the corporate treasurer and, at times, also a shareholder. The Settlement Order related to a Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding issued by the Commission on September 17, 2010. In the present action, the Commission contends that Ms. Schaefer poses a threat to the effective regulation of gaming and asks for the revocation of Ms. Schaefer's public card room employee license.

Ms. Schaefer signed and dated the Request for Administrative Hearing on May 29, 2013. The Commission received the Request for Administrative Hearing on June 4, 2013, twenty-one (21) days after service on Ms. Schaefer.

The Commission issued a Notice of Hearing to the parties on July 23, 2013. The Notice of Hearing set the hearing to be heard on Tuesday, November 5, 2013, beginning at 1:30 PM and concluding at 5:00 PM, and the location to be 4565 7th Avenue, Lacey, Washington.

On September 27, 2013, the Commission issued an Amended Notice of Hearing to the parties. The only change was to start the hearing at 9:00 AM instead of 1:30 PM. The Commission mailed the Amended Notice of Hearing to Ms. Schaefer at her Hayden Lake, Idaho address after first erroneously issuing a cover letter that referred to Hayden Lake, Oregon.

At the November 5 hearing, the Commission offered eighteen exhibits, numbered 1 through 18, all of which were admitted without objection. Exhibit 20 consists of two CD-R video disks containing views of Ms. Schaefer's gambling table from two different perspectives. The Commission offered a certified copy of the Snohomish County District Court docket that constitutes Exhibit 18, again without objection.

Ms. Schaefer did not submit any exhibits in advance of the hearing and was not present at the November 5 hearing to offer exhibits there.

The Commission asked to present a prima facie case in Ms. Schaefer's absence and the undersigned Administrative Law Judge agreed to hear the prima facie case.

The Administrative Law Judge, having considered the evidence, now enters the following Findings of Fact:

FINDINGS OF FACT

1. Ms. Schaefer possesses a public card room employee license, no. 68-18922, issued by the Commission. The license is a type 68, Class B. Without more, her license will expire on January 6, 2014. Exhibit 1. Ms. Schaefer previously held a public card room employee license, issued by the Commission, in 2004. Ms. Schaefer surrendered that license in 2004.¹ Testimony and Exhibit 1, page 3.

2. Ms. Schaefer is married to Thomas Schaefer and has been married to Thomas at all times pertinent to this case.

¹ Persons who are "substantial interest holders" in a business licensed to operate a public card room or a spouse of a substantial interest holder are not required to have a CRE license to work as a dealer. WAC 230-03-280. See, Finding of Fact No. 4.

3. Mr. Thomas was formerly the treasurer for Northwest Gaming, Inc., a corporation that operated a casino in Spokane, Washington known as Ringo's Little Vegas.

4. Ms. Schaefer was a substantial interest holder in Ringo's Little Vegas because of her marriage to Mr. Thomas. She remained a substantial interest holder from 2004 until December 15, 2010, when Ringo's Little Vegas closed.

5. On January 12, 2011, an Administrative Law Judge signed a Settlement Order between the Commission and Ringo's Little Vegas. The Settlement Order resolved issues raised in an earlier Notice of Administrative Charges and Opportunity for Hearing, issued by the Commission on September 17, 2010. Exhibit 4.

6. The January 12, 2011 Settlement Order suspended Ringo's Little Vegas' gambling licenses (one for house-banked card room activities and one for punchboard/pull-tab activities) for twelve days, seven of which were deferred. The Settlement Order also included a provision relating directly to Ms. Schaefer:

Thomas and Linda Schaefer shall have no involvement directly or indirectly, with any gambling activity or any involvement with Northwest Gaming, Inc. or Ringo's Little Vegas that would make Thomas or Linda Schaefer substantial interest holders, as defined in WAC 230-03-045. [Exhibit 4, page 6.] [Emphasis supplied].

7. On January 7, 2013, the Commission received Ms. Schaefer's application for a public card room employee license. Exhibit 2.

8. When the Commission receives an application for a public card room employee license, the application arrives first at the business office, then is sent to the forms and records unit, then (in Ms. Schaefer's case) to the individual applicant unit,

and then to a customer service specialist. The Commission followed this procedure with Ms. Schaefer's application.

9. Ms. Schaefer's application was assigned to a customer service specialist named Michael Moore; however, Mr. Moore was not in the office when Ms. Schaefer's application arrived. Therefore, Ms. Schaefer's application went to Cathee Gottfryd, who was Mr. Moore's backup that day.

10. When Ms. Gottfryd reviewed Ms. Schaefer's application, she first checked the application to be sure that it was fully completed and signed by Ms. Schaefer. Then she viewed a Commission computer data base known as Gambling Information Management System ("GIMS") and the Judicial Information System ("JIS") for information relating to Ms. Schaefer. She saw no "red flags" that would indicate a criminal history or fines owed, something that would affect whether the Commission would issue a license.

11. Another person, a "quality control" reviewer, reviewed the work done by customer service specialists such as Ms. Gottfryd. The role of the quality control person is to double check the work done by the first reviewer. The quality control person here was Cassie Voss.

12. Cassie Voss is a Commission employee and has been for ten years. She works as a Customer Service Specialist 3 and has worked in that capacity for six years. She worked in other office capacities earlier.

13. Ms. Voss saw nothing that would alert her to any problems with Ms. Schaefer's application. She saw no "red flags" or "locks." She issued the public card room employee's license to Ms. Schaefer on or about January 6, 2013.

14. If Ms. Gottfryd or Ms. Voss had seen the comment "notify CLD of applications," either of them should have notified the CLD ("CLD" stands for "Communications and Legal Division" within the Commission) or the CHI ("CHI" stands for the "Criminal History Investigation Unit" within the Commission). At that point, the Commission would have denied the license to Ms. Schaefer because of her status as substantial interest holder in Ringo's Little Vegas and because of the violation history that attached to Ringo's Little Vegas gambling licenses during the time that Ms. Schaefer was a substantial interest holder in relation to Ringo's.

15. William McGregor is a Special Agent for the Commission and has worked in that capacity for twenty-four years. He is a CPA and a fraud examiner. He has had extensive training. His duties include conducting field inspections and conducting criminal investigations. He works in the Commission's Spokane office.

16. When Special Agent McGregor learned, in January 2013, that the Commission had issued a public card room employee's license to Ms. Schaefer, he undertook his own review of the Commission's action. He interviewed Ms. Gottfryd and accessed GIMS and JIS.

17. On January 29, 2013, Special Agent McGregor reviewed GIMS and found a comment posted there: "notify CLD of applications." Exhibit 3.

18. During the time that Ms. Schaefer was a substantial interest holder in Ringo's Little Vegas, at least five Settlement Orders were concluded between it and the Commission involving various violations of the gambling code. Exhibits 4, pp. 1-8 (signed in January 2011, but covering periods before December 15, 2010); 9, pp. 15-17; 12, pp. 12-15; 14, pp. 59-64; and 15, pp. 15-20.

19. Additionally, during the time that Ms. Schaefer was a substantial interest holder in Ringo's Little Vegas, at least four Notices of Violation and Settlement ("NOVAS") were concluded between it and the Commission involving various violations of the gambling code. Exhibits 7, page 4; 8, page 8; 10, page 6; and 11, page 6.

20. Based on his investigation, Special Agent McGregor wrote case report number 2013-00356. He recommended revoking Ms. Schaefer's license because the Commission issued that license through inadvertence or mistake. Exhibit 1:

From the foregoing Findings of Fact, the Administrative Law Judge now enters the following

CONCLUSIONS OF LAW:

1. The Commission originated this action when it filed and served the Notice of Administrative Charges on May 14, 2013, by mailing two copies to Ms. Schaefer, one by regular mail and the other by certified mail. Ms. Schaefer requested a hearing on the form provided by the Commission, which the Commission received on June 4, 2013. The final date for filing a timely request for a hearing was twenty-three days after the mailing of the Notice of Administrative Charges by regular United States mail.

WAC 230-17-010(2) requires that the Commission receive the licensee's request for a

hearing within either 23 days after service by regular mail or 20 days after service by certified mail. The Commission received Ms. Schaefer's request for a hearing twenty-one days after the Commission mailed the Notice of Administrative Charges by regular United States mail. Therefore, Ms. Schaefer timely filed her request for a hearing on the issues raised in the Notice of Administrative Charges.

2. The Office of Administrative Hearings has jurisdiction to hear and initially decide this matter in an adjudicative proceeding. RCW 9.46.140; 34.05.413, 34.12.030(1), and WAC 230-17-025.

3. The Commission bases its proposed revocation of Ms. Schaefer's gambling license on the provisions of RCW 9.46.075(1), (3), and (8); RCW 9.46.153(1); WAC 230-03-085(1) and (8)(a). Conclusions of Law No. 4 through 7 contain the applicable language of these statutes and administrative rules:

4. RCW 9.46.075 is the Commission's legislative grant of authority to deny, suspend, or revoke gambling licenses or permits. "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;

(3) has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;

(8) fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of [chapter 9.46 RCW][.]

5. Ms. Schaefer has an affirmative obligation to come forward with clear and convincing evidence that it is qualified to possess a gambling license. RCW 9.46.153(1) declares that

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[.]

6. "Clear and convincing evidence" is a higher burden of proof than "preponderance of the evidence." See, *Hardee v. Department of Social and Health Services*, 172 Wn.2d 1, 6-18, 256 P.3d 339 (2011).

7. The Commission also relies on its administrative rules. WAC 230-03-085 states in plain language when the Commission will deny, suspend, or revoke an application, license or permit. "We [referring to the Commission] 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;

(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[.]

8. The heart of the Commission's case is that it issued the 2013 public card room employee license to Ms. Schaefer by mistake. Were it not for the mistake, the Commission would not have issued the license to Ms. Schaefer.

9. The January 2011 Settlement Order contained an agreement between the Commission and Ms. Schaefer: she would have no involvement directly or indirectly "with any gambling activity." Working as a dealer in a casino is involvement with gambling activity. The provision in the January 12, 2011, Settlement Order was in the disjunctive: "no involvement directly or indirectly with any gambling activity" OR "any involvement with Northwest Gaming, Inc. or Ringo's Little Vegas that would make Thomas or Linda Schaefer substantial interest holders, as defined in WAC 230-03-045."

10. In this case, the Commission issued Ms. Schaefer a license contrary to the language in the January 2011 Settlement Order where the parties agreed that Ms. Schaefer would have "no involvement directly or indirectly with any gambling activity." I conclude that working as a license card room employee is direct involvement with gambling activity.

11. I conclude that the Commission has proved by a preponderance of the evidence that Ms. Schaefer violated the statutes and administrative rules cited above and that she represents a threat to the effective regulation of gambling in this State.

12. I also conclude that Ms. Schaefer has failed to prove by clear and convincing evidence that she should continue to be licensed by the Commission.

13. I conclude that Ms. Schaefer's gambling license should be revoked.

From the foregoing conclusions of law, NOW THEREFORE,

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INITIAL ORDER

IT IS ORDERED That Ms. Schaefer's license, no. 68-18922, is REVOKED.
DATED at Tacoma, Washington, this 6th day of December, 2013.

John M. Gray

John M. Gray
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). Petitions for review are governed by WAC 230-17-090:

"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 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 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 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." WAC 230-17-090(4).

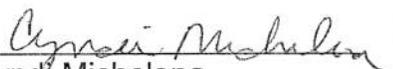
"Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us." WAC 230-17-090(5).

"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." WAC 230-17-090(6).

"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." WAC 230-17-090(7).

Certification of Mailing

I certify that I mailed true and correct copies of the **Initial Order Revoking Gambling License** to the following parties, postage prepaid this 6th day of December 2013 at Tacoma, Washington.


Cyndi Michelena
Legal Secretary

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