

NOV 17 2014

GOVERNMENT COMPLIANCE
& ENFORCEMENT

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

In The Matter Of:

ALMA, LLC, d/b/a O'Callahans,
Lakebay, Washington

License No. 05-20305.

OAH Docket No. 2014-GMB-0017

Agency No. CR 2014-01213

INITIAL ORDER

1. ISSUES

1.1. Has O'Callahans violated RCW 9.46.075(1) and (8), RCW 9.46.153(1), and WAC 230-03-085(1), (3), and (4) to warrant the revocation of O'Callahans' punchboard/pulltab license?

2. ORDER SUMMARY

2.1. O'Callahans failed to pay its gambling tax, including penalties and interest, to Pierce County for the period from May 2009 to December 2011. In doing so, O'Callahans violated RCW 9.46.075(1) and (8), RCW 9.46.153(1), and WAC 230-03-085(1), (3), and (4). Those violations warrant the revocation of O'Callahans' punchboard/pulltab license, no. 05-20305.

3. HEARING

3.1. Hearing Date: Tuesday, October 21, 2014.

3.2. Administrative Law Judge: John M. Gray, ALJ.

3.3. Appellant: Alma, LLC, d/b/a O'Callahans.

3.3.1. Representative: Gregory L. Calahan.

3.3.2. Witnesses:

3.3.2.1. Gregory L. Calahan.

3.3.2.2. Allen Richardson, Field Agent, Pierce County, Budget & Finance Dept.
(called as an adverse witness).

3.4. Agency: Washington State Gambling Commission.

3.4.1. Representative: Gregory J. Rosen, Assistant Attorney General

3.4.2. Witnesses:

3.4.2.1. Allen C. Esparza, Special Agent, Gambling Commission.

3.4.2.2. Allen Richardson, Field Agent, Pierce County, Budget & Finance Department. (James Moore, Field Agent, Pierce County, Budget & Finance Department, attended the hearing but did not testify.)

3.4.2.3. Jennifer Stretch, Paralegal, Gambling Commission.

3.5. Exhibits: The Commission's Exhibits 1 through 9 were admitted, without objection. The licensee's ("O'Callahans") exhibit A (pp. 1-5) was admitted without objection.

3.6. Other: All witnesses were sworn before they testified.

4. FINDINGS OF FACT

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

Jurisdiction

4.1. The Washington State Gambling Commission ("Commission") issued a Notice of Administrative Charges and Opportunity for Adjudicative Proceeding ("NOA") to O'Callahans on July 9, 2014. The Commission served the NOA by placing two copies in the United States mail on July 10, 2014, one by regular mail and the other by certified mail.

4.2. Gregory Calahan filed a Request for Administrative Hearing and Interpreter with the Commission, which the Commission received on July 29, 2014.

4.3. The Department issued a punchboard/pulltab license to O'Callahans most recently on or about September 30, 2013. The license expired on September 30, 2014, at midnight. The license number was 05-20305.

4.4. O'Callahans is located in Lakebay, Washington. Lakebay, Washington is located in Pierce County, Washington.

- 4.5. Gregory Calahan is the owner of and a member of the limited liability company known as Alma, LLC, which does business under the name of O'Callahans. Exhibits 3, page 2, and 9, page 2; testimony of Gregory Calahan.
- 4.6. Pierce County taxes gambling activities within its jurisdiction. Its gambling tax is codified in Pierce County Code 4.04. Exhibit 7, pp. 5-10.
- 4.7. The Pierce County Budget & Finance ("B&F") Department monitors and collects personal property taxes and gambling taxes. The Pierce County tax obligation is a "self-reporting" system. Pierce County does not send tax reporting forms to gambling licensees.
- 4.8. The B&F Department does not have the capability to accept electronic payments toward gambling taxes.
- 4.9. Allen Richardson is a field agent employed by the Pierce County B&F Department. He is the custodian of gambling tax records for Pierce County, Washington. He has worked for the B&F Department for eight and one-half years. Before that, he worked in a similar capacity for Kitsap County for thirteen and one-half years. He has twenty-two years of experience working with gambling taxes.
- 4.10. In July 2011, the B&F Department discovered that O'Callahans had not filed its gambling tax returns or paid its gambling taxes for the period of May 2009 through December 2011. On July 13, 2011, the B&F Department mailed a letter to O'Callahans notifying it of this fact, and included a declaration of intent, a gambling tax form, and a copy of the Pierce County code regarding gambling taxes. O'Callahans turned the matter over to its bookkeeper, a CPA.
- 4.11. There was a "gap" period between July 2011 through February 2012 when there was no contact between O'Callahans and the B&F Department.
- 4.12. The testimony of the parties conflicted on material points. Having carefully considered and weighed all the evidence, including the demeanor and motivations of the parties, the reasonableness of the testimony, and the totality of the circumstances presented, I resolve the conflicting testimony in this way. Mr. Calahan testified that he had an agreement with the Pierce County B&F Department to pay \$500 per month toward his unpaid back gambling taxes in addition to his monthly payments on his then current gambling taxes. Mr. Richardson testified to the contrary, that there was no agreement between Mr. Calahan and the Pierce County B&F Department. The evidence shows that O'Callahans paid \$500 per month to the B&F Department beginning in March 2012 and continuing through

August 2013. Mr. Richardson's September 22 (Exhibit 2, pp. 5-6) and November 20, 2013 (Exhibit 2, page 4) letters suggest there was such an agreement; for example, quoting from the September 11 letter: "You previously had agreed to pay \$500 a month towards this debt." I find that Mr. Richardson meant there was no written agreement for the payment of the unpaid gambling taxes, but that there was either a verbal agreement or the appearance of an agreement created by O'Callahan's practice of sending an extra \$500 per month with its ongoing tax obligations. In entering my findings, I need not be persuaded beyond a reasonable doubt as to the true state of affairs, nor must the persuasive evidence be clear, cogent, and convincing. The trier of fact need only determine what most likely happened.

- 4.13. Mr. Calahan paid \$500 per month to the B&F Department beginning in March 2012 and continuing through August 2013.
- 4.14. Mr. Calahan mailed a letter to the B&F Department on or about August 7, 2013, in which he asked for relief of all penalties and interest that had accrued on O'Callahans' delinquent gambling taxes.
- 4.15. Mr. Richardson replied to Mr. Calahan on September 11, 2013, denying Mr. Calahans' request to eliminate penalties and interest on the ground that Pierce County Code section 4.04 does not allow for elimination of penalties and interest assessed on gambling taxes owed to Pierce County. Mr. Richardson's September 11 letter included a balance sheet that showed the gambling taxes, penalties and interest from the delinquent period (May 2009 through December 2011) and the \$500 monthly payments from March 2012 through June 2013. The balance sheet revealed that the beginning balance due was \$23,397.41 and the ending balance due (through June 2013) was \$19,119.73. Exhibit 4.
- 4.16. Mr. Calahan stopped making the \$500 monthly payments to the B&F Department after August 2013 when he received Mr. Richardson's September 11 response. After August 2013, Mr. Calahan intentionally did not call the B&F Department in general or Mr. Richardson in particular because he believed "you're not going to catch me twice," meaning that he thought his tax debt was increasing despite his payments to the B&F Department. Mr. Calahan admits that he owed, and continues to owe, unpaid gambling taxes for the period May 2009 to December 2011.
- 4.17. Mr. Calahan sent "short payments" to the B&F Department in August, September, October, and November 2013. "Short payments" are payments consisting of tax only, but no penalties or interest.

- 4.18. Pierce County returned the short payments to O'Callahans because it is their policy not to accept short payments.
- 4.19. Mr. Calahan did not resume any payments on the unpaid gambling tax debt.
- 4.20. Jennifer Stretch is a paralegal employed by the Commission. She has worked for the Commission for seven and one-half years.
- 4.21. On November 20, 2013, Mr. Richardson wrote to Jennifer Stretch explaining that the business was on a payment plan for previously delinquent taxes, but stopped making any payments. Mr. Richardson asked the Gambling Commission for assistance in collecting the unpaid gambling taxes. Exhibit 5.
- 4.22. Ms. Stretch wrote to Mr. Calahan on December 23, 2013, informing him that Mr. Richardson had contacted the Commission to ask for its assistance. She identified the amount owed as \$23,397, which was the most current information she had.¹ She urged him to contact Mr. Richardson to resolve the situation, and included Mr. Richardson's telephone number. The letter included this language in bold-faced type: "Failure to do so may result in the suspension or revocation of your gambling license." Exhibit 6.
- 4.23. Mr. Richardson wrote to Mr. Calahan on March 6, 2014 acknowledging receipt of Alma LLC's January 2014 gambling tax return and enclosing an Excel spreadsheet showing the taxes from May 2009 to December 2011. He asked Mr. Calahan to contact him no later than March 21, 2014 to discuss the spreadsheet and resumption of payments, or else he would ask the Commission to revoke or suspend Alma LLC's license. Exhibit A.
- 4.24. The spreadsheet that Mr. Richardson included in the March 6 letter showed only amounts that remained unpaid. It did not show amounts that O'Callahans had paid previously. The purpose of the spreadsheet was to show only what was still owed. The total amount still owed as of March 6, 2014, was \$19,826.68, which was similar to the amount shown in the September 11, 2013 balance sheet (see Finding of Fact No. 4.14). The difference between the two numbers was the accrual of six months of interest at \$117.28 per month.
- 4.25. Mr. Calahan did not contact the B&F Department as Mr. Richardson requested in the March 6 letter.

¹ Mr. Richardson's September 11, 2013 letter to Mr. Calahan included the enclosure showing the unpaid debt had decreased to \$19,119.73 as of that date. Exhibit 4.

- 4.26. Mr. Richardson wrote to Ms. Stretch on June 6, 2014, informing the Commission that Pierce County had not convinced Mr. Calahan to resume payments on their delinquent gambling taxes. Mr. Richardson asked the Commission to revoke or suspend Alma LLC's gambling license. Exhibit 7.
- 4.27. Ms. Stretch wrote to Mr. Calahan on June 17, 2014, informing him of the June 6 letter from Mr. Richardson, again urged Mr. Calahan to contact Mr. Richardson, supplied his telephone number, and warned again in bold-faced type: "Failure to do so may result in the suspension or revocation of your gambling license." Exhibit 8.
- 4.28. Allen C. Esparza is a Special Agent employed by the Commission, currently assigned to the Financial Investigations Unit. He has worked for the Commission for eleven years. He has a B.A. degree in criminal justice and over 700 hours of additional training by the Commission. He is a certified fraud examiner. Special Agent Esparza received an assignment to investigate Pierce County's claim of unpaid gambling taxes owed by O'Callahans and Pierce County's request to revoke O'Callahans' gambling license because of that unpaid gambling tax debt. He prepared Cases Report No. 2014-01213, submitted on or about July 2, 2014, and a supplemental report submitted on September 15, 2014, with attachments showing Pierce County's and the Commission's efforts to collect the unpaid gambling taxes from O'Callahans. Exhibits 1 and 2.
- 4.29. The Commission issued an NOA to Mr. Calahan on July 10, 2014, mailing copies of the NOA to O'Callahans by both regular and certified mail that date. The NOA summarized the history of the unpaid gambling taxes, the legal authority to revoke a gambling license on the basis of unpaid gambling taxes, and informed O'Callahans that it was seeking to revoke O'Callahans' gambling license because of the unpaid gambling taxes. It also informed O'Callahans of O'Callahans' right to a hearing.
- 4.30. Gregory Calahan asked for a hearing in the document titled Request for Administrative Hearing and Interpreter. Mr. Calahan checked the box that he did not need an interpreter, wrote that he would represent himself, and checked the box that he wanted a hearing. He returned the document to the Commission. The Commission received Mr. Calahan's request for a hearing on July 29, 2014.
- 4.31. The Commission received O'Callahans' last gambling license renewal request on September 16, 2013, which it approved. That license expired by its own terms on September 30, 2014 at midnight. Exhibits 1-1 and 9.

- 4.32. The total amount that O'Callahans owes to Pierce County as of the date of the hearing is \$20,651.45.
- 4.33. The Commission urges the revocation of O'Callahans' gambling license. Mr. Calahan stated in his testimony and closing argument that he stopped punchboard/pulltab sales in April 2014 and that he does not want his gambling license.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. The Commission served the Notice of Administrative Charges on July 10, 2014. O'Callahans requested a hearing on the form provided by the Commission, which the Commission on July 29, 2014. Thus, the Commission received the appeal on the 19th day after service of the NOA. The twentieth day after service of the NOA was July 30, 2014. The twenty-third day after service of the NOA was August 2, 2014. By either count, O'Callahans timely filed its request for a hearing on the issues raised in the NOA. Even if O'Callahans' license expired on September 30, 2014, the Office of Administrative Hearings continues to have jurisdiction to hear this case because it acquired jurisdiction before the license expired. *Nims v. Bd. Of Registration*, 113 Wn. App. 499, 507, 53 P.3d 52 (2002).
- 5.2. 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.
- 5.3. The Commission bases its proposed revocation of O'Callahans' gambling license on the provisions of RCW 9.46.075(1) and (8); RCW 9.46.153(1); WAC 230-03-085(1), (3), and (4). Conclusions of Law No. 5.4 through 5.7 contain the applicable language of these statutes and administrative rules. Commission's Memorandum of Legal Authorities.
- 5.4. 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;

....

(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][.]

5.5. RCW 9.46.153(1) is a statute containing a separate statement of RCW 9.46.075(8):

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[.]

5.6. "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).

5.7. 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; or

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

(4) Has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned us to take action[.]

5.8. The evidence shows that Pierce County made numerous efforts to get O'Callahans to pay its delinquent gambling taxes, but that O'Callahans failed to do so. The ALJ concludes that the Commission has proved by a preponderance of the evidence that

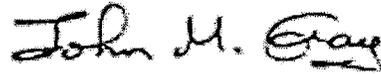
O'Callahans violated RCW 9.46.075(1) and WAC 230 03 085(1); O'Callahans committed specific acts – repeated failures to pay its gambling taxes – that constitute its failure to comply with its legal requirement to pay its gambling taxes under the applicable statutes and administrative rules. RCW 9.46.075.

- 5.9. The Commission has also proved by a preponderance of the evidence that O'Callahans failed to pay its gambling taxes for the periods from May 2009 through December 2011. In so doing, O'Callahans violated WAC 230 03 085(4). It failed to pay its gambling taxes on time and the local taxing authority (here, Pierce County) petitioned the Commission to revoke O'Callahans' gambling license. The same evidence shows that O'Callahans showed a willful disregard of statutes, administrative rules, and local ordinances by failing to pay its gambling taxes over all of those years. WAC 230 03 085(3).
- 5.10. RCW 9.46.075(8) and 9.46.153(1) require a licensee to prove by clear and convincing evidence that it is qualified to continue to hold a gambling license. Mr. Calahan testified that he knows he owes the taxes and that the tax debt remains unpaid. The evidence shows that he will intentionally not cooperate with the B&F Department to pay the amounts owed and that he does not care if his gambling license is revoked. Consequently, O'Callahans failed to prove by clear and convincing evidence that it is qualified to continue to hold a gambling license.
- 5.11. The ALJ concludes that the Commission has proved its case for revoking O'Callahan's punchboard/pulltab gambling license. The ALJ further concludes that Mr. Calahan failed to prove, by clear and convincing evidence, that O'Callahans is qualified to continue to hold a gambling license. The ALJ concludes that O'Callahans' license should be revoked.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT O'Callahans' punchboard/pulltab license, no. 05-20305, is REVOKED.

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



Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

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).

CERTIFICATE OF MAILING IS ATTACHED

REQUEST FOR RECONSIDERATION

Name _____

Docket No. 2014-GMB-0017

Please explain why you want the Final Order reconsidered. Try to be specific. For example, explain:

- Why you think the Order is wrong (why you disagree with it).
- How the Order should be changed.
- The importance of certain facts that the Administrative Law Judge should consider.

I want the Administrative Law Judge to reconsider the Final Order because:

Signature and Date:

Address:

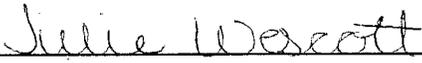
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2014-GMB-0017

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

<p>Alma, LLC dba O'Callahans Attn: Gregory Calahan P.O. Box 976 Vaughn, WA 98394 Licensee</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Gregory J. Rosen Assistant Attorney General Office of the Attorney General 1125 Washington St SE PO Box 40100 Olympia WA 98504 Fax: (360) 664-0229 Agency Representative</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Maureen Pretell Washington State Gambling Commission PO Box 42400 Olympia WA 98504 Fax: (360) 486-3625 Agency Contact</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Thursday, November 13, 2014

OFFICE OF ADMINISTRATIVE HEARINGS



 Julie L. Wescott
 Legal Secretary