

RECEIVED

AUG 02 2012

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE GAMBLING COMMISSION

GAMBLING COMMISSION
COMM & LEGAL DIVISION

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

MELISSA NELSON
Seattle, Washington,

Licensee.

OAH No. 2012-GMB-0033
GC No. CR 2012-00258

INITIAL ORDER REVOKING
GAMBLING LICENSE AND
ALTERNATIVELY REVOKING
LICENSE BASED ON DEFAULT

Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on June 20, 2012, at the Gambling Commission Office, 4565 7th Avenue, Lacey, Washington.

Stephanie U. Happold, Assistant Attorney General, appeared and represented the Washington State Gambling Commission ("Commission"). Julie Sullivan, Special Agent with the Commission, appeared as witness for the Commission. Kevin Maxwell, Special Agent with the Commission, and Marisa E. Broggel, Assistant Attorney General, attended the hearing, but did not testify or participate.

Melissa Nelson, the Licensee, failed to appear.

On March 22, 2012, the Director of the Commission caused a Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding ("Notice of Administrative Charges") to be issued against Ms. Nelson. The Director alleged that Ms. Nelson failed to disclose her criminal history and that the Commission staff who conducted the criminal history check failed to note her disqualifying criminal history. Based on that mistake, and no disclosure from Ms.

RECEIVED
AUG 02 2012
COMMISSION
COMM & LEGAL DIVISION

Nelson on her application regarding her criminal history, the Commission issued a license to Ms. Nelson by inadvertence on January 30, 2012.

The Commission served the Notice of Administrative Charges on Ms. Nelson. The record is silent regarding the method and date of service on Ms. Nelson, but she filed his request for an administrative hearing on April 17, 2012.

The Commission issued the Notice of Hearing on May 31, 2012, setting this matter for hearing on Wednesday, June 20, 2012, at 1:00 PM at the Washington State Gambling Commission Hearing room, 2nd floor, 4565 7th Avenue SE, in Lacey, Washington.

When Ms. Nelson failed to appear for the hearing, the Commission sought to establish a prima facie case, and offered twenty-four (24) exhibits, which were admitted. Special Agent Julie Sullivan testified.

The Administrative Law Judge, having considered the evidence, now enters the following Findings of Fact:

FINDINGS OF FACT

1. Ms. Nelson is an individual who possesses a card room employee license ("CRE"), License No. 68-31066, type 68, class B, issued by the Commission on January 30, 2012. She works at the Macau Casino in Lakewood, Washington. Without more, that license will expire on January 29, 2013.

2. On February 13, 2012, the Commission assigned Special Agent Stephanie Beach to investigate whether Ms. Nelson continues to qualify for certification based on her criminal history. Special Agent Beach had over two

years of experience with the Commission as a special agent. She completed all of the training assigned to her, including programs offered by the Department of Personnel, the State Patrol. She worked in the Commission's Criminal History Investigation Unit.

3. Special Agent Beach prepared Commission Case Report 2012-00258 based on her investigation. She stated as her recommendation, "NELSON was issued a license through inadvertence or mistake on January 30, 2012. NELSON'S criminal history [includes] Theft, a pattern of Assaults and other criminal charges [that] shows she is a threat to the effective regulation of gambling. NELSON does not prove that she is qualified to hold a license."

4. Special Agent Beach left the Commission after she prepared the report in order to move to another state and join her family, who had already moved. When she left, the Commission reassigned this investigation to Special Agent Julie Sullivan.

5. Special Agent Sullivan has ten years of experience with the Commission. She has completed all of the training assigned to her, including programs offered by the Washington State Criminal Justice Training Commission. She is a nationally certified fraud examiner. She is also a criminal justice major at Washington State University. She works in the Commission's Criminal History Investigation Unit.

6. Ms. Nelson applied for a public card room employee license. She dated the application January 14, 2012. The Commission date stamped the application as received on January 30, 2012. Question no. 6 asks an application

if he or she has ever (a) forfeited bail or paid a fine over \$25 (including traffic fines), (b) been arrested, (c) been charged with a crime, (d) been convicted, (e) been jailed, and (f) been placed on probation. In Exhibit 2, page 2, Ms. Nelson answered question no. 6, "criminal history statement," by checking the box "NO." Exhibit 2.

7. On the same page 2 of the application, Ms. Nelson signed and dated the Oath of Applicant – Public Card Room Employee. The oath declares that Ms. Nelson "declared under penalty of perjury, under the laws of the State of Washington, that all information provided on this application is true and complete to the best of my knowledge."

8. Special Agents Beach and Sullivan found the following criminal record for Ms. Nelson. They conducted a search using the Judicial Information System ("JIS").

9. Ms. Nelson pleaded guilty on January 23, 2006, to one charge of harassment and one charge of assault in the fourth degree. The case was heard in King County Superior Court, Juvenile Court Docket No. 05-8-05949-6. In her own words, Ms. Nelson wrote, "In King County, Washington on October 13, 2005, I threatened to cause bodily injury [illegible] and caused the person to believe that threat would be carried out. I also intentionally assaulted A.N.O. (the victim)." Exhibit 5.

10. Ms. Nelson pleaded guilty on November 30, 2005, to one charge of criminal trespass in the second degree. The case was heard in King County Superior Court, Juvenile Court Docket No. 05-8-02916-3. In her own words, Ms.

Nelson wrote, "In King County, Washington, on May 15, 2005, I knowingly was on the premises of Albertson's having previously trespassed [at] Albertson's."

Exhibit 8.

11. Ms. Nelson pleaded guilty on January 23, 2006, to one charge of malicious mischief in the third degree. The case was heard in King County Superior Court, Juvenile Docket No. 05-8-06131-8. In her own words, Ms. Nelson wrote, "In King County, Washington, on 3/6/05 I knowingly and maliciously damaged the skylight at the Gildo Key Elementary School." Exhibit 11.

12. Ms. Nelson pleaded guilty on July 26, 2004, to one charge of criminal trespass in the first degree. The case was heard in King County Superior Court, Juvenile Docket No. 04-8-02476-7. In her own words, Ms. Nelson wrote, "On June 19, 2003, in King County, WA, I knowingly entered Auburn Supermall when I knew I wasn't supposed to be there because I had been trespassed." Exhibit 16.

13. Ms. Nelson pleaded guilty on July 26, 2004, to one charge of theft in the third degree. The case was heard in King County Superior Court, Juvenile Docket No. 04-8-02211-0. In her own words, Ms. Nelson wrote, "On May 2, 2004, in King County, WA, I stole chicken from Top Foods without paying." Exhibit 19.

14. Ms. Nelson pleaded guilty on January 29, 2004, to assault in the fourth degree. The case was heard in King County Superior Court, Juvenile

9. RCW 9.46.075(7) provides that the Commission may suspend or revoke any license or permit issued by it, for any reason or reasons it deems to be in the public interest, including but not limited to misrepresenting or failing to disclose, a material fact to the Commission

10. RCW 9.46.075(8) provides that the Commission may suspend or revoke any license or permit issued by it where the applicant or licensee 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.

11. WAC 230-03-085 provides that the Commission may suspend or revoke any license or permit when the licensee (1) commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075, or (2) has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals, and the rule defines "physical harm to individuals" to include any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person, or (8) when the licensee 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 prior activities, criminal record, reputation, habits, or associations.

12. The Commission proved by a preponderance of the evidence that Ms. Nelson's gambling license should be revoked because she has violated, failed or

refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW. RCW 9.46.075(1).

13. The Commission proved by a preponderance of the evidence that Ms. Nelson's gambling license should be revoked because she obtained the gambling license or permit by failing to disclose her criminal convictions. Further, the Commission relied on her application and issued the license through its inadvertence or mistake. RCW 9.46.075(3).

14. The Commission proved by a preponderance of the evidence that Ms. Nelson's gambling license should be revoked because she pleaded guilty to crimes against property that are similar to the ones listed in RCW 9.46.075(4) and she pleaded guilty to crimes involving physical harm to individuals. RCW 9.46.075(4).

15. The Commission proved by a preponderance of the evidence that Ms. Nelson's gambling license should be revoked because she failed to disclose material facts – her criminal convictions – to the Commission when she applied for a license. RCW 9.46.075(7).

16. The Commission proved by a preponderance of the evidence that Ms. Nelson's gambling license should be revoked because she failed to prove, by clear and convincing evidence, that she is qualified in accordance with the provisions of ch. 9.46 RCW. RCW 9.46.075(8) and 9.46.153(1).

17. The Commission proved by a preponderance of the evidence that Ms. Nelson's gambling license should be revoked because she committed acts that constitute grounds for denying, suspending, or revoking licenses or permits

under RCW 9.46.075; specifically, those enumerated in Findings of Fact no. 9 through 14 and Conclusions of Law no. 12 through 16. WAC 230-03-085(1).

18. The Commission proved by a preponderance of the evidence that Ms. Nelson's gambling license should be revoked because she was convicted of misdemeanors involving physical harm or the threat of physical harm to other persons. WAC 230-03-085(2).

19. The Commission proved by a preponderance of the evidence that Ms. Nelson's gambling license should be revoked because the licensee 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 her prior activities, specifically including her criminal record. WAC 230-03-085(8).

20. Each licensee has an affirmative responsibility to establish, by clear and convincing evidence, her continuing qualifications for licensure. RCW 9.46.153(1). Each holder of a license issued pursuant to ch. 9.46 RCW is subject to continuous scrutiny regarding his general character, integrity, and ability to engage in, or associate with, gambling or related activities impacting this state. RCW 9.46.153(7). Ms. Nelson failed to establish, by clear and convincing evidence, her continuing qualifications for licensure, in part because she failed to appear for the hearing. The evidence shows criminal convictions. Consequently, the Commission is understandably concerned that Ms. Nelson, as a holder of a gambling license, will not comply with the statutes enacted by the Legislature and the administrative rules adopted by the Commission as they relate to gambling.

The risk posed to the Commission's efforts to keep crime out of gambling in this state is there.

21. I conclude that the Commission's evidence has established that the revocation of Ms. Nelson's license to act as a public card room employee is in the public interest. The available evidence shows that Ms. Nelson has stolen property and assaulted individuals. Her behavior legitimately raises the question of her willingness to comply with the statutes and administrative rules relating to gambling. I conclude that Ms. Nelson represents a threat to the effective regulation of gambling and her license should be revoked.

22. RCW 34.05.440(2) provides in relevant part: "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding . . . the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order." Therefore, in the alternative, the Licensee, Melissa Nelson, is in default for her failure to appear for the June 20, 2012, hearing.

From the foregoing conclusions of law, **NOW THEREFORE:**

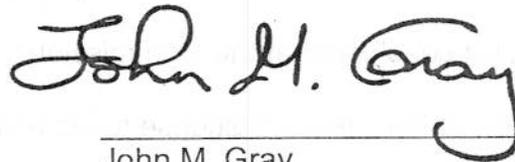
INITIAL ORDER

IT IS HEREBY ORDERED That the Commission's proposal to revoke Ms. Nelson's CRE, License No. 68-31066, is **GRANTED**.

Alternatively, the Licensee, Melissa Nelson, is in **DEFAULT**.

A request that this order be vacated must be filed within seven days of service of this order, stating the grounds relied upon. RCW 34.05.440(3).

Signed and issued at Tacoma, Washington, this 1st day of August 2012.



John M. Gray
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES

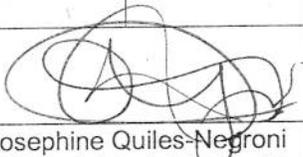
Initial orders must be entered in accordance with RCW 34.05.461(3). WAC 230-17-085(1). Section 5(e) and (n) of the Compact may also apply. An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-090. WAC 230-17-085(2).RCW 34.05.464 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).

Certificate of Service – OAH Docket No. 2012-GMB-0033

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Address: Melissa K. Nelson 9640 26th Avenue SW Seattle WA 98106	First Class US Mail, postage prepaid
Address: Stephanie Happold Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia WA 98504-0100	First Class US Mail, postage prepaid
Address: Washington State Gambling Commission PO Box 42400 Olympia WA 98504-2400	First Class US Mail, postage prepaid
Address:	
Address:	
Address:	

Date: August 1, 2012



Josephine Quiles-Negrone
Office of Administrative Hearings

