

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

APR 24 2017
GOV
OFFICE

In The Matter Of:

Docket No. 03-2017-GMB-00019

Kelly L. Bang,

INITIAL ORDER

Appellant.

Agency: Gambling Commission
Program: Washington State Gambling Commission
Agency No. 2016-02133

1. ISSUES

1.1. Based on the State of Washington Gambling Commission's 'Denial of Public Card Room Employee License Application', dated March 8, 2017: Whether the Washington State Gambling Commission properly denied the Appellant, Kelly Bang's application for a public card room license in accordance with RCW 9.46.153(1) based on RCW 9.46.075(1),(4),(8),(10) and/or WAC 230-03-085(1),(8)(a),(b), due to a felony conviction for Theft in the Second Degree in 2011?

2. ORDER SUMMARY

2.1. **AFFIRMED.** The Washington State Gambling Commission properly denied Kelly Bang's application for a public card room license in accordance with RCW 9.46.153(1).

3. HEARING

- 3.1. Hearing Date: July 26, 2017
- 3.2. Appellant: Kelly L. Bang represented himself ('Appellant')
- 3.3. Agency: Washington State Gambling Commission ('Gambling Commission')
- 3.3.1. Representative: Greg Rosen, Senior Counsel, Office of Attorney General of Washington

3.3.2. Witnesses: Tyson Wilson, Gambling Commission
Special Agent

3.4. Exhibits: Gambling Commission's Exhibits 1 through
10 were admitted, without objection.

The Appellant did not submit any exhibits.

4. FINDINGS OF FACT

The undersigned administrative law judge finds the following facts by a preponderance of the evidence:

Jurisdiction

- 4.1. On December 8, 2016, Kelly Layne Bang ('Appellant'), filed a Public Card Room Employee License Application with the Washington State Gambling Commission ('Gambling Commission'). *Exhibit (Ex.) 9.*
- 4.2. On March 8, 2017, Gambling Commission issued a 'Denial of Public Card Room Employee License Application' to the Appellant.
- 4.3. On March 23, 2017, the Appellant filed an appeal of the denial.

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- 4.4. The Appellant worked as a financial manager at Downtown Harley Davidson, Renton, Washington, from March 2010 until October 15, 2010. *Ex 2.*
- 4.5. During his employment, the Appellant was responsible for handling financial transactions with customers which included the handling of cash and check payments on motorcycles. Shortly after he left employment at Downtown Harley Davidson, an internal investigation began regarding missing funds. Having found money missing on accounts the Appellant handled, Harley Davidson notified the Renton Police Department, who commenced a formal investigation. Renton Police Detective Morris determined the Appellant stole \$10,303.00 from the business. The matter was forwarded to the King County Prosecutor's Office for the filing of criminal charges. *Ex 2.*

- 4.6. King County Prosecutor's Office filed an informational charging document for felony Theft in the First Degree charges against the Appellant. *Ex. 1.*
- 4.7. Shortly after the filing of the pleading, the Prosecutor filed a First Amended Information for the charge of Theft in the Second degree, a felony. *Ex 3.*
- 4.8. On March 3, 2011, the Appellant pled guilty to Theft in the Second degree, a felony. The Appellant was represented by counsel during his plea of guilty and sentencing. The plea of guilty was accepted as knowingly, voluntarily, and intelligently made by the Appellant. The judge imposed a sentence which included community service, in lieu of jail time, and required restitution to be paid to the Harley Davidson dealership, in the amount of \$10,303.00, which the Appellant paid at the time of sentencing. *Exs. 4 & 5.*
- 4.9. The Appellant held a Public Card Room Employee License while he worked at Downtown Harley Davidson. Based on the Appellant's conviction for Theft in the Second Degree, the Gambling Commission revoked the Appellant's license in 2011. *Exs. 6 & 7.*

Gambling Commission's Investigation

- 4.10. On December 8, 2016 Mr. Bang applied for a Washington State Gambling Commission Public Card Room Employee License. *Testimony of Tyson Wilson (hereinafter 'Testimony of Wilson') and Ex 9.*
- 4.11. The Appellant's license application was assigned to Gambling Commission Special Agent Tyson Wilson. Special Agent Wilson has been employed with the Washington State Gambling Commission for 13 years. He is assigned to the licensing unit which investigates licensing applications. *Testimony of Tyson Wilson.*
- 4.12. The investigation of the Appellant's license application included a review of the Appellant's criminal history. Special Agent Wilson found the Appellant had been convicted for Theft in the Second degree, a felony, in March 2011. *Testimony of Wilson.*
- 4.13. Special Agent Wilson also found that the Appellant had a public card room employee license previously and it had been revoked based on his 2011 felony conviction. *Testimony of Wilson.*

- 4.14. Special Agent Wilson determined due to the nature of the theft, theft from an employer, and since it was a felony, the Appellant was not qualified to hold a card room license since he posed a threat to the integrity of the gambling industry. As a public card room employee license holder, his day-to-day work would entail handling of money. Ultimately, Special Agent Wilson recommended denial of the Appellant's license application based on his criminal history. *Testimony of Wilson and Ex. 8.*
- 4.15. In addition, the Commission has an internal policy, that the Commission will not recommend approval of a license within 10 years of the sentence on a felony. Special Agent Wilson reviewed the Appellant's Judgment and Sentence and even though the jurisdiction of Superior Court was over, because the felony sentence was not 10 years removed from the application, he recommended denial. Special Agent Wilson did take into consideration the fact that the Appellant has no other criminal history since his sentence in 2011. *Testimony of Wilson.*
- 4.16. Special Agent Wilson determined that due to the crime of dishonesty which is based on taking money from an employer, the Appellant was not a suitable card room license applicant. *Testimony of Wilson.*
- 4.17. Douglas Harrell of Roxbury Investment Group, Inc., doing business as Roxy's Casino, submitted a letter in support of the Appellant's card room licensure. However, it appears Mr. Harrell is unclear of the Appellant's criminal history since Mr. Harrell merely refers to the Appellant's felony theft conviction as a 'legal issue with his previous employer.' Mr. Harrell is the Appellant's father-in law. *Ex. 10.*

[Continued]

5. CONCLUSIONS OF LAW

Based upon the facts above, the undersigned administrative law judge makes the following conclusions:

Jurisdiction

- 5.1. The Office of Administrative Hearings has jurisdiction over the persons and subject matter of this case under RCW (Revised Code of Washington) 9.46.140(2)&(4), and WAC (Washington Administrative Code) 230-17-025.

Burden of Proof

- 5.2. RCW 9.46.153(1) 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[.]” ***Emphasis Added.***

- 5.3. “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).

Applicable Statutes, Rules, and Analysis:

- 5.4. The Gambling Commission based its denial of the Appellant’s Public Card Room Employee License Application on the provisions of RCW 9.46.153(1) in conjunction with RCW 9.46.075 (1), (4), (8), and (10); and WAC 230-03-085(1) and (8)(a),(b).
- 5.5. 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;

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful 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;

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

(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 other related activity of 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; *RCW 9.46.075*.

5.6. The Commission also relied on its administrative rules. Specifically, WAC 230-03-085 states 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

(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; *WAC 230-03-085*.

5.7. The Appellant has not proven by 'clear and convincing evidence' that the Washington State Gambling Commission's 'Denial of Public Card Room Employee License Application' was improper.

5.8. The Appellant's conviction of Theft in the Second Degree in 2011 was a crime involving dishonesty. Consequently, he violated RCW 9.46.075(4) and WAC 230-03-085(2).

5.9. As the Gambling Commission has successfully argued, the Appellant poses a threat to the effective regulation of gambling demonstrated by his criminal record. If the Appellant is willing to steal more than \$10,000 from his employer, then there exists the possibility he is willing to steal in the future from his employer. The Appellant has violated WAC 230-03-085(8)(b).

5.10. The Appellant has failed to prove by 'clear and convincing evidence', he has the necessary qualifications for licensure under Chapter 9.46 RCW. As a result, the Appellant has failed to meet his burden of proof under RCW 9.46.075(8) and 9.46.153(1).

5.11. Therefore, the Washington State Gambling Commission's 'Denial of Public Card Room Employee License Application' was proper.

[Continued]

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. **AFFIRMED.** The Washington State Gambling Commission properly denied Kelly Bang's application for a public card room license, in accordance with RCW 9.46.153(1).

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



TJ Martin
Administrative Law Judge
Office of Administrative Hearings

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 SERVICE FOR OAH DOCKET NO. 03-2017-GMB-00019

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

<p>Kelly L. Bang 21819 SE 249th Pl. Maple Valley, WA 98038 <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 J. Rosen, AAG Office of the Attorney General 1125 Washington St Se 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: Wednesday, August 23, 2017

OFFICE OF ADMINISTRATIVE HEARINGS



Ricci Frisk
Legal Assistant 4