

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Suspension or Revocation of)
the License to Conduct Gambling Activities of:)
)
Spitfire Pub and Eatery)
Spokane Valley, Washington,)
)
License.)
_____)

NO. CR 2011-00147

**NOTICE OF ADMINISTRATIVE
CHARGES AND OPPORTUNITY
FOR AN ADJUDICATIVE
PROCEEDING**

I.

The Washington State Gambling Commission issued Spitfire Pub and Eatery, organization number 00-21833, license number 05-20801, authorizing Class "A" Punchboard/Pull-Tab activity. The license expires on March 31, 2011, and was issued subject to the licensee's compliance with state gambling laws and regulations.

II.

Rick Day, Director of the Washington State Gambling Commission, charges the licensee with the following violations of the Washington State Gambling Act, 9.46 RCW, and WAC Title 230:

The licensee failed to pay an exceeding license class fee, failed to submit documents requested by a Commission Special Agent, and failed to submit its punchboard/pull-tab activity report for the third and fourth quarters of 2010.

- 1) The licensee was licensed from April 2009 through March 2010 for Class "A" Punchboard/Pull-Tab Activity, which is authorized to have annual gross gambling receipts up to \$50,000. However, the licensee's gross gambling receipts were \$63,153. Therefore, the licensee needed to upgrade its license class to a "B" level, which allows for up to \$100,000 in gross gambling receipts.
- 2) On November 2, 2010, Commission staff sent Spitfire Pub and Eatery. The letter states that under WAC 230-06-135, because the licensee exceeded its license class and then failed to upgrade its class, Spitfire Pub and Eatery needed to pay a \$645 fee.
- 3) On December 20, 21, and 28, 2010, Commission staff attempted to contact Joshua Sherwood, owner, by telephone to inform him that he needed to pay the exceeding license class fee. On December 28, 2010, a Commission Special Agent (agent) went to the Spitfire Pub and Eatery and left copies with the bartender of the exceeding class fee paperwork that the licensee needed to submit.

4) On January 21, 2011, an agent talked to Mr. Sherwood by telephone. Mr. Sherwood told the agent:

- a) On September 1, 2010, he entered into an agreement to have a new person be the managing member and purchase the bar.
- b) Today was the first day since September 1, 2010, that he had been in the bar.
- c) He just found the exceeding license class paperwork left at the bar by an agent.

5) The agent told Mr. Sherwood to send in documents regarding a possible new ownership or substantial interest holder no later than January 28, 2011. On January 21, 2011, the agent sent Mr. Sherwood a letter requesting information and documents about the purchase and sale documents and other agreements by January 28, 2011. As of March 2, 2011, Mr. Sherwood has not submitted the information requested by the agent.

6) The licensee failed to pay the required fees of \$645 in connection with exceeding their Punch Board/Pull-Tab license class for their license year ending in March 31, 2010, in violation of WAC 230-06-130(1), and (2).

7) The licensee violated WAC 230-06-105 and WAC 230-06-080 when it failed to report a change of management and submit documents and information about changes made:

- In the organizational and management structure of the licensee.
- In contracts and agreements related to gambling activities.
- That alters the organizational structure of the licensee's organization or business activities in Washington.

8) The licensee failed to submit its punchboard/pull-tab activity report for the third and fourth quarters of 2010. The activity report was due January 30, 2011. However, the activity report was not received. On February 10, 2011, Commission staff sent the licensee a letter giving Spitfire Bar & Eatery until February 28, 2011, to submit its activity report to avoid administrative action against its gambling license. As of March 2, 2011, the licensee has failed to submit its activity report for the third and fourth quarters of 2010, in violation of WAC 230-14-284.

9) Therefore, under RCW 9.46.075(1) and (5) and WAC 230-03-085(1) and (7) grounds exist to suspend or revoke Spitfire Bar and Eatery's license.

RCW 9.46.075 Denying, suspending, or revoking an application, license 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.

(5) Denies the commission or its authorized representatives, including authorized local law

enforcement agencies, access to any place where a licensed activity is conducted or who fails promptly to produce for inspection or audit any book, record, document or item required by law or commission rule.

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

We 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: (The following subsections apply.)

- (1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075.
- (7) 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.

WAC 230-06-130 Exceeding license class

(The following subsections apply.)

- (1) Licensees must not exceed the gross gambling receipts limits for their license class during any annual license period.
- (2) Licensees must apply a projection of year-to-date receipts to the remaining period of their license and, if it indicates that it is reasonably likely that they may exceed their license, they must immediately: (a) Apply for a license that authorizes the anticipated level of gross gambling receipts; and (b) Submit the fee required for the new license, minus the amount originally submitted for the previous license, plus a change of classification fee.

WAC 230-06-135 Failing to apply for license class upgrade.

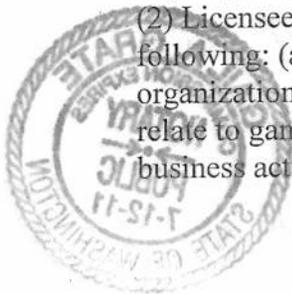
(The following subsections apply.)

- (1) If licensees fail to apply for a license class upgrade and exceed the license class limit within a present or previous license year, we assess an additional fee. We charge an additional fee of up to fifty percent of the difference between the fee for the present license class and the new license class, or one thousand dollars, whichever is less.
- (2) Licensees must pay any required license class upgrade fee, plus any additional fee required by subsection (1) of this section, within thirty days of our notification.

WAC 230-06-080 Report changes to application information and submit updated documents and information.

(The following subsections apply.)

- (1) Licensees must notify us in writing if any information filed with the application changes in any way within thirty days of the change.
- (2) Licensees must submit to us any new or updated documents and information, including the following: (a) Articles of incorporation or bylaws, or any other documents which set out the organizational structure and purposes; and (b) All oral or written contracts and agreements which relate to gambling activities or alter the organizational structure of the licensee's organization or business activities in Washington.



WAC 230-06-105 Report change of management.

- (1) Licensees must report in writing changes made to their organization's management, directors, officers, or any other position that makes management decisions directly affecting the operation of their licensed gambling activity. We provide the forms to report these changes.
- (2) If you are a commercial business licensee, you must report within thirty days.

WAC 230-14-284 Activity for punchboard and pull-tab licensees

Punchboards and pull-tab licensees must submit an activity report to the Commission. Licensees must complete the report in the format we require and must:

(The following subsections apply.)

- (1) Cover the periods: (a) January 1 through June 30; and (b) July 1 through December 31; and
- (2) Be received at our administrative office or postmarked no later than thirty days following the end of the reporting period.

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 or discuss settlement options, the enclosed request for hearing must be completed 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 a request for hearing for hearing will result in the entry of a default order REVOKING your license.

STATE OF WASHINGTON)
) ss.
 COUNTY OF THURSTON)

Rick Day, being duly sworn on oath, says: That he has read this Notice of Administrative Charges and Opportunity for An Adjudicative Proceeding, knows the contents of it, believes it to be true, that he is the Director of the Washington State Gambling Commission, and in that capacity has executed said Notice.

STATE OF WASHINGTON)
) ss.
 COUNTY OF THURSTON)

I hereby certify that I have this day served a copy of the document upon all parties of record in the proceeding by mailing a copy thereof, properly 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 4 day of March, 2011

Mawreen Pretell

Communications and Legal Department
Washington State Gambling Commission

Rick Day

 RICK DAY, DIRECTOR

SUBSCRIBED AND SWORN TO before me
 this 4 day of March, 2011
Gail A. Grate

 NOTARY PUBLIC in and for the State of
 Washington residing at Olympia
 My Commission expires on July 12, 2011

