

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Summary Suspension of the)
License to Operate Gambling Activities of:) NO. CR 2011-01253
)
Chopsticks) **FINDINGS OF FACT,**
Vancouver, Washington,) **CONCLUSIONS OF LAW,**
) **AND ORDER OF SUMMARY**
) **SUSPENSION OF LICENSE**
Licensee.)

RCW 9.46.070(17) authorizes the Washington State Gambling Commission (Commission) to summarily suspend¹ a license, subject to final action by the Commission. The Director has reviewed this Order of Summary Suspension and has issued it for service.

This order takes effect when served on Chopsticks, its representative, or its agent. A Commission Special Agent shall seize Chopsticks' license and the licensee must stop conducting gambling activities.

FINDINGS OF FACT

I.

Rick Day is Director of the Washington State Gambling Commission and issues this order. Jurisdiction of this proceeding is based on chapter 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, and Title 230 WAC.

II.

The Washington State Gambling Commission issued Chopsticks license number: 05-20718, authorizing Class "A" Punchboard/Pull-Tab activity in Vancouver, Washington. The Commission issued this license, which expires on September 30, 2012, subject to the licensee's compliance with state gambling laws and Commission rules.

III.

After a thorough review of the report by a Commission Special Agent (agent) about the facts in this matter, the Director accepts the report as true and has determined that the summary suspension is necessary.

¹ WAC 230-17-165 defines summary suspension as immediately taking a license or permit from a person or organization which prevents them from operating or conducting gambling activities.

IV.

SUMMARY:

On June 16, 2011, Jian Hua Wu, 50% owner and substantial interest holder of Chopsticks, was charged with:

- a) Defrauding a Public Utility 1st Degree
- b) Manufacture of a Controlled Substance- Marijuana
- c) Malicious Mischief 1st Degree
- d) Maintaining a Dwelling for Controlled Substance

On or about October 6, 2011, an Amended Information was filed charging Mr. Wu as follows:

- a) Defrauding a Public utility 1st Degree
- b) Manufacture of a Controlled Substance-Marijuana
- c) Malicious Mischief 2nd Degree

On October 6, 2011, Mr. Wu pled guilty to Manufacturing a Controlled Substance-Marijuana, Malicious Mischief 2nd Degree, and Defrauding a Public Utility 1st Degree.

FACTS:

1) On September 16, 2011, in the context of an investigation to determine if Chopsticks qualified for continuing licensure, Commission staff became aware that one of the licensee's owners had been charged with four felonies in Clark County Superior Court.

2) An Agent obtained and reviewed certified court records related to Jian Hua Wu's criminal charges. Mr. Wu is a 50% owner and substantial interest holder of Chopsticks.

3) Review of those records reflected that on June 16, 2011, Mr. Hua was charged with:

- Defrauding a Public Utility 1st Degree. Mr. Wu "did cause physical damage to the property of another in the amount exceeding five thousand dollars, and/or did defraud a public utility by diverting services in an amount exceeding \$1,500, and/or tampering with utility service in furtherance of criminal activity."
- Manufacture of a Controlled Substance, Marijuana. Mr. Wu "did knowingly manufacture a controlled substance, to-wit: Marijuana."
- Malicious Mischief 1st Degree. Mr. Wu "did knowingly and maliciously cause an interruption or impairment of services rendered to the public by physically damaging or tampering with a public utility, power, or communication."
- Maintaining a Dwelling for Controlled Substances. Mr. Wu "did knowingly keep or maintain a dwelling ... which is resorted to by persons using controlled substances in violation of the law for the purpose of keeping or selling controlled substances, to-wit: Marijuana."

4) On June 13, 2011, a Clark County pre-booking/Probable Cause Sheet was filed in the Clark County Superior Court in the licensee's name. The probable cause statement alleged that Clark County Sheriff's officers executed a search warrant for Manufacturing of Marijuana. Before executing the search, Mr. Wu and a co-defendant arrived at the house. Mr. Wu had the keys to the residence. In the residence, over 1,600 marijuana plants in various growth stages were found. During the search, a power diversion was located, and PUD officials estimated that approximately \$10,000 worth of kilowatt-hours of electricity was stolen. The interior of the residence, which was a rental, was destroyed by mold, false walls, with damage estimated at tens of thousands of dollars. Mr. Wu waived his Miranda rights, and admitted that he had been hired to add chemicals and water to the marijuana. Mr. Wu told officers that he did not start the power at the residence; however, records show that Mr. Wu was the power subscriber for the residence.

5) On or about October 6, 2011, an Amended Information arising from the same facts was filed, charging Mr. Wu as follows:

Defrauding a Public utility 1st Degree (Count 1)

Manufacture of a Controlled Substance, Marijuana (Count 2)

Malicious Mischief 2nd Degree (Count 3)

6) On October 6, 2011, Mr. Wu pled guilty to three felonies: Manufacturing a Controlled Substance, Marijuana; Malicious Mischief 2nd Degree; and Defrauding a Public Utility 1st Degree.

7) On Count 1, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. On Count 2, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. On Count 3, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. All jail time was to run concurrently. Mr. Wu was also ordered to pay \$15,467.07 in restitution in addition to customary fees and financial penalties.

8) Mr. Wu failed to report to Commission staff both his pending charges and his guilty finding.

CONCLUSIONS OF LAW

I.

1) **RCW 9.46.070** provides that the Commission shall have the following powers and duties: The Commission may authorize the Director to temporarily suspend licenses subject to final action by the Commission.

2) **WAC 230-17-165** provides as follows:

(1) "Summary suspension" means immediately taking a license or permit from a person or organization which prevents them from operating or conducting gambling activities.

(2) The commission delegates its authority to the director to issue an order to summarily suspend any license or permit if the director determines that a licensee or permittee has performed one or more of the actions identified in RCW 9.46.075 as posing a threat to public health, safety, or welfare.

(3) The commission deems the following actions of a licensee or permittee constitute an immediate danger to the public safety and welfare:

(a) Failing or refusing to comply with the provisions, requirements, conditions, limitations, or duties imposed by chapter 9.46 RCW or any rules adopted by the commission; or

(d) Being convicted of, or forfeiting of a bond on a charge of, or having pled guilty to:

(vii) Any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude; or rule; or

(h) Making a misrepresentation of, or failure to disclose, a material fact to the commission; or

(i) Having pursued or 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; or

(4) An order of summary suspension takes effect immediately on service unless stated otherwise in the order of summary suspension.

On October 6, 2011, Mr. Wu was found guilty of three felonies: Manufacture of a Controlled Substance, Marijuana; Malicious Mischief 2nd Degree; and Defrauding a Public Utility 1st Degree. On Count 1, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. On Count 2, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. On Count 3, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. All jail time was to run concurrently. Mr. Wu was also ordered to pay \$15,467.07 in restitution in addition to customary fees and financial penalties.

The licensee's actions constitute an immediate danger to public safety and welfare based on WAC 230-17-165(3)(a), (d), (h), and (j) and are a basis for Chopsticks to immediately stop conducting gambling activities.

3) **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 licensee, or any person with any interest therein: (The following subsections apply.)

(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;

(2) Knowingly causes, aides, abets or conspires with another to cause any person to violate any of the laws of this state or the rules of the commission;

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude;

(7) Makes a misrepresentation of, or fails to disclose, a material fact to the commission;

(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) **WAC 230-03-085(1)** provides that the Commission may revoke any license when a licensee commits any act that constitutes grounds under RCW 9.46.075 for revoking a license, or commits any other act that the Commission determines constitutes a sufficient reason in the public interest for revoking a license.

5) **WAC 230-06-085** Report criminal actions filed

(1) Licensees must report to us in writing within thirty days all criminal actions filed against the licensee, any manager of the licensed gambling activity, the business organization, or any person holding a substantial interest in the business organization.

(2) We must receive a copy of the final written decision or settlement within thirty days after the case is resolved.

6) **WAC 230-03-085(7)** provides that that the Commission may revoke any and all licenses or permits of any holder, when the holder fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us.

7) **WAC 230-03-085(8)** provides that the Commission may revoke any and all licenses or permits of any holder, when the holder 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.

8) **RCW 9.46.153(1)** provides 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.

On October 6, 2011, Mr. Wu pled guilty to three felonies: Manufacture of a Controlled Substance, Marijuana; Malicious Mischief 2nd Degree; and Defrauding a Public Utility 1st Degree. On Count 1, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. On Count 2, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 173 days on work release. On Count 3, Mr. Wu was sentenced to serve seven days in jail, with credit for time served, in addition to 143 days on work release. All jail time was to run concurrently, Mr. Wu was also ordered to pay \$15,467.07 in restitution in addition to customary fees and financial penalties.

Mr. Wu is a 50% owner of the licensee, and exerts management and control over Chopsticks. Based on Mr. Wu's actions, the licensee has demonstrated that it poses a threat to the effective regulation of gaming, or increases the likelihood or unfair practices as demonstrated by Mr. Wu's criminal record and prior activities, including working with others to operate a marijuana operation. Mr. Wu pled guilty to crimes involving moral turpitude. In addition, the licensee failed to report Mr. Wu's criminal charges and guilty pleas, both of which are material facts, in violation of WAC 230-06-085.

Chopsticks has also demonstrated that it has failed to establish clearly and convincingly, as required by RCW 9.46.153(1), that they are qualified to be licensed. As a result, there are grounds to revoke Chopsticks license based on RCW 9.46.075(1), (2), (4), (7), (8), and (10) and WAC 230-03-085(1), (7) and (8).

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II.

The licensee's actions are an immediate danger to public safety and welfare, and the licensee has failed to comply with chapter 9.46 RCW or Commission rules. The immediate suspension of Chopsticks gambling activity is required to protect public safety and welfare.

ORDER

Based on the FINDINGS OF FACT AND CONCLUSIONS OF LAW and the Director's authority under RCW 34.05.422, RCW 9.46.070(17), and WAC 230-17-165, the Director orders that Chopsticks license is summarily suspended, pending a formal hearing by an Administrative Law Judge.

STATEMENT OF RIGHTS

(1) **You may ask for a stay of this Order.** To do so, you must complete and return to the Commission the enclosed Application for Stay Hearing form within fifteen (15) days from the date you receive this Order. If the Commission receives a timely request, we will hold a hearing within seven (7) days as required by WAC 230-17-170(3). The stay hearing will determine if your suspension should continue, or whether the suspension may be modified.

At the stay hearing, you will have to prove by clear and convincing evidence that:

- (a) You will likely win at hearing; and
- (b) If your suspension continues, you will suffer serious injury. Under this section, loss of income from licensed activities is not considered serious injury; and
- (c) Removing the immediate suspension will not hurt others in this case; and
- (d) The threat to the public safety or welfare does not justify continuing the suspension, or that modifying the suspension will adequately protect the public.

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