

STATE OF WASHINGTON  
GAMBLING COMMISSION

In the Matter of the Summary Suspension of the	)	NO. CR 2013-01868
License to Operate Gambling Activities of:	)	
	)	<b>FINDINGS OF FACT,</b>
The Broadway Bar & Grill	)	<b>CONCLUSIONS OF LAW,</b>
Spokane, Washington,	)	<b>AND ORDER OF SUMMARY</b>
	)	<b>SUSPENSION OF</b>
Licensee.	)	<b>LICENSE</b>

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RCW 9.46.070(17) authorizes the Washington State Gambling Commission (Commission) to summarily suspend<sup>1</sup> 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 The Broadway Bar & Grill. A Commission Special Agent shall seize The Broadway Bar & Grill's license and it must immediately stop operating gambling activities.

**FINDINGS OF FACT**

I.

David Trujillo 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, Title 230 WAC.

II.

The Washington State Gambling Commission issued The Broadway Bar & Grill located at 1811 W. Broadway, Spokane, organization number 00-18701 the following license:

Number 65-06968, authorizing Class "E1" Public Card Room activity.

The license expires on September 30, 2014, and was issued subject to the licensee's compliance with state gambling laws and regulations.

III.

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

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<sup>1</sup> 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:

Wanitta Racicot, an owner of Shed, Inc., doing business as The Broadway Bar & Grill, has been charged with Theft in the 1<sup>st</sup> Degree for allegedly filing false claims with the Washington State Department of Labor and Industries (L&I) from at least March 25, 2003, through August 23, 2011. She received a total of \$249,267 in compensation these claims.

#### FACTS:

- 1) On September 25, 2013, a Washington State Gambling Commission Special Agent (agent) reviewed The Broadway Bar & Grill's renewal application. As part of his investigation, the agent reviewed the Defendant Case History (DCH) on Wanitta Racicot and court dockets. The DCH indicated Ms. Racicot had an open Theft 1 case filed August 22, 2013. Ms. Racicot failed to notify Commission staff in writing of the criminal actions filed against her.
- 2) The agent noted that The Broadway Bar & Grill had a Public Card Room license. The applicant on the last license renewal was Shed Inc., and listed Robert Racicot as president and Wanitta Racicot as his spouse. Robert and Wanitta Racicot own Shed, Inc.
- 3) On September 30, 2013, the agent received certified copies of the Certification of Probable Cause and the Information from Spokane County Superior Court filed on August 22, 2013. The Certification of Probable Cause states the following:
  - On May 18, 2011, an investigator for the State of Washington Department of Labor and Industries was assigned to conduct an investigation into allegations that Ms. Racicot may be engaged in work and/or activities outside of her work restrictions. During the investigation, the investigator found that on or about September 26, 2001, Ms. Racicot filed a claim for an industrial injury. She signed the form and claimed that she had injured her arms on September 21, 2001, while employed with Spaghetti Station, a business she co-owned with her husband Robert Racicot.
  - The employer's report of injury was filed by Mr. Racicot, who described the type of business as a "rest/lounge" and her job title and duties as "office/seating cust/clearing tables/carry heavy bus tubs." L&I initiated benefits to Ms. Racicot for medical treatment, surgery, physical therapy, and time-loss payments. Her claim was closed on May 9, 2002, and then re-opened upon appeal by Ms. Racicot on January 5, 2003.

- The investigation found that Ms. Racicot signed more than fifty-five Worker Verification Forms under penalty of perjury stating that she was not working and was incapable of working due to her industrial injury. Ms. Racicot continued to receive Time Loss benefits through August 18, 2011. The investigator determined Ms. Racicot worked in her own business, The Broadway Bar & Grill, in the capacity of cook, meal planner, shopper, busser, server, and manager. Ms. Racicot failed to disclose to L&I any of her work over multiple years. Her husband was aware of her daily work and failed to notify the department of her ongoing fraud for nearly nine years.
- On August 25, 2011, two investigators interviewed Ms. Racicot. She told them that since the injury, she has been unable to work or do much of anything with her hands and she “can’t even button up [her] shirts anymore [or] put on earrings.” She also said that she could not bus tables, wait tables, host, or cook.
- When questioned about her activities that day, Ms. Racicot admitted to being at The Broadway Bar & Grill, but she claimed she was visiting her husband at his work. When confronted with a photo of her carrying plates and asked if she was cooking, she told the investigators that another person was cooking during lunch. Later, the investigator was able to obtain payroll records that showed the other person was working at another restaurant 12 miles away at the time. Ms. Racicot eventually admitted to performing some work activities for The Broadway Bar & Grill that day and taking a phone order earlier that day. After the interview, the investigator saw that Ms. Racicot no longer parked her car at her usual spot directly behind The Broadway Bar & Grill. The surveillance showed that she used the Bryant School parking lot on numerous occasions as well as other locations away from The Broadway Bar & Grill.
- The investigator obtained and showed photographs and videos of Ms. Racicot conducting activities that appeared to exceed the physical limitations placed on her by her physician. The doctor wrote that Ms. Racicot misled him after he viewed the video of these activities. Based on the video, he said she would have been able to return to her job as early as January 1, 2002.
- On September 6, 2011, Washington State Liquor Control Board (WSLCB) officers observed Ms. Racicot involved in food preparation in the kitchen while Mr. Racicot was also present.

- On September 19, 2011, the L&I investigator was present in an audit of The Broadway Bar & Grill, along with an L&I Audit Supervisor. Mr. Racicot told the investigator that Ms. Racicot was not involved in the business and that she's not even there. He continued to say, "Well, she comes in but she's not working, yeah...she can't work anymore. Hands are completely destroyed." He also told them that he does most of his shopping at Costco at night. The investigator was able to obtain purchase records, which showed Ms. Racicot used her Costco card 171 times over eight and a half years. The L&I investigator found 39 checks written and signed by Ms. Racicot from August 4, 2008, and June 8, 2011, for payroll, food supplies, and beverage distributors.
  - The investigator also interviewed current and former employees and business associates of The Broadway Bar & Grill who confirmed that Ms. Racicot had been working with Mr. Racicot for many years in the same capacity and schedule. One witness said she had been working in that capacity since before he started working for them in 2001.
  - Based on the above information, the investigator determined that Ms. Racicot had received one hundred sixty warrants (checks) from L&I, for a total of \$249,267, all of which were based upon the fraudulent submission of Worker Verification Forms asserting she was not working and/or was not capable of working due to a work-related injury.
- 4) On October 2, 2013, the agent called Mr. Racicot, who confirmed he was still married to Ms. Racicot and that she had 50% ownership. He was also aware of the charges against Ms. Racicot and said, "they were fighting the charges and that she was not guilty." He said he was told this could take a couple years to resolve, but that she was innocent until proven guilty.
- 5) Previously, Mr. Racicot was the owner of Shed, Inc. d/b/a The Pine Shed Restaurant and was issued a Summary Suspension June 8, 1993, for aiding and abetting with John W. Sarber who was acting as an unlicensed operator. Additionally, The Pine Shed Restaurant was used to solicit players to participate in illegal "after-hours" card games and other operational violations.

## 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(2)** provides that the Commission delegates its authority to the Director to summarily suspend any license if the Director determines that a licensee 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) **WAC 230-17-165(3)** The Commission deems the following actions of a licensee constitute an immediate danger to the public safety and welfare:  
(The following subsections apply.)

(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;

(b) Knowingly causing, aiding, abetting, or conspiring with another to cause any person to violate any of the laws of this state or the rules of the commission;

(f) Being subject to current prosecution or pending charges, or appealing a conviction, for any of the offenses included under (d)<sup>2</sup> of this subsection;

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

(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.

The Broadway Bar & Grill is owned by Robert and Wanitta Racicot. Ms. Racicot has been charged with Theft in the 1<sup>st</sup> Degree for submitting false L&I claims over an eight-year period resulting in payments of \$249,267. Ms. Racicot's actions constitute an immediate danger to public safety and welfare based on WAC 230-17-165(2), (3) (a), (b), (f), (h) and (i), and are a basis for Broadway Bar & Grill to immediately stop conducting gambling activities.

4) **RCW 9.46.075 Denial, suspension, or revocation of certification, 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

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<sup>2</sup> (d) Being convicted of, or forfeiting of a bond on a charge of, or having pled guilty to: (i) Forgery; or (ii) Larceny; or (iii) Extortion; or (iv) Conspiracy to defraud; or (v) 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 (vi) Bribing or otherwise unlawfully influencing a public official or employee of any state or the United States; or (vii) Any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude.

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, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of the commission;

(8) Fails to prove, by clear and convincing evidence, that she is qualified in accordance with the provisions of this chapter.

(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)<sup>3</sup> 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;

(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) WAC 230-03-085 Denying, suspending, or revoking an application, license or permit**

We may deny, suspend, or revoke any application, license or permit, when the applicant, certified employee, or anyone holding a substantial interest in the applicant's or certified employee'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;

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

(8) 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

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<sup>3</sup> (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;

- (c) Reputation; or
- (d) Habits; or
- (e) Associations.

**6) WAC 230-06-085 Report criminal actions filed.**  
(The following subsections apply.)

(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.

**7) RCW 9.46.153 Applicants and licensees — Responsibilities and duties — Waiver of liability — Investigation statement as privileged.**

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.

The Broadway Bar & Grill has failed to establish by clear and convincing evidence, as required by RCW 9.46.153(1), that it is qualified for licensure. In addition, Ms. Racicot, owner of The Broadway Bar & Grill has been charged with Theft in the 1<sup>st</sup> degree for submitting false L&I warrants over an eight-year period resulting in payments of \$249,267. Ms. Racicot failed to report the criminal action filed against her within thirty days, in violation of WAC 230-06-085. As a result, there are grounds to revoke Broadway Bar & Grill's license based on RCW 9.46.075(1), (2), (8), (9) and (10), and WAC 230-03-085(1), (3), and (8).

II.

The licensee's actions are an immediate danger to public safety and welfare, and it has failed to comply with chapter 9.46 RCW, Commission rules. The immediate suspension of Broadway Bar & Grill's 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 Broadway Bar & Grill's license is summarily suspended, pending a formal hearing by an Administrative Law Judge.

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