

STATE OF WASHINGTON
GAMBLING COMMISSION

Received
MAY 15 2014
Gambling Commission
Comm. & Legal Division

In the Matter of the Suspension or Revocation of)
the License to Conduct Gambling Activities of:) NO. CR 2013-01647
)
Gameworks) **SETTLEMENT ORDER**
Seattle, Washington,)
)
Licensee.)
_____)

The Washington State Gambling Commission and the licensee, Gameworks, have entered into this Settlement Order to resolve the administrative charges pending against the licensee. Gregory Rosen, Assistant Attorney General, and Melinda Froud, Staff Attorney, represent the Commission. Adam Telanoff, General Counsel, represents the licensee.

I.

The Washington State Gambling Commission issued Gameworks license number 53-21182, authorizing Class "G" Amusement Game activity.

The Commission issued this license, which expires on May, 19, 2014, subject to the licensee's compliance with state gambling laws and Commission rules.

II.

In the above-entitled case, the Gambling Commission issued a Notice of Administrative Charges and Opportunity for an Adjudicative Hearing on, September 9, 2013, seeking the suspension or revocation of Gameworks' license to conduct gambling activities. On September 23, 2013, Commission staff received the licensee's request for a hearing. On January 29, 2014, the Gambling Commission issued an Amended Notice of Administrative Charges and Opportunity for an Adjudicative Hearing. The following summary of facts and violations were alleged in the Amended Notice of Administrative Charges:

SUMMARY:

The licensee failed to submit its commercial amusement game annual activity report for 2013. Additionally, the licensee failed to timely pay their second half payment for their commercial amusement games license year covering May 20, 2013 through May 19, 2014. Gameworks operated without a valid license from November 19, 2013, to December 6, 2013.

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VIOLATIONS:

1) RCW 9.46.075(1) and (5) Denying, suspending, or revoking a 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) 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) 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.

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

(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.

3) WAC 230-13-169 Annual activity reports for commercial amusement game licensees

Commercial amusement game licensees must submit an annual activity report to us in the format we require and must:

(1) Cover the license year of one calendar year or less; and

(2) Be received at our administrative office or postmarked no later than thirty days following the end of the reporting period; and

(3) Be signed by the licensee's highest ranking executive officer or a designee. If someone other than the commercial amusement game licensee or its employee prepares the report, then it must provide the preparer's name and business telephone number; and

(4) Submit a report for any period of time their license was valid, even if they had no activity or did not renew their license; and

(5) Complete the report according to the instructions furnished with the report.

4) WAC 230-05-015 Two-part payment plan for license fees.

(The following subsections apply.)

(2) We issue licenses under the two-part payment plan with an expiration date of not more than one year and a second-half payment due date.

(a) If we receive your second-half payment on or before the due date, the license will remain in effect until the expiration date.

(b) If you do not submit the second-half payment on or before the due date, the license expires and gambling activities must stop. You must pay us the second-half payment regardless if you stop operating the gambling activity, close your business, surrender your license, or your license is revoked. If you do not pay the second-half payment, we may take action against other licenses you hold or refer the debt to collections, or both.

5) RCW 9.46.160 Conducting activity without license.

Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license issued by the commission shall be guilty of a class B felony. If any corporation conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license issued by the commission, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section.

Gameworks has shown willful disregard by repeatedly failing to timely make its second-half license payment, in violation of WAC 230-05-015 and RCW 9.46.160, failing to submit activity reports to Commission staff within the due dates, and failing to submit some at all, in violation of WAC 230-13-169. Therefore, grounds exist for the suspension or revocation of Gameworks' license to conduct gambling activities, based on RCW 9.46.075(1), and WAC 230-03-085(1), (3), and (7).

III.

The facts and violations set forth in paragraph II above constitute grounds for the suspension or revocation of the license issued to Gameworks pursuant to RCW 9.46.075 and WAC 230-03-085.

IV.

The licensee acknowledges that it received the Amended Notice of Administrative Charges issued in this case, and understands the facts and violations contained in it. The licensee has now made its second-half payment and has submitted its activity reports.

On September 23, 2013, Commission staff received Gameworks' request for a hearing in this matter; however, the licensee has waived its right to a hearing, based on the terms and conditions of this Settlement Order.

The licensee agrees to the following terms and sanctions:

1) Gameworks' gambling license is hereby suspended for a period of **thirty (30) days**, provided that:

- a) **Ten (10) days** of the suspension shall not be currently served, but shall be deferred for a period of one year from the date of entry of this Settlement Order, subject to the following: The licensee agrees not to violate the terms of this Settlement Order, or any of Washington's gambling statutes or regulations during the one (1) year term. If the licensee violates this Settlement Order or gambling statutes or regulations, and if the violation is the type that warrants the filing of administrative or criminal charges, then the Director may impose the ten-day deferred suspension of the current gambling licenses and any subsequently acquired gambling licenses.
- b) The parties agree that the Director of the Washington State Gambling Commission, pursuant to this agreement, has discretion to determine whether the licensee has violated any term of this agreement. In the event the Director determines that a violation of this agreement has occurred, he may suspend the license(s) issued to the licensee for up to ten days, by mailing or delivering a Notice of Order of Administrative Charges to the licensee. In addition to the consequences of the new violation, the deferred sentence shall also be served. The licensee shall be afforded the opportunity to have an Adjudicative Proceeding, which includes a hearing on the alleged violations.
- c) Pursuant to RCW 9.46.077, the licensee has chosen to vacate the **remaining twenty (20) days** of the suspension by paying a fine of **eleven thousand, six hundred and forty dollars (\$11,640)**, which represents a portion of the licensee's daily net receipts for twenty days.
- d) **The licensee has agreed to serve a three (3) day suspension for a previous settlement order violation.**
 - i. **The suspension period begins at 8:00 a.m. on Tuesday, May 6, 2014, and runs through Thursday, May 8, 2014.**
 - ii. During this period of suspension, no gambling activities shall take place at the licensed premises.
 - iii. The licensee may resume its gambling activities at 8:00 a.m. on Friday, May 9, 2014.
- e) **The signed order and payment must be received by Commission staff on or before Monday, May 5, 2014, and** mailed to Commission Headquarters at the following address:

Washington State Gambling Commission
Attention: Communications and Legal Division
P.O. Box 42400
Olympia, WA 98504-2400

or delivered (in person or via private courier) to the following address:

Washington State Gambling Commission
Attention: Communications and Legal Division
4565 7th Avenue SE; Fourth Floor
Lacey, WA 98503

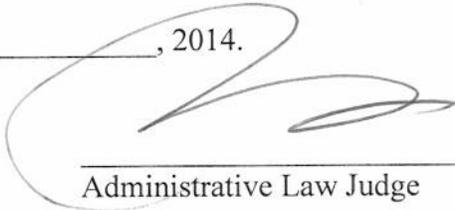
4) If the licensee makes its payment as agreed, this matter will be deemed closed. However, if the licensee fails to timely make its payment, the Director may impose an additional **two (2)** day suspension for the late payment. Serving the suspension would not, however, relieve the licensee of its obligation to pay its fine.

5) On April 23, 2014, Administrative Law Judge John Gray conducted a status conference that the parties had jointly requested. During the status conference, Gameworks' counsel, Adam Telanoff, orally moved to set aside Judge Gray's February 26, 2014 Initial Order of Default Dismissing Licensee's Appeal for Failure To Appear At Prehearing Conference, which was issued due to Gameworks' failure to telephonically appear for a February 25, 2014 pre-hearing conference. Mr. Telanoff conceded during the status conference that he failed to telephonically appear for the February 25th hearing because he incorrectly believed that the hearing had been scheduled for March 25th. Counsel to the Gambling Commission Staff, Assistant Attorney General Greg Rosen, did not object to the motion to vacate. Mr. Rosen noted that Mr. Telanoff and Commission Staff had negotiated a tentative settlement of the case. Mr. Rosen acknowledged that Gameworks' oral motion to vacate did not comply with the seven day deadline in RCW 34.05.440(3) for making such a motion, nor did it comply with the requirement in the Order of Default that any motion to vacate be in writing. Mr. Rosen, however, also stated that based on judicial economy, specifically, a desire to effectuate the parties' tentative settlement, he did not object to Gameworks's motion to vacate. Mr. Rosen also noted that the parties' tentative settlement could not go forward unless and until Judge Gray granted Gameworks's motion to vacate the Order of Default.

Following argument by the parties, Judge Gray granted Gameworks' oral motion to vacate the Order of Default, and reinstated Gameworks' administrative appeal. Judge Gray noted that his ruling was a one-time, non-precedent setting ruling, given Gameworks' lack of compliance with the seven-day deadline to file the motion to vacate and requirement that a motion to vacate be made in writing.

This Settlement Order is respectfully submitted to Judge Gray for his consideration.

DATED this 13 day of May, 2014.



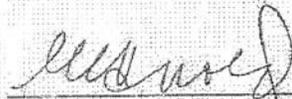
Administrative Law Judge

APPROVED FOR ENTRY:

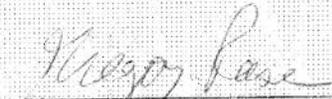
APPROVED AS TO FORM:

By signing this Settlement Order,
the licensee acknowledges and understands
the terms and conditions contained in it.

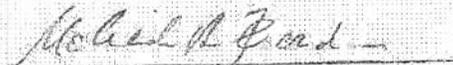
Mary E. Arnold, CFO


Date 4/29/14

Mary E. Arnold,
CFO, Gameworks


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