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In the Matter of the Suspension or Revocation of)
the License to Conduct Gambling Activities of:)
)
McCoy's Cavern)
Olympia, Washington,)
)
Licensee.)

NO. CR 2012-00224

SETTLEMENT ORDER

This Settlement Order is entered into between the Washington State Gambling Commission and McCoy's Cavern. Stephanie U. Happold, Assistant Attorney General, and Melinda Froud, Lead Staff Attorney, represent the Commission. Ian Abel, owner, represents the licensee.

I.

The Washington State Gambling Commission issued McCoy's Cavern, organization number 00-17853 the following license:

Number 05-09754, authorizing Class "A" Punchboard Pull-Tab activity.

The license expires on December 31, 2012, and was issued subject to the licensee's compliance with state gambling laws and regulations.

II.

Rick Day, Director of the Washington State Gambling Commission, charges the licensee with the following violations of the Washington State Gambling Act, 9.46 RCW, and WAC Title 230:

- 1) On February 17, 2012, a Washington State Gambling Commission Special Agent (agent) called Ian Abel, the owner of McCoy's Cavern. The agent spoke to him about the Quarterly Activity Report (QAR) for the third and fourth quarters of 2011 that had not been submitted.
- 2) The activity report was due at our administrative office by January 30, 2012. However, the activity report was never received, in violation of WAC 230-14-284(2). Mr. Abel said there was a miscommunication with his accountant, and they must not have turned in the QAR. The agent explained that it is a repeat violation and would result in another Notice of Violation and Settlement (NOVAS)¹ and a larger fine.
- 3) On February 17, 2012, the agent and Mr. Abel met at McCoy's Cavern. The agent explained that this was the third QAR in a row that was late and this time the penalty would be a \$500 fine and a NOVAS.

¹ A NOVAS identifies the violation, and in this case, gives the recipient the opportunity to pay a fine and submit its delinquent report to settle the matter.

4) Mr. Abel pulled out the late QAR from a stack of paper on the table. He offered it to the agent but was reminded he had to mail or deliver it to our administrative office. Mr. Abel had not signed it yet. He explained it was in a pile of paperwork the accountant gave him, and he wasn't aware he had to sign anything.

5) The agent attempted to issue a NOVAS for the violation. Mr. Abel stated he did not want to pay a \$500 fine and asked how many days he needed to shut down instead of paying a fine. The agent stated if he signed the NOVAS, he had 15 days to decide if he wanted to pay it or challenge it. The agent explained to Mr. Abel that a Statement of Charges would be issued if he either failed to pay the NOVAS fine or if he refused to sign it, and that any other settlements would be discussed after a Statement of Charges was issued.

6) Mr. Abel stated he was not a criminal and he was operating a clean game. He did not want to sign the NOVAS because he felt it made it look like he was doing something deceptive. The agent explained turning in activity reports are a requirement for any licensed gambling activity. Mr. Abel said he wanted to plead his case to the judge.

7) Mr. Abel refused to sign the NOVAS. The agent told Mr. Abel he would receive the Statement of Charges in the mail within the next several weeks.

8) The agent later verified the licensee submitted his late QAR on February 17, 2012.

9) Previously, on August 18, 2011, the licensee received a NOVAS and \$300 fine for a QAR for the first and second quarters of 2011, which was due on July 30, 2011. It was received by Commission staff on August 29, 2011. In addition, on February 10, 2011, the licensee received a warning letter from Commission staff for a late QAR for the third and fourth quarters of 2010 which was due on January 30, 2011. It was received by Commission staff on February 18, 2011.

10) McCoy's Cavern's repeated failure to timely submit its activity reports demonstrates the licensee's willful disregard for complying with state administrative rules. Therefore, grounds exist for the suspension of McCoy's Cavern license to conduct gambling activities, based on RCW 9.46.075(1) and WAC 230-03-085(1), (3) and (7).

RCW 9.46.075 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 subsection applies.)

(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.

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; 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.

WAC 230-14-284 Activity reports for punchboard and pull-tab licensees

Punchboards and pull-tab licensees must submit an activity report to the Commission. Licensees must complete the report in the format we require and must:

(The following subsections apply.)

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(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.

IV.

The Commission alleges that the facts and violations specified in paragraph III above constitute grounds to suspend or revoke McCoy's Cavern license under RCW 9.46.075(1) and WAC 230-03-085(1), (3) and (7).

V.

Ian Abel, Owner, acknowledges that he received the Notice of Administrative Charges issued in this case, and understands the facts and violations contained in it.

The licensee has waived its right to a hearing, based on the terms and conditions of this Settlement Order and agrees to the following terms and sanctions:

1) The licensee's gambling license is suspended for a period of fifteen (15) days, provided that:

a) **Three (3) days** of the suspension shall not be currently served, but shall be deferred for one year, 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 deferral period.

b) 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.

- c) 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 three 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.

2) **The licensee has chosen to serve the remaining twelve (12) days of the suspension.**

- i. **The suspension period begins at 8:00 a.m. on Wednesday, June 13, 2012, and runs through Sunday, June 24, 2012.**
- 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 Monday, June 25, 2012.

3) **The signed Settlement Order must be received by Commission staff on or before May 25, 2012, 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

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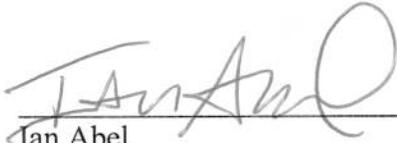
or delivered (in person or via private courier) to the following address:

Attention: Communications and Legal Division – Fines
4565 7th Avenue SE; Third Floor
Lacey, WA 98503

DATED this 30 day of May, 2012.


Administrative Law Judge 6/7/12

APPROVED FOR ENTRY:



Ian Abel (Date) 5.30.12
Owner, McCoy's Cavern

APPROVED AS TO FORM:



Stephanie U. Happold, WSBA# 38112
Assistant Attorney General, Representing
the Washington State Gambling
Commission



Melinda A. Froud, WSBA# 26792
Lead Staff Attorney,
Washington State Gambling Commission