

MAY 15 2014

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

Gambling Commission
Comm. & Legal Division

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

OAH Docket No. 2014-GMB-0002
GMB No. CR 2013-01662

BOBBY'S DRY DOCK
Blaine, Washington

**CORRECTED INITIAL ORDER
REVOKING GAMBLING LICENSE**

Number: 05-20341,

Licensee

This Corrected Initial Order Revoking Gambling License is issued to correct two scrivener's errors in the Initial Order that was issued on May 6, 2014. The Gambling Commission filed a Motion to Correct Scrivener's Errors on May 9, 2014. The errors will appear in ~~line through type~~. The replacement language will appear as underline type. The corrections appear on page 9 of this Corrected Initial Order.

Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on April 16, 2014, at the Gambling Commission Office, 4565 7th Avenue, Lacey, Washington.

Gregory Rosen, Assistant Attorney General, Attorney General's Office, appeared and represented the Washington State Gambling Commission ("Commission"). Whatcom County Treasurer's Office Tax Specialist Nicole Moore and Gambling Commission Special Agent Alan Esparza testified on behalf of the Commission.

No one appeared or testified on behalf of Bobby's Dry Dock ("Bobby's Dry Dock") at the April 16 hearing.¹

¹ The name of the actual license holder may be La Cantina Birch Bay, d/b/a Bobby's Dry Dock, but this Initial Order will use the name "Bobby's Dry Dock" when referring to the licensee.

PROCEDURAL HISTORY

On October 15, 2013, the Commission issued the Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding. The Notice named Bobby's Dry Dock as the subject of a license revocation action.

The Commission served the Notice of Administrative Charges on Bobby's Dry Dock by placing two copies of that document in the United States mail on October 13, 2013, one by regular mail and one by certified mail.

On October 30, 2013, the Commission received Bobby's Dry Dock's Request for Administrative Hearing.

On January 22, 2014, the Commission served the Notice of Hearing to the parties and to the Office of Administrative Hearings ("OAH") setting this matter to be heard on Wednesday, April 16, 2014, beginning at 1:00 PM at the Commission's hearing room in Lacey, Washington.

At the April 16 hearing, the Commission offered Exhibits No. 1 through 9, which were admitted without objection.

Bobby's Dry Dock did not appear and offered no exhibits, either before or at the hearing.

All witnesses were sworn before they testified.

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

FINDINGS OF FACT

1. La Cantina Birch Bay is a limited liability company (LLC) that operated a restaurant and punchboard/pull tab activities in Blaine, Washington. The LLC

identified itself to the public as Bobby's' Dry Dock.

2. Bobby's Dry Dock possesses a punchboard/pull tab license. The license number is 05-20341. The license is a Type 05, Class D. Without more, the license will expire on September 30, 2014, at midnight. Exhibit 1.²

3. Bobby's Dry Dock operated punchboard and pull tab activities in Whatcom County.

4. Whatcom County imposes a tax on receipts from bingo, raffles, punchboards, pull tabs, and public card rooms. The tax is codified at Whatcom County Code chapter 3.40. The tax is levied in §3.40.020(B), punchboard and pull tabs. The tax is five percent of the net receipts obtained directly from the operation of the punchboards or pull tabs themselves. The tax is qualified by an exception that does not apply in this case. Exhibit 4.

5. Within Whatcom County government, the Treasurer's Office has the responsibility to collect the gambling tax from those who are subject to that tax. Whatcom County Code §3.40.040; Exhibit 4, page 2.

6. Nicole Moore is a tax specialist employed by the Whatcom County Treasurer's Office. She has worked in that office for approximately ten and one-half years. Her job duties include collecting the property tax, the gambling tax, and monitoring collection of the local sales and use tax.

7. The gambling tax is due twice a year on January 31 and July 31. Whatcom County Code §3.40.050, Exhibit 4, page 2.

8. Bobby's Dry Dock has eight semi-annual gambling tax payments that are

² Bobby's Dry Dock formerly held two other gambling licenses, but they expired in 2002 and 2011, and are not at issue in this case. Exhibit 1, page 1.

delinquent, dating back to January 31, 2009. Testimony of Nicole Moore and Exhibit 2, page 1.

9. The delinquent tax periods are January 31 2009; January 31, 2010; January 31, 2011; July 31, 2011; January 31, 2012; July 31, 2012; January 31, 2013; and July 31, 2013. Exhibits 4 and 7.

10. The Whatcom County Treasurer's Office wrote ten letters to Bobby's Dry Dock between February 3, 2009, and October 29, 2012, in its efforts to collect the delinquent and current gambling tax. Exhibit 3.

11. The Whatcom County Treasurer's Office made four telephone calls to the restaurant or the owner's cell phone between September 28, 2012, and June 6, 2013, in its efforts to collect the delinquent and current gambling tax. The Whatcom County Treasurer personally visited the restaurant on or about March 1, 2013, to try and collect the delinquent and current gambling tax. Exhibit 3.

12. Bobby's Dry Dock did not reply to any of the Treasurer's Office's collection letters or telephone calls. Robert Christoffer, one of the owners of the LLC, met with the County Treasurer on the occasion of that visit, but did not make any payment against the delinquent gambling tax liability.

13. On August 6, 2013, Ms. Moore wrote to the Commission, notifying the Commission that Bobby's Dry Dock owed \$24,847.28 in delinquent gambling tax and asking the Commission to revoke Bobby's Dry Dock's gambling license. Exhibits 2 and 4.

14. At Whatcom County's request, the Commission had earlier written to Bobby's Dry Dock on February 8, 2013, and telephoned Bobby's Dry Dock on June

27, 2013, to assist in the collection effort, but those efforts were also unsuccessful.

Exhibit 3.

15. Whatcom County filed a collection action in Whatcom County District Court on August 7, 2013, to collect the delinquent gambling taxes. The docket number for the collection action is CV13-1382. Exhibits 1, page 4; 8.

16. On August 21, 2013, Whatcom County Treasurer's Office notified the Commission of the former's collection lawsuit in Whatcom County. Exhibit 6.

17. Alan Esparza is a Special Agent with the Commission. He has worked at the Commission for eleven years and is currently assigned to the Financial Investigation Unit. The Commission assigned the Whatcom County Treasurer's August 6 request to him on August 20, 2013, for action. Exhibit 1, page 3.

18. Special Agent Esparza opened his case report on Bobby's Dry Dock on August 28, 2013. He wrote and submitted Case Report No. 2013-01662. Exhibit 1.

19. On February 28, 2014, the Whatcom County District Court entered an Order of Default against Bobby's Dry Dock and a Judgment against Bobby's Dry Dock under the same cause number, CV13-1832, in the amount of \$26,106.27.³

Exhibit 9.

20. The gambling taxes remain unpaid as of the date of this hearing.

CONCLUSIONS OF LAW

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

³ There is a minor discrepancy in the exhibits. Exhibit 7 shows that Bobby's Dry Dock owes \$26,095.87 as of April 16, 2014, a slightly lower amount than the Judgment amount of \$26,106.27 as of February 28, 2014. Exhibit 7. There was no evidence of any payment by Bobby's Dry Dock.

1. The Commission filed and served the Notice of Administrative Charges on Bobby's Dry Dock on October 15, 2013, by personal service. Bobby's Dry Dock filed both its Application for Stay Hearing and Request for Administrative Hearing, which the Commission received on October 30, 2013. WAC 230-17-010(1)(c) requires that the Commission receive the licensee's request for hearing within twenty days after service of the administrative charges by personal service. The twentieth day after service on Bobby's Dry Dock was Monday, November 4, 2013. Bobby's Dry Dock filed its request on the fifteenth day after service on it of the Notice of Administrative Charges. Therefore, Bobby's Dry Dock timely filed its 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 Bobby's Dry Dock 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. 4 through 7 contain the applicable language of these statutes and administrative rules. Commission's Memorandum of Legal Authorities.

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. 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[.]

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; 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

8. The evidence shows that Whatcom County made numerous efforts to get Bobby's Dry Dock to pay their delinquent and current gambling taxes, but that Bobby's Dry Dock failed to do so. The ALJ concludes that the Commission has proved by a preponderance of the evidence that Bobby's Dry Dock violated RCW 9.46.075(1) and WAC 230-03-085(1); Bobby's Dry Dock 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.

9. The Commission has also proved by a preponderance of the evidence that Bobby's Dry Dock failed to pay its gambling taxes for the periods from January 31, 2009 through July 31, 2013. In so doing, Bobby's Dry Dock violated WAC 230-03-085(4). It failed to pay its gambling taxes on time and the local taxing authority (here, Whatcom County) petitioned the Commission to revoke Bobby's Dry

Dock's gambling license. The same evidence shows that Bobby's Dry Dock 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).

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. Bobby's Dry Dock failed to appear or testify, and submitted no exhibits, at the April 16 hearing. Consequently, Bobby's Dry Dock failed to prove by clear and convincing evidence that it is qualified to continue to hold a gambling license.

11. I conclude that Bobby's Dry Dock's ~~public card room gambling license~~ ~~punchboard/pull tab license~~ should be revoked for the reasons stated in this Initial Order.

From the foregoing Conclusions of law, NOW, THEREFORE,

INITIAL ORDER

IT IS ORDERED That the Bobby's Dry Dock's ~~public card room employee license~~ ~~punchboard/pull tab license~~, no. 05-20341, is **REVOKED**. Because it was necessary to issue this Corrected Initial Order, this Corrected Initial Order also creates a new appeal period for seeking review pursuant to the Notice of Parties, below.

DATED at Tacoma, Washington, this 6th 14th day of May, 2014.



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 14th day of May, 2014 at

Tacoma, Washington.



Audrey Chambers
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