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Gambling Commission
Comm. & Legal Division

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

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

THE SHED, INC. d/b/a BROADWAY
BAR & GRILL
Spokane, Washington

Number: 65-06968,

Licensee

OAH Docket No. 2013-GMB-0077
GMB No. CR 2013-01868

INITIAL ORDER REVOKING
GAMBLING LICENSE

Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on March 25, 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"). Special Agent Kevin Maxwell testified on behalf of the Commission.

No one appeared or testified on behalf of The Shed, d/b/a Broadway Bar & Grill ("Broadway") at the March 25 hearing.¹

PROCEDURAL HISTORY

On November 19, 2013, the Commission summarily suspended Broadway's gambling license in Findings of Fact, Conclusions of Law and Order of Summary Suspension ("Summary Suspension Order"). The Notice named Broadway as the subject of a license revocation action.

¹ The actual license holder may be The Shed as a corporate entity. However, for the purposes of this Initial Order, the licensee shall be referred to as "Broadway."

2013-GMB-0007

GC No. 2013-01868

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On November 22, 2013, Teresa K. Reed personally served Robert Racicot with a cover letter, the Summary Suspension Order, an Application for Brief Adjudicative Proceeding (Stay Hearing), an Application for Adjudicative Proceeding, and Case Report No. 2013-01868 with attachments.

On November 25, 2013, the Commission received Broadway's Application for Stay Hearing and Request for Administrative Hearing.

On December 2, 2013, Administrative Law Judge Steven Smith conducted the Stay Hearing in this matter. The Administrative Law Judge issued an Order and Notice on December 13, 2013, vacating an earlier default order entered against Broadway and denying Broadway's petition for a stay of the Summary Suspension Order.

On December 27, 2013, the Commission issued a Notice of Hearing to the parties and to the Office of Administrative Hearings ("OAH") setting this matter to be heard on Tuesday, March 25, 2014, beginning at 9:00 AM at the Commission's hearing room in Lacey, Washington.

At the March 25 hearing, the Commission offered Exhibits No. 1 through 6, which were admitted without objection.

Broadway 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. Broadway possesses a public card room license. The license number is 65-06968. The license is a Type 65, Class E1. Without more, the license will expire on 2013-GMB-0007
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September 30, 2014, at midnight. Exhibit 1.²

2. Shed, Inc. is a corporation that does business as the Broadway Bar & Grill in Spokane, Washington. Exhibit 6, Finding of Fact No. 5.6, Order and Notice Granting Licensee's Motion to Vacate Order of Default Against Licensee as to Stay Hearing and Denial of Licensee's Petition for Stay or Modification of Summary Suspension of Its Public Card Room Gambling License (hereinafter, the "Stay Order").

3. Robert Racicot and Wanitta Racicot are co-owners of Shed, Inc. Each owns fifty percent of the shares of Shed, Inc. Exhibit 6, Finding of Fact No. 5.6 on page 4 of the Stay Order.

4. On August 20, 2013, the State of Washington charged Mrs. Racicot with theft in the first degree. Theft in the first degree is a class B felony. RCW 9A.56.030.

Exhibit 3.

5. The State of Washington contends that:

Between March 25, 2003 and August 18, 2011, Racicot received one hundred sixty (160) warrants from the Washington State Department of Labor & Industries, for a combined total of \$249,267 [footnote omitted], all of which was based upon the fraudulent submission of Worker Verification Forms asserting that she was not working and/or was not capable of working due to a work-related injury. Racicot negotiated each of the warrants. Exhibit 2, page 19.

6. Neither Mr. Racicot nor Mrs. Racicot notified the Commission within 30 days of August 20, 2013, that Mrs. Racicot had been charged criminally as described in Finding of Fact No. 4.

7. The Commission learned of the criminal charges against Mrs. Racicot

² Broadway formerly held two other gambling licenses, but they expired in 2002 and 2011, respectively, and are not at issue in this case. Exhibit 1, page 1.

when Special Agent Kevin Maxwell received Broadway's license file on September 25, 2013, just prior to the expiration date of Broadway's license on September 30, 2013.

8. Kevin Maxwell is a special agent employed by the Commission. He is currently assigned to the Criminal History Investigation Unit. His duties include the review of applicants' criminal histories for gambling licenses, both new applications and renewal applications. He has received training in financial investigations as well as general training for the Commission's special agents. Testimony of Kevin Maxwell.

9. Special Agent Maxwell prepared Case Report No. 2013-01868. Exhibit 1.

10. Mrs. Racicot's criminal trial is set to be heard on June 9, 2014. Exhibit 5.

CONCLUSIONS OF LAW

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

1. The Commission filed and served the Notice of Administrative Charges on Broadway on November 22, 2013, by personal service. Broadway filed both its Application for Stay Hearing and Request for Administrative Hearing, which the Commission received on November 25, 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 Broadway was Thursday, December 12, 2013. Broadway filed its request on the third day after service on it of the Notice of Administrative Charges. Therefore, Broadway 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 Broadway gambling license on the provisions of RCW 9.46.075(1), (4) (7); (8), (9) and (10); RCW 9.46.153(1); WAC 230-03-085(1), (3), and (7). Conclusions of Law No. 4 through 7 contain the applicable language of these statutes and administrative rules.

Commission's Amended 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;

...

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful 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 [chapter 9.46 RCW];

(9) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (4) of this section: PROVIDED, That at the request of an applicant for an original license, the commission may defer decision upon the application during the pendency of such prosecution or appeal; and

(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.

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

...

(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.

8. In this case, the Commission has proved by a preponderance of the evidence that criminal charges are pending against Mrs. Racicot, that Mrs. Racicot is a substantial interest holder in Broadway, and that neither she nor Mr. Racicot reported the criminal charges to the Commission within thirty days of the filing of the Information.

9. I conclude that the pending criminal charges prove that Mrs. Racicot has violated RCW 9.46.075(9) and WAC 230-03-085(1).

10. I conclude that, by failing to report the criminal charges to the Commission within thirty days of the filing of the information, Mrs. Racicot violated RCW 9.46.075(1), (7), and WAC 230-03-085(1), (3), and (7).

11. No finding of fact is made in this Initial Order as to the underlying facts that led to the theft charge against Mrs. Racicot. Further, no conclusion of law is made in this Initial Order with regard to RCW 9.46.075(4) or (10).

12. Neither party moved to continue this hearing on the basis of pending and unresolved criminal charges. However, "the mere pendency of related civil and criminal proceedings does not prevent the civil proceedings from going forward." *State Farm Fire & Casualty Co. v. Huynh*, 92 Wn. App. 454, 460, 962 P.2d 854 (1998). This adjudicative proceeding is akin to a civil proceeding as that term is used in *State Farm, supra*.

13. 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.

Broadway failed to appear or testify, and submitted no exhibits, at the March 25 hearing.

Consequently, Broadway failed to prove by clear and convincing evidence that it is

qualified to continue to hold a gambling license.

14. I conclude that Broadway's public card room gambling 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 Broadway's public card room employee license, no. 65-06968, is **REVOKED**.

DATED at Tacoma, Washington, this 24 day of April, 2014.

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).

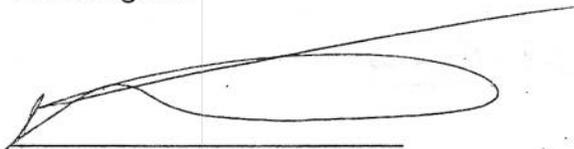
"Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us." WAC 230-17-090(5).

"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 24 day of April 2014 at Tacoma, Washington.



Melanie Barnhill

Legal Secretary

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