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Gambling Commission
Comm. & Legal Division

BEFORE THE WASHINGTON STATE GAMBLING COMMISSION

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

McCoy's Cavern,

Licensee.

NO. CR 2013-01624

(OAH NO. 2013-GMB-0072)

STIPULATION AND
FINAL ORDER ON
PETITION FOR REVIEW

STIPULATION

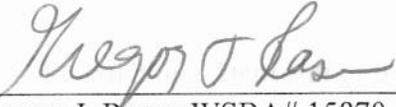
McCoy's Cavern, Petitioner, representing itself, and Gambling Commission Staff, represented by ROBERT W. FERGUSON, Attorney General, and Gregory J. Rosen, Assistant Attorney General, stipulate as follows:

1. The original Notice of Administrative Charges was issued in this matter on September 9, 2013. The Notice alleged that the Petitioner failed to submit its required quarterly activity reports for the first and second quarters of 2013, although those reports were due on July 30, 2013. On September 25, 2013, the Commission received the activity reports for the first and second quarters of 2013. The Commission's November 15, 2013 Amended Notice of Administrative Charges reflected the Petitioner's untimely submission of those reports on September 25, 2013.
2. The Administrative Law Judge conducted an administrative hearing in this matter during the morning of January 21, 2014. During the afternoon of January 21, 2014, the Petitioner received training from Commission Staff, and timely submitted the required

activity reports for the third and fourth quarters of 2013, which were due no later than January 30, 2014.

3. The parties STIPULATE that the terms and conditions set out in the attached Order constitute a fair and appropriate resolution of this matter. McCoy's Cavern waives its right to a hearing on its petition for review, and respectfully requests that instead the Commission adopt the following Final Order. Should the Commission fail to adopt the following Final Order at its May 9, 2014, hearing, this stipulation shall be deemed void and the Petition for Review may be held at the July 2014 Commission meeting.

ROBERT W. FERGUSON
Attorney General



Gregory J. Rosen WSBA# 15870 (Date)
Assistant Attorney General
Attorney for Commission Staff



Ian Abel, President (Date)
McCoy's Cavern, Licensee

FINAL ORDER

This Stipulation and Final Order on Petition for Review will be presented to the undersigned Commissioners of the Washington State Gambling Commission at the

Commission's regularly scheduled meeting on May 9, 2014, in Olympia, Washington. The Commission has before it the entire record of the proceedings before the Administrative Law Judge, where McCoy's Cavern's license was revoked. Based on its review, the Commission finds that the record in this matter is sufficient to support the Findings of Fact, Conclusions of Law, and, as hereby modified, the Initial Order Revoking Gambling License by the Administrative Law Judge. However, the Commission is not, at this time, affirming the revocation in light of: (1) McCoy's Cavern submitting the required quarterly activity reports for the first and second quarters on September 25, 2013, before the administrative hearing was held on January 21, 2014; and (2) timely filing the next set of activity reports for the third and fourth quarters of 2013 on January 21, 2014, after the hearing was held. Accordingly the Commission hereby orders as follows:

IT IS ORDERED that the Administrative Law Judge's Initial Order revoking McCoy's Cavern's license to conduct punchboard/pull-tab activities is DEFERRED.

The Petitioner shall timely submit its completed activity reports for the next two reporting periods which are due July 30, 2014 and January 30, 2015, as set out in WAC 230-14-284.

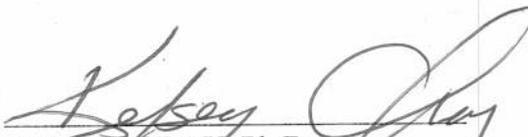
IT IS FURTHER ORDERED that McCoy's Cavern shall violate no gambling related statutes or regulations during the period of this deferred revocation. If McCoy's Cavern timely complies with all of the above ordered conditions, then McCoy's Cavern's license shall not be revoked and this matter shall be deemed closed.

If McCoy's Cavern fails to comply with any of the above conditions of deferral, it may result in this matter being brought back before the Commission for further proceedings, possible reconsideration of the Commission's order deferring revocation, and the Commission's issuance

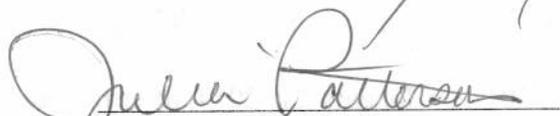
of an amended Final Order On Petition For Review that fully revokes McCoy's Cavern's license to conduct gambling activities in the State of Washington.

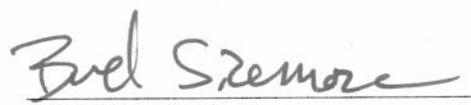
DATED this 9th day of May, 2014.


MICHAEL AMOS, Chair


KELSEY GRAY, Ph.D.


CHRISTOPHER STEARNS


JULIA PATTERSON


BUD SIZEMORE

FEB 11 2014

Gambling Commission
Comm. & Legal DivisionSTATE 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:

MCCOYS CAVERN
Olympia, Washington

Number: 05-09754

OAH Docket No. 2013-GMB-0072
GMB No. CR 2013-01624

INITIAL ORDER REVOKING
GAMBLING LICENSE

Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on January 21, 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 Jay Summers and Research Analyst Cameron Baker testified on behalf of the Commission.

Ian Abel, President and sole shareholder of McCoys Cavern, appeared and testified on behalf of McCoys Cavern ("McCoys") at the January 21 hearing.

PROCEDURAL HISTORY

On September 9, 2013, the Commission issued a Notice of Administrative Charges and Opportunity for Adjudicative Proceeding ("the Notice"). The Notice named McCoys Cavern as the subject of a license revocation action.

On September 26, 2013, the Commission received McCoys Request for Administrative Hearing.

On November 18, 2013, the Commission issued an Amended Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding ("the amended Notice") to McCoys.

Also on November 18, 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, January 21, 2013, beginning at 9:00 AM at the Commission's hearing room in Lacey, Washington.

The Commission offered Exhibits No. 1 through 13, which were admitted without objection.

McCoys offered no exhibits.

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. McCoys possesses a license to operate punchboards and pull tabs at its tavern in Olympia, Washington. The license number is 05-09754. The license is a Type 5, Class A. Without more, the license would have expired on December 31, 2013. Exhibit 1.

2. McCoys is required to file reports with the Commission regarding McCoys punchboard and pull tab operations (for brevity, these documents will simply be referred to as the "report" or "reports.") Licensees, including McCoys, are required to file twice per year. The first filing is for the first and second quarters of that calendar year, and

the second filing is for the third and fourth quarters of that calendar year. The first filing is due no more than thirty days after the end of the second quarter, on July 30. The second filing is due no more than thirty days after the end of the fourth quarter, on January 30.¹

3. McCoys did not file its first and second quarter 2013 report until September 25, 2013. McCoys filed that report online, the first time that it has filed this kind of report online. Exhibit 13.

4. McCoys has a history of late-filed punchboard and pull tab reports.

5. On February 10, 2011, the Commission issued a letter to McCoys notifying it that it had not filed its third and fourth quarter 2010 report. The report was due no later than January 30, 2011. Tina Griffin, the Assistant Director of the Licensing Operations Division, gave McCoys until February 28, 2011, to file the report without penalty. Exhibit 4. McCoys filed the report on February 18, 2011. Exhibit 13.

6. On August 18, 2011, the Commission issued a Notice of Violation and Settlement ("NOVAS") to McCoys for the latter's failure to timely file its first and second quarter 2011 report. For this failure, the Commission assessed a \$300 fine against McCoys. Exhibit 3. McCoys filed the report on August 29, 2011. Exhibit 13.

7. On March 22, 2012, the Commission issued a Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding to McCoys for the latter's failure to timely file its report for the third and fourth quarters of 2011. Exhibit 6.

¹ The reporting frequency changed beginning with the second half of 2005. The frequency changed from quarterly reporting for each quarter to twice yearly reporting for two quarters in each report.

8. The Commission and McCoys agreed to a Settlement Order that resolved the issues in the Notice of Administrative Charges referred to in Finding of Fact No. 7. The Settlement Order provided for a fifteen day suspension of McCoys license, beginning on June 13, 2012, and ending on June 24, 2012, with three of the fifteen days deferred for one year subject to this provision: "The licensee agrees not to violate the terms of this Settlement Order, or any of Washington's gambling statutes or regulations during the deferral period." The settlement order also stated:

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 three-day deferred suspension of the current gambling licenses and any subsequently acquired gambling licenses. Exhibit 9.

9. An Administrative Law Judge signed the Settlement Order on May 30, 2012. Exhibit 9.

10. On April 15, 2013, the Commission issued a Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding to McCoys for the latter's failure to timely file its third and fourth quarter 2012 report.

11. The Commission and McCoys agreed to a Settlement Order that resolved the issues in the Notice of Administrative Charges referred to in Finding of Fact No. 10. The Settlement Order provided for a twenty day suspension, three days deferred subject to the same conditions stated above in Finding of Fact No. 8. The parties agreed that McCoys license would be suspended for twenty days, three days of which were the three days previously deferred in the May 30, 2012 Settlement Order. The suspension ran from May 15, 2013 to June 3, 2013. Exhibit 10.

12. An Administrative Law Judge signed the Settlement Order on May 24, 2013.

13. Beginning with the third and fourth quarters of 2010 and ending with the first and second quarters of 2013, McCoys filed its reports late five times out of six.

Exhibit 11.

14. Beginning with the first and second quarters of 2000 and ending with the first and second quarters of 2013, McCoys filed its reports late seventeen times.

15. Mr. Abel operates McCoys Cavern as a neighborhood tavern in Dupont. The tavern has a strong, regular following of customers. His business has grown, but he increasingly finds it difficult to make money. Although McCoys possesses the gambling license, Mr. Abel is not currently operating punchboard and pull tab games.

16. In 2010, Mr. Abel changed accountants when the accountant he previously had retired.

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 September 9, 2013, by regular United States mail and by certified United States mail. McCoys Cavern filed his Request for and Administrative Hearing on September 26, 2013, requesting a hearing on the merits. WAC 230-17-010(2)(a) requires that the Commission receive the licensee's request for hearing within twenty-three days after service of the administrative charges by regular United States mail. The twenty-third

day after service on McCoys Cavern was Tuesday, October 2, 2013. McCoys filed its request on the seventeenth day after service on it of the Notice of Administrative Charges. Therefore, McCoys Cavern timely filed its request for a hearing on the issues raised in the Notice of Administrative Charges.

2. The issuance of the Notice of Administrative Charges occurred before McCoys Cavern's license was set to expire on December 31, 2013.

3. Neither the Commission nor the OAH lost jurisdiction to hear this case because "once a professional disciplinary tribunal lawfully acquires jurisdiction over a proceeding, its jurisdiction continues until the proceeding is concluded." *Nims v. Wa. Board of Registration*, 113 Wn. App. 499, 506-07, 53 P.3d 52 (2002).

4. 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.

5. The Commission bases its proposed revocation of McCoys gambling license on the provisions of RCW 9.46.075(1) and (8); RCW 9.46.153(1); WAC 230-03-085(1) (3), (8)(a) and (d); and WAC 230-14-284(1)(a), (b), and (2). Conclusions of Law No. 6 through 10 contain the applicable language of these statutes and administrative rules. Commission's Opening Statement and Memorandum of Legal Authorities.

6. 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];

7. 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[.]

8. "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).

9. 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

...

(8) poses a threat to the effective regulation of gambling, 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

...

(d) habits[.]

10. WAC 230-14-284 and the pertinent subsections provide:

Punch boards and pull-tab licensees must submit an activity report to the commission.

Licensees must complete the report in the format we require and must:

(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[.]

11. In this case, the Commission has issued a NOVAS, two Notices of Administrative Charges, and the Commission and McCoys have agreed to two Settlement Orders in the past three years, all dealing with the same problem: McCoys failure to timely file its reports.

12. The rule itself is clear. The quarterly reports are filed twice each year and are due no later than 30 days after the close of the second and fourth quarters, by July 30 and January 30, respectively for the first/second and third/fourth quarters.

13. Mr. Abel is the man in charge of McCoys. He hired accountants to file the reports on behalf of McCoys because Mr. Abel finds that easier than answering and filing the reports himself. The accountants are McCoys agents when they do so. Mr. Abel is the principal.

14. Mr. Abel asked several times during the hearing for a chance to get better organized and eliminate communication problems between himself and his accountant in order that McCoys reports be filed on time in the future. However, Mr. Abel has had years to get organized and to eliminate those communication problems. He knew there was a problem because of the history between the Commission and McCoys, noted in the Findings of Fact above. For whatever reasons, he has not done so. The history is discouraging because it implies that another suspension will not cure the problem but, rather, that the problem of late filing of reports by McCoys will continue.

15. 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. McCoys does not dispute the Commission's evidence and acknowledges that it filed its reports late. Mr. Abel did not identify any concrete action he had taken, or planned to take, to cure the problem. Instead, he asked for more time.

16. The Commission is the agency charged with administering the gambling laws as enacted by the Legislature. The Commission argues that McCoys has had plenty of time to cure the problem of late-filed reports by now, and that revocation is the appropriate remedy at this stage in McCoys history.

17. I conclude that the Commission has proved by a preponderance of the evidence that McCoys filed its first and second quarter 2013 reports late, filing on September 25, 2013, but which were due on July 30, 2013, as alleged in the amended Notice. I conclude that the Commission has proved by a preponderance of the evidence that McCoys has a history of filing its reports late: five out of six times as shown in Exhibit 11 and at least seventeen times since 2000.

18. I also conclude that McCoys has not proved by clear and convincing evidence that it is qualified to continue to hold its gambling license. There was no evidence of any action taken to cure the problem, either in the past or for the future. Abel has had plenty of time to consider what action he could or should take, but presented nothing.

19. I conclude that McCoys punchboard and 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 McCoys Cavern's card room employee license, no. 05-09754, is **REVOKED**.

DATED at Tacoma, Washington, this 10th day of February, 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).

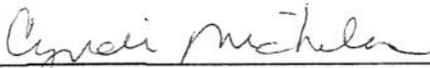
"Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us." WAC 230-17-090(5).

"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 10th day of February, 2014 at Tacoma, Washington.



Cyndi Michelena

McCoy's Cavern Ian Abel P.O. Box 471 DuPont, WA 98327
Gregory J. Rosen Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia, WA 98504-0100
Maureen Pretell Attn: Legal Department Washington State Gambling Commission PO Box 42400 Lacey, WA 98504