

FEB 03 2017

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter Of:

Docket No. 11-2016-GMB-00015

ERIC G. GORDON,
Moses Lake, Washington
License No. 68-33452

Licensee

INITIAL ORDER

Agency: Gambling Commission
Program: Licensing
Agency No. CR 2016-01213

1. ISSUES

- 1.1. Issue 1: Did the Washington State Gambling Commission ("Commission") properly revoke Eric Gordon's ("Mr. Gordon's") gambling license because he obtained that license by misrepresentation or concealment?
- 1.2. Issue 2: Did the Commission properly revoke Mr. Gordon's gambling license because he was convicted of a misdemeanor involving physical harm to an individual?
- 1.3. Issue 3: Did the Commission properly revoke Mr. Gordon's gambling license because he is the subject of an outstanding felony arrest warrant?
- 1.4. Issue 4: Did the Commission properly revoke Mr. Gordon's gambling license because he is subject to pending charges for an offense listed under RCW 9.46.075(4)?
- 1.5. Issue 5: Did the Commission properly revoke Mr. Gordon's gambling license because he has demonstrated willful disregard for complying with statutes or ordinances at the state or local level?
- 1.6. Issue 6: Did the Commission properly revoke Mr. Gordon's gambling license because he poses a threat to the effective regulation of gambling as demonstrated by his criminal record?
- 1.7. Issue 7: Did the Commission properly revoke Mr. Gordon's gambling license because he failed to establish by clear and convincing evidence that he is qualified for licensure?

2. ORDER SUMMARY

- 2.1. Order No. 1: The Washington State Gambling Commission ("Commission") properly revoked Eric Gordon's ("Mr. Gordon's") gambling license because he obtained that license by misrepresentation or concealment.
- 2.2. Order No. 2: The Commission properly revoked Mr. Gordon's gambling license because he was convicted of a misdemeanor involving physical harm to an individual.
- 2.3. Order No. 3: The Commission properly revoked Mr. Gordon's gambling license because he is the subject of an outstanding felony arrest warrant.
- 2.4. Order No. 4: The Commission properly revoked Mr. Gordon's gambling license because he is subject to pending charges for an offense listed under RCW 9.46.075(4)
- 2.5. Order No. 5: The Commission properly revoked Mr. Gordon's gambling license because he has demonstrated willful disregard for complying with statutes or ordinances at the state or local level.
- 2.6. Order No. 6: The Commission properly revoked Mr. Gordon's gambling license because he poses a threat to the effective regulation of gambling as demonstrated by his criminal record.
- 2.7. Order No. 7: The Commission properly revoked Mr. Gordon's gambling license because he failed to establish by clear and convincing evidence that he is qualified for licensure.

3. HEARING

- 3.1. Hearing Date: December 14 2016.
- 3.2. Administrative Law Judge: John M. Gray
- 3.3. Appellant: Eric G. Gordon ("Mr. Gordon"). (Did not appear).
 - 3.3.1. Representative: Mr. Gordon
 - 3.3.2. Witnesses:
 - 3.3.2.1. None.
- 3.4. Agency: Washington State Gambling Commission ("Commission").

- 3.4.1. Representative: Greg Rosen, Assistant Attorney General.
- 3.4.2. Witnesses: Mike Lopez, Special Agent, Commission.
- 3.5. Exhibits: Exhibits 1 through 17 were admitted.
- 3.6. Other: The Commission notified Mr. Gordon of the time and the place of the administrative hearing. Mr. Gordon did not appear. The Attorney General's Office received a telephone call from Mr. Gordon on December 13, 2016 (the day before the hearing) who said he cannot get to the hearing from Moses Lake to Lacey, Washington. The consequence of a default order was explained to him. No further word was heard from Mr. Gordon. The Commission wished to establish a prima facie case, and offered seven (17) exhibits, which were admitted. Special Agent Mike Lopez testified.

4. FINDINGS OF FACT

The ALJ finds the following facts by a preponderance of the evidence:

Jurisdiction

- 4.1. The Commission issued the Notice of Administrative Charges on September 14, 2016. The Commission mailed the Notice of Administrative Charges to Mr. Gordon by both regular and certified United States mail. The mailing address was 1312 Buell Street, Moses Lake, WA 98837. Mr. Gordon filed his appeal with the Commission, which received the appeal on October 3, 2016. Subsequently, the Commission issued an Amended Notice of Administrative Charges on November 4, 2016, which it also mailed to Mr. Gordon at 1312 Buell Street, Moses Lake, WA 98837.
- 4.2. The Commission issued the Notice of Hearing for the December 14 hearing on November 7, 2016, including a certificate of service on all parties.

Eric Gordon:

- 4.3. Eric Gordon is an individual whose last known address was 1312 Buell Street, Moses Lake, Washington 98837. On April 4, 2016, the Commission received Mr. Gordon's individual license application for a public card room employee's license. The employer's name appears on the application as Papa's Casino in Moses Lake, Washington. Exhibit 1, page 1.
- 4.4. On page 2 of the application there is a section called "criminal history statement." The instructions to the applicant state:

Have you ever (a) forfeited bail or paid a fine over \$25 (incl. traffic fines)?; (b) been arrested?; (c) been charged with a crime?; (d) been convicted?; (e) been jailed?; (f) been placed on probation? You must answer "YES" if any of the above have occurred, even if charges were dismissed, deferred or changed. Explain each charge fully below and attach additional sheets as needed. False or incomplete information may result in denial, suspension, or revocation of your license. You must include information as a juvenile if you are applying for a Gambling License. Exhibit 1, page 2, no. 6.

- 4.5. Mr. Gordon disclosed that in 2005, he was charged with driving under the influence ("DUI") in Moses Lake, Grant County, Washington. He did not disclose the outcome or disposition. Exhibits 1, page 2, no. 6.
- 4.6. At the bottom of page 2 of the application is the applicant's oath. The instructions to the applicant warn that "untruthful, misleading, or mistake" may result in revocation of any gambling licenses currently held. The instructions also inform the applicant that failure to disclose to the Commission any criminal or civil actions filed against the applicant during the application or license period may be grounds for revocation of the license. Exhibit 1, page 2.
- 4.7. Mr. Gordon signed the license application on March 31, 2016. Exhibit 1, page 2.
- 4.8. A pre-licensing review of the Judicial Information System ("JIS") did not reveal any material criminal history. At the time the Commission issued the license, it had not yet received an FBI report. An FBI report reveals a person's criminal matters outside Washington State. The Commission issued a public card room employee's license to Mr. Gordon on April 4, 2016, based on the absence of a criminal history in JIS and because of the lack of disclosure by Mr. Gordon in his application. Without more, the license will expire by its own terms on April 4, 2017. Exhibit 17, pp. 1 and 4.

The Commission's Investigation:

- 4.9. Mike Lopez is a Special Agent employed by the Commission. He has worked for the Commission for over 26 years and has extensive experience there. He has also had extensive training in gambling law enforcement over the years of his employment at the Commission.
- 4.10. After the Commission issued a license to Mr. Gordon, Special Agent Lopez discovered the following criminal convictions and related matters pertaining to Mr. Gordon.

Mr. Gordon's Criminal History:

- 4.11. First, the State of Oregon charged Mr. Gordon with assault in the fourth degree and harassment on June 6, 2000. Exhibit 2.
- 4.12. Mr. Gordon pleaded guilty to the charge of assault in the fourth degree on June 19, 2000. The State of Oregon dismissed the harassment charge in return for the guilty plea on the assault charge. Exhibit 3.
- 4.13. The State of Oregon amended the sentence on July 17, 2000. The amended sentence shows that Mr. Gordon completed the batterer treatment previously ordered on June 19. The amended sentence was nunc pro tunc June 19, 2000. Exhibit 4.
- 4.14. In 2001, the State of Oregon charged Mr. Gordon with resisting arrest. Exhibit 8.
- 4.15. Second, on November 8, 2001, two Salem police officers were checking for fishing violations in a Salem park. They encountered Mr. Gordon, who tried to conceal that he had been fishing. Mr. Gordon used a false name and, when they tried to arrest him, he ran. As he broke free from the police, he knocked one of the officers to the ground. The police pursued him. Mr. Gordon turned and appeared to want to fight the police. They were able to arrest Mr. Gordon. Exhibits 5, 6, and 7.
- 4.16. The State of Oregon charged Mr. Gordon with the crime of resisting arrest on November 9, 2001. Exhibit 8.
- 4.17. Mr. Gordon pleaded guilty to the charge of resisting arrest on November 21, 2001. Exhibit 9
- 4.18. Third, on July 29, 2002, in Pasco, Washington, Mr. Gordon was part of a large group of people who were watching two women fight near a food cart. Police from several jurisdictions were called to intervene because it appeared that a riot could occur. Mr. Gordon refused to leave when ordered to do so by law enforcement officers and, instead, remained on the scene yelling obscenities at the officers. He was arrested for failing to disperse as ordered by the police. Exhibit 10, pp. 1-11.
- 4.19. The Pasco City Attorney charged Mr. Gordon with failure to disperse. Mr. Gordon pleaded guilty to the charge of failure to disperse on September 13, 2002. Exhibit 11.

- 4.20. In addition to the convictions identified above, Mr. Gordon is the subject of an arrest warrant issued by the State of Florida on December 8, 1997 in Palm Beach County, Florida. The charges against Mr. Gordon are (a) burglary with assault or battery; (b) aggravated assault with a weapon. Exhibits 13,14, and 16.
- 4.21. Upon inquiry by Special Agent Lopez, the Palm Beach County Sheriff's Office stated the warrant is active and that extradition is not sought. Exhibit 13.
- 4.22. The weapon in the Florida crime was a knife. Exhibit 15.
- 4.23. Mr. Gordon did not disclose any of these crimes of the Florida arrest warrant to the Commission when he applied for a license in April 2016.
- 4.24. Special Agent Lopez telephoned Mr. Gordon on April 25, 2016, to discuss the undisclosed criminal convictions. Mr. Gordon was evasive, at first, and only reluctantly acknowledged the three convictions in Oregon and Washington. Mr. Lopez did not, on his own, admit the existence of the Florida arrest warrant. See, Exhibit 17, pp. 4-5.

Mr. Gordon's Failure to Appear at the December 14 Adjudicative Proceeding:

- 4.25. Mr. Gordon did not appear for the hearing scheduled for December 14, 2016, at 9 AM. The Commission and the undersigned Administrative Law Judge waited until 9:35 AM for Mr. Gordon to appear. When he had not appeared, the Commission presented a prima facie case. The findings in this case are based primarily upon evidence presented by or on behalf of the Commission.

5. CONCLUSIONS OF LAW

Based upon the facts above, the ALJ makes the following conclusions:

Jurisdiction

- 5.1. 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. The Commission received Mr. Gordon's request for an administrative hearing nineteen days after the Commission served Mr. Gordon with the Notice of Administrative Charges. Twenty-three days is the time allowed if service is made by regular United States mail. WAC 230-17-010(2)(a). Twenty days is the time allowed if service is made by certified mail. WAC 230-17-010(2)(b). Mr. Gordon timely filed his request for an administrative hearing.

Statutes, Rules, and Analysis:

- 5.2. The Commission bases its revocation of Mr. Gordon's gambling license on the provisions of RCW 9.46.075(1), (3), (4), (7), (8), and (9); RCW 9.46.153(1); WAC 230-03-085(1), (2), (3), (6), (7), and (8). At the hearing, the Commission withdrew its reliance on WAC 230-06-085(1). See, Commission's Memorandum of Legal Authorities, page 5, and as modified by the Assistant Attorney General at the hearing. Conclusions of Law No. 5.3 through 5.6.6 contain the applicable language of these statutes and administrative rules.
- 5.3. 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:
- 5.3.1. (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;
- 5.3.2. (3) Has obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake;
- 5.3.3. (4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful 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;
- 5.3.4. (7) Makes a misrepresentation of, or fails to disclose, a material fact to the commission;
- 5.3.5. (8) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter;

5.3.6. (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) 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[.]

5.4. RCW 9.46.153(1) is a statute containing a separate statement of RCW 9.46.075(8) and that requires applicants to prove their eligibility for a license:

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[.]”

5.5. “Clear and convincing evidence,” as that term is used in RCW 9.46.153(1), 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).

5.6. 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:

5.6.1. (1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or

5.6.2. (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. "Physical harm to individuals" includes 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

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

5.6.4. (6) Is the subject of an outstanding gross misdemeanor or felony arrest warrant; or

5.6.5. (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; or

5.6.6. (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

(c) Reputation; or

(d) Habits; or

(e) Associations[.]

5.7. The Commission has proved by a preponderance of the evidence that Mr. Gordon's failure to disclose his criminal convictions and the Florida arrest warrant was an attempt on Mr. Gordon's part to obtain a gambling license by misrepresentation or concealment. In doing so, Mr. Gordon violated RCW 9.46.075(3) and (7).

5.8. The Commission has proved by a preponderance of the evidence that Mr. Gordon's conviction of assault in the fourth degree in Oregon in 2000 was a crime involving physical harm to an individual. Consequently Mr. Gordon violated RCW 9.46.075(4) and of WAC 230-03-085(2).

5.9. The Commission has proved by a preponderance of the evidence that Mr. Gordon's is the subject of an outstanding felony arrest warrant issued by Florida, and consequently is in violation of WAC 230-03-085(6).

5.10. The Commission has proved by a preponderance of the evidence that Mr. Gordon is subject to pending charges for offenses listed under RCW 9.46.075(4) and consequently is in violation of RCW 9.46.075(9) and WAC 230-03-085(2).

5.11. The Commission has proved by a preponderance of the evidence that Mr. Gordon's convictions and his refusal to obey lawful instructions from police, resulting in his arrests, demonstrate willful disregard for complying with statutes and ordinances at the state or local level. The Commission's evidence shows it could just as easily have been an instruction from the casino operator or a Commission agent that Mr. Gordon is willing to disregard. He also disregarded

instructions to disclose all of his arrests and criminal convictions when he applied for the gambling license. Consequently, Mr. Gordon violated WAC 230-03-085(3).

5.12. The Commission has proved by a preponderance of the evidence that Mr. Gordon poses a threat to the effective regulation of gambling as demonstrated by his criminal record. The ALJ concludes that if Mr. Gordon is willing to defy police when the instruct him to submit to arrest and to disperse, as well as is willing to assault individuals, that Mr. Gordon is willing to disobey gambling statutes and regulations. Mr. Gordon has violated WAC 230-03-085(8)(b).

5.13. Mr. Gordon has failed to prove at all, let alone by clear and convincing evidence, that he has the necessary qualifications for licensure under Chapter 9.46 RCW. Mr. Gordon has failed to meet his burden of proof under RCW 9.46.075(8) and 9.46.153(1).

5.14. The ALJ concludes that the Commission established a prima facie case that establishes valid grounds for revocation of Mr. Gordon's gambling license.

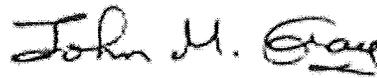
5.15. RCW 34.05.440(2) provides in relevant part: "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding . . . the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order." Therefore, in the alternative, the Licensee, Eric G. Gordon, is in default for his failure to appear for the June 21, 2010, hearing.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. The Commission's decision to revoke Mr. Gordon's gambling license, no. 68-33452, is AFFIRMED.

Issued from Tacoma, Washington, on the date of mailing.



John M. Gray
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

PETITION FOR REVIEW

Any party to this proceeding may file a Petition for Review of this initial order. The written petition for review must be mailed to the Washington State Gambling Commission at:

Washington State Gambling Commission
PO Box 42400
Olympia, WA 98504

The petition for review must be **received** by the Commission within **twenty (20) days** from the date this initial order was mailed to the parties. A copy of the petition for review must be sent to all parties of record. The petition for review must specify the portions of the initial order with which the party disagrees, and must refer to the evidence in the record which supports the party's position. The other party's reply must be **received** at the address above, and served on all parties of record, within **thirty (30) days** from the date the petition for review was mailed.

Any party may file a cross appeal. Parties must file cross appeals with the Washington State Gambling Commission within ten days of the date the petition for review was filed with the Washington State Gambling Commission. Copies of the petition or cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed.

CERTIFICATE OF MAILING IS ATTACHED

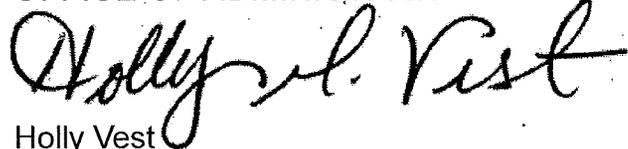
CERTIFICATE OF SERVICE FOR DOCKET NO. 11-2016-GMB-00015

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

<p>Eric Gordon 1312 Buell Street Moses Lake, WA 98837 Appellant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Gregory Rosen Po Box 40100 MS: 40100 Olympia, WA 598504 Assistant Attorney General</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Thursday, February 02, 2017

OFFICE OF ADMINISTRATIVE HEARINGS



Holly Vest
Legal Assistant

ATTORNEY GENERAL
OF WASHINGTON
FEB 03 2017
GOVERNMENT COMPLIANCE
& ENFORCEMENT