

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In The Matter Of:

ANGELINE UY,

Licensee.

License No. 69-39427

Docket No. 12-2016-GMB-00016

INITIAL ORDER

Agency: Gambling Commission
Program: Licensing
Agency No. CR 2016-01678

1. ISSUES

- 1.1. Issue 1: Did Ms. Uy violate WAC 230-06-090(1) by failing to report to the Commission, in writing and within 30 days of the date of filing of administrative charges, that administrative charges had been filed against her by the Muckleshoot Gaming Commission?
- 1.2. Issue 2: Did Ms. Uy violate WAC 230-06-090(5) by failing to provide a copy of the final written decision by, or settlement with, the Muckleshoot Gaming Commission within 30 days after the case was resolved?
- 1.3. Issue 3: Did Ms. Uy violate WAC 230-03-085(7) by failing to provide the Commission with the information required by WAC 230-06-090(1) and 230-06-090(5)?
- 1.4. Issue 4: Did Ms. Uy violate WAC 230-03-085 and RCW 9.46.075(10) by taking a casino patron's phone, without that patron's permission, to sell the phone and collect the money from the sale?
- 1.5. Issue 5: Did Ms. Uy fail to prove, by clear and convincing evidence, that she is qualified for licensure in violation of RCW 9.46.075(8) and RCW 9.46.153(1)?
- 1.6. Issue 6: Should the Commission's revocation of Ms. Uy's Class III certification pursuant to RCW 9.46.075(1), (7), (8), and (10); WAC 230-03-085(1), (7), and (8), as well as Section V C(1), (2), and (4) of the Muckleshoot Tribe-State Compact, be upheld, modified, or set aside?

2. ORDER SUMMARY

- 2.1. Order No. 1: Yes.

- 2.2. Order No. 2: Yes.
- 2.3. Order No. 3: Yes.
- 2.4. Order No. 4: Yes.
- 2.5. Order No. 5: Yes.
- 2.6. Order No. 6: Affirmed.

3. HEARING

- 3.1. Hearing Date: March 22, 2017
- 3.2. Administrative Law Judge: John M. Gray
- 3.3. Appellant: Angeline Uy; failed to appear
 - 3.3.1. Representative: None
 - 3.3.2. Witnesses:
 - 3.3.2.1. None
- 3.4. Agency: Washington State Gambling Commission ("Commission")
 - 3.4.1. Representative: Gregory Rosen, Assistant Attorney General
 - 3.4.2. Witnesses:
 - 3.4.2.1. Bill Dunn, Muckleshoot Gaming Commission
 - 3.4.2.2. Donna Khanhasa, Special Agent, Commission
 - 3.4.3. Others present but not testifying: Lily Melton, Muckleshoot Gaming Commission; Haylee Mills, staff attorney, Commission
- 3.5. Exhibits: Commission Exhibits 1 through 12 were admitted. Ms. Uy did not submit any proposed exhibits.
- 3.6. Other: This adjudicative proceeding was governed by the Prehearing Conference Order ("PHCO") entered January 26, 2017.
- 3.7. Other: All witnesses were sworn before testifying.

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 October 26, 2016, serving that document by both certified and regular United States mail on all parties, including Angeline Uy at 2018 E. 39th Street, Tacoma, WA 98404. The Commission received Ms. Uy's Request for Administrative Hearing on November 3, 2016.
- 4.2. The Prehearing Conference Order (PHCO) stated the parties' agreement that the hearing would be held on Wednesday, March 22, 2017, beginning at 9:00 AM, at the Commission's hearing room in Lacey, Washington. The PHCO included a certificate of service on all parties.

Ms. Uy's Failure to Appear:

- 4.3. Ms. Uy was provided with notice of the time, date and place of the hearing, but failed to appear and present evidence. Consequently, the findings in this case are based primarily upon evidence presented by or on behalf of the Commission.

The Cell Phone Incident:

- 4.4. The Commission issued a Class III Tribal Certification, License No. 69-39427, to Ms. Uy on or about February 3, 2016. That license expired on February 3, 2017. Exhibit 1, page 1. See also, Conclusion of Law No. 5.2.
- 4.5. Ms. Uy used her license to work as a table game dealer at the Muckleshoot Casino. She worked there until May 6, 2016, when the Casino suspended her for the incident that is the basis of this license revocation action.
- 4.6. On April 30, 2016, a patron of the Muckleshoot Casino, Colton Gaer, dropped his cell phone to the floor of the casino when he stood up from a gaming machine.
- 4.7. Very shortly after he dropped the cell phone, Ms. Uy walked by the same spot where the phone fell to the casino floor. She saw the cell phone and bent over to pick it up. She continued to walk out of the casino, walking past a security podium en route.
- 4.8. Ms. Uy left the casino with Mr. Gaer's cell phone and went home.

- 4.9. The Muckleshoot Casino has a written policy for its employees who find lost items and money. That written policy provides:
2. Any employee finding an item will immediately turn the item into the Security Department. The Security Department's Lost and Found Room located at the Security Podium is the only authorized storage location for non-cash lost and found items. All questions about lost items will be directed to Security. Exhibit 4, page 1.
- 4.10. Ms. Uy also signed the Muckleshoot Gaming Commission's Licensee Responsibility Agreement on January 19, 2016. In this agreement, she acknowledged her responsibility to know proper procedures and any laws, Tribal Codes, or Rules that were relevant to her position and to stay apprised of any changes in those policies or procedures. She also acknowledged that any demonstrated willful disregard for compliance with "ordinances, statutes, administrative rules, or court orders at the Tribal, Local, State, or Federal level," is grounds for denial, suspension or revocation of her gaming license. Exhibit 5, page 1.
- 4.11. Ms. Uy also signed the "mission statement of the [Muckleshoot] Gaming Commission, also on January 19, 2016. This two page document contains several statements regarding the importance of employees' personal honesty whether at work or outside the gaming premises and warning that the commission of a crime at work, including theft or misappropriation of lost and found property while in pending status for return to the rightful owner, will result in revocation of that employee's gaming license. Exhibit 5, pp. 2 and 3.
- 4.12. Mr. Gaer reported the loss of his cell phone to casino security on April 30, 2016, at about 4:05 AM. Exhibit 2.
- 4.13. The Muckleshoot Casino maintains a system of closed-circuit surveillance cameras to monitor events in the casino at all times. When Mr. Gaer reported the loss of his cell phone to security, and identified where he thought he had lost it, casino security asked the casino surveillance operators to review the video of that area and about that time to see if anything could be learned from the video. Surveillance review identified Ms. Uy as someone who could have picked up the cell phone. Ms. Uy's next scheduled work day was May 6, 2016. Bill Dunn arranged to interview Ms. Uy, together with Lily Melton, on May 6 regarding the lost cell phone.
- 4.14. Muckleshoot Casino surveillance cameras captured Mr. Gaer's cell phone dropping from his lap as he stood up and Ms. Uy picking up the same cell phone

on April 30, 2016. The videos also show her leaving the casino. Exhibit 11, CD # 1.

The Muckleshoot Casino's Investigation of the Incident:

- 4.15. Bill Dunn has worked as a gaming enforcement agent for the Muckleshoot Gaming Commission for about seventeen years. His job is to protect tribal assets and to investigate alleged violations and crimes on casino property, including those involving casino patrons. He has had on the job training and specific training in casino policies. Mr. Dunn investigated the matter involving the cell phone and Ms. Uy.
- 4.16. Mr. Dunn and Ms. Melton, who works with Mr. Dunn, interviewed Ms. Uy in a Muckleshoot Casino interview room on May 6, 2016. Exhibit 3, page 3.
- 4.17. When the interview began, Ms. Uy said she knew why they were there. She said she found the cell phone, picked it up, and left the casino with the cell phone in her possession. She intended to sell the phone, but got scared and did not do so. She also said she knew what the casino's lost and found procedure was and that she had violated that procedure (she expressed it as "my bad") when she did not turn in the phone to the Security Department's Lost and Found Room at the Security Podium. Exhibit 3, page 3.
- 4.18. Also on May 6, 2016, Ms. Uy signed a statement, written in her handwriting on paper with Muckleshoot Gaming Commission letterhead, acknowledging the facts in Finding of Fact No. 4.17, but adding "I want to clarify it in here that I obviously did not steal it." Exhibit 12.
- 4.19. Ms. Uy agreed to return the cell phone to the casino. The cell phone was still in her possession at her home.
- 4.20. Mr. Dunn concluded that the incident was a dischargeable offense under the Muckleshoot Casino "employee criminal violation matrix," seized Ms. Uy's badge, and told her that he was summarily suspending her gaming license. After giving her instructions to contact the casino's HR department before returning to work, other security personnel accompanied Ms. Uy as she cleaned out her locker and escorted her from the casino. Exhibit 3, pp. 3-4.
- 4.21. Ms. Uy returned the cell phone to the casino. Mr. Gaer retrieved his property.

The Muckleshoot Gaming Commission's Revocation of Ms. Uy's Gaming License:

- 4.22. On June 1, 2016, the Muckleshoot Gaming Commission notified Ms. Uy that it would hold a revocation hearing on Tuesday, June 14, 2016, at noon. Ms. Uy filed a response stating that she contested the proposed revocation. Exhibits 6 and 7.
- 4.23. The Muckleshoot Gaming Commission held the hearing on June 14, 2016, as scheduled. In a letter dated June 14, 2016, the Muckleshoot Gaming Commission notified Ms. Uy that it had revoked her Class III, Class A gaming license. Exhibit 8.
- 4.24. On August 4, 2016, Merle P. Barr, Sr., the Muckleshoot Gaming Commission's chairman, notified the Washington State Gambling Commission that it had revoked Ms. Uy's license on June 14, 2016 and enclosed a copy of the June 14 letter to Ms. Uy. Exhibit 9.

The Washington State Gambling Commission's Investigation:

- 4.25. Donna Khanhasa is a special agent employed by the Commission. She has worked there for over eleven years. Currently she performs financial and criminal history investigations. Her primary duty is to protect the public in the gaming industry. She has had over 400 hours of training in how to conduct investigations and how to perform background checks.
- 4.26. The Commission assigned Ms. Khanhasa to investigate Ms. Uy.
- 4.27. Special Agent Khanhasa performed her investigation and concluded that the facts alleged by the Muckleshoot Gaming Commission, regarding Ms. Uy and the cell phone incident on April 30, 2016, had occurred.
- 4.28. Special Agent Khanhasa also found that Ms. Uy had never notified the Commission of both the suspension of her gaming license by the Muckleshoot Gaming Commission and the revocation of her gaming license by the same entity.
- 4.29. Special Agent Khanhasa wrote the case report for the Commission, numbered CR 2016-01678. Exhibit 1.
- 4.30. Based on Special Agent Khanhasa's case report, the Commission decided to revoke Ms. Uy's state-issued Class III gaming license.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make 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 served the Notice of Administrative Charges on Ms. Uy mail on October 26, 2016. The Commission received Ms. Uy's request for an administrative hearing on November 3, 2016. 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). The Commission received Ms. Uy's request for a hearing eight days after the Commission served the Notice of Administrative Charges, well within the appeal deadlines. Therefore, the ALJ concludes that the appeal was timely filed in the absence of evidence to the contrary.
- 5.2. Even though Ms. Uy's license had expired before the date of the March 22 hearing, "once a professional disciplinary tribunal lawfully acquires jurisdiction over a proceeding, its jurisdiction continues until the proceeding is concluded." *Nims v. Wa. Bd. of Registration*, 113 Wn. App. 499, 53 P.3d 52 (2002). Therefore, jurisdiction did not terminate merely because Ms. Uy's state license expired before the hearing date.

The Applicable Law:

- 5.3. The Commission bases its revocation of Ms. Uy's gambling license on the provisions of RCW 9.46.075(1), (8), and (10); RCW 9.46.153(1); WAC 230-03-085(1) and (8); WAC 230-06-090(1), (7), and (8); and the Muckleshoot Tribe-State Compact, Sections V(C)(1), (2), and (3). Conclusions of Law No. 5.3 through 5.11 contain the applicable language of these statutes and administrative rules.
- 5.4. 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:
- 5.4.1. (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;

5.4.2. (8) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter;

5.4.3. (10) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain[.]

5.5. 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[.]”

5.6. “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).

5.7. 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:

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

5.7.2. (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

5.7.3. (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[.]”

5.8. WAC 230-06-090(1) states, “All licensees must report to us in writing within thirty days all administrative actions filed against them by other gambling regulatory agencies, including those from other countries and Indian tribes.

5.9. WAC 230-06-090(5) states, “We must receive a copy of the final written decision or settlement within thirty days after the case is resolved.”

5.10. The Tribal-State Compact for Class III Gaming Between the Muckleshoot Indian Tribe and the State of Washington is an agreement between sovereign nations consistent with the Centennial Accord dated August 4, 1989. The Tribal-State Compact for Class III Gaming Between the Muckleshoot Indian Tribe and the State of Washington (hereinafter, “the Compact”) was originally signed on February 11, 1993, and was last amended on March 30, 2007.

5.11. Section V of the Compact is “Licensing and Certification Procedures. Section V(C) and its pertinent subsections provide:

Grounds for Revocation, Suspension or Denial of State Certification. The State Gaming Agency may revoke, suspend or deny a State certification under the provisions of RCW 9.46.075, and rules promulgated thereunder, for any reason or reasons it deems to be in the public interest. In addition, these reasons shall include, but shall not be limited to when an applicant or holder of certification or principal of an entity:

- (1) Is determined to be a person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the effective regulation of gaming or creates or enhances the chances of unfair or illegal practices, methods and activities being used in the conduct of the gaming activities permitted pursuant to this Compact; or the person has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by any provision of a Tribal-State Compact.
- (2) Has failed to provide any information reasonably required to investigate the application for state certification or to reveal any fact material to such

application, or has furnished any information which is untrue or misleading in connection with such application.

- (3) Has had a Tribal or State gaming license revoked or denied during the twelve (12) months prior to the date of receipt of the application; is currently on probation; or has demonstrated a willful disregard for compliance with gaming regulatory authority in any jurisdiction, including offenses that could subject the individual or entity to suspension, revocation or forfeiture of any gaming license. For the purpose of reviewing any application for a state certification or for considering the denial, suspension or revocation of any state certification the state gaming agency may consider any prior criminal conduct or current probationary status of the applicant or holder of certification and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases.

- 5.12. The ALJ concludes that the Commission has proved by a preponderance of the evidence that Ms. Uy's failure to report the proposed revocation of her gaming license by the Muckleshoot Gaming Commission violated RCW 9.46.075(1), WAC 230-03-085(1) and (7), and WAC 230-06-090(1) by failing to report that proposed revocation to the Commission within 30 days of the filing of the action by the Muckleshoot Gaming Commission. Ms. Uy received notice of the proposed action from the Muckleshoot Gaming Commission in the notice to her dated June 1, 2016. The ALJ further concludes that Ms. Uy's failure to report the Muckleshoot Gaming Commission's revocation of her license, for which she received notice in the letter dated June 14, 2016, violated those same cited provisions and WAC 230-06-090(5).
- 5.13. The ALJ concludes that the Commission has proved by a preponderance of the evidence that Ms. Uy's conversion of Mr. Gaer's cell phone for her planned sale and profit from the sale of Mr. Gaer's cell phone violated RCW 9.46.075(10). The phrase defining "occupational manner or context" to mean "the systematic planning, administration, management or execution of an activity for financial gain" is written in the disjunctive; i.e., the use of the word "or." The evidence shows that Ms. Uy formed the intent to take the cell phone and to sell it, and that constituted the execution of an activity for financial gain.
- 5.14. The ALJ concludes that the Commission has proved by a preponderance of the evidence that Ms. Uy's conversion of Mr. Gaer's cell phone to her own use for her intended wrongful profit was a violation of WAC 230-03-085(8)(a), because in doing so, she demonstrated that she 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 her prior activity on April 30, 2016.

5.15. Ms. Uy has failed to prove at all, let alone by clear and convincing evidence, that she has the necessary qualifications for licensure under Chapter 9.46 RCW. Ms. Uy has failed to meet her burden of proof under RCW 9.46.075(8) and 9.46.153(1).

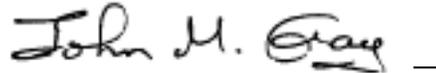
5.16. The ALJ concludes that the Commission established a prima facie case that establishes valid grounds for revocation of Ms. Uy's gambling license.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. The Commission's decision to revoke Ms. Uy's Class III Tribal Certification, No. 69-39427 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

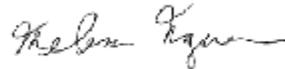
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 12-2016-GMB-00016

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

<p>Angeline Uy 2018 E. 39th Street Tacoma, WA 98404 <i>Appellant</i></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, AAG Office of the Attorney General MS 40100 PO Box 40100 Olympia, WA 98504 <i>Agency Representative</i></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: Friday, May 19, 2017

OFFICE OF ADMINISTRATIVE HEARINGS



Melesa Noguera
Legal Assistant 2