

NOV 05 2018

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

GOVERNMENT COMPLIANCE
& ENFORCEMENT

In the matter of:

Oh Whatever, LLC dba
Draft Choice Sports Bar & Grill,

Appellant/Licensee.

License Nos. 53-20470
65-07474
05-09002

Docket No. 05-2018-GMB-00049

**INITIAL ORDER ON SUMMARY
JUDGMENT MOTION**

Agency: Gambling Commission
Program: Washington State Gambling
Commission
Agency No. 2018-00119

1. ISSUES

- 1.1. Whether a genuine issue of material fact exists as to whether or not the Licensee, by and through the actions of one of its substantial interest holder, Mr. James Jackson, is 'subject to current prosecution or pending charges' for a felony charge of Rape in the Second Degree involving 'physical harm' in violation of RCW 9.46.075(1), (7), (8), (9)?
- 1.2. Whether a genuine issue of material fact exists as to whether or not the Licensee failed to report to the Washington State Gambling Commission, in writing, within thirty (30) days of July 31, 2017, that its substantial interest holder, Mr. James Jackson had been charged with a felony crime in violation of WAC 230-03-085 and WAC 230-06-085?
- 1.3. If the Washington State Gambling Commission proves the allegations as asserted, whether, as a matter of law, the Licensee, Oh Whatever LLC dba Draft Choice's gambling licenses should be revoked, in accordance with RCW 9.46.075(1), (7), (8), and (9) and WAC 230-03-085(1), (7), and (8)(a) and WAC 230-06-085(1)?

2. ORDER SUMMARY

- 2.1. No genuine dispute of material fact exists as to whether the Licensee's substantial interest holder, Mr. James Jackson, is 'subject to current prosecution or pending charges' for Rape in the Second Degree, a felony, involving 'physical harm', in violation of RCW 9.46.075(9). Since the Licensee has raised no genuine dispute of material fact, the Washington State Gambling Commission Board Staff is entitled to Summary Judgment as a matter of law. The Washington State Gambling Commission Staff's Motion for Summary Judgment is **GRANTED**.
- 2.2. No genuine dispute of material fact exists establishing the Licensee's substantial interest holder, Mr. James Jackson, failed to report to the Washington

State Gambling Commission, in writing, within thirty days of July 31, 2017, that he had been charged with the criminal charge of Rape in the Second Degree, in violation of WAC 230-06-085(1) and WAC 230-03085(8). Since the Licensee has raised no genuine dispute of material fact, the Washington State Gambling Commission Board Staff is entitled to Summary Judgment as a matter of law. The Washington State Gambling Commission Board Staff's Motion for Summary Judgment is **GRANTED**.

2.3. Since the Licensee has established no genuine dispute of material fact, the Washington State Gambling Commission Board Staff's allegations are established. Therefore, as a matter of law consistent with RCW 9.46.075(1), (8), and (9) and WAC 230-03-085(1),(7), and (8)(a) and WAC 230-06-085(1), the Licensee's Commercial Amusement Activity License number 53-20470, Public Card Room License number 65-07474 and Punchboard/Pull-tab license number 05-09002 are **REVOKED**.

3. SUMMARY JUDGMENT MOTION HEARING

- 3.1. Hearing Date: Decided without argument
- 3.2. Administrative Law Judge: Dawn Bettinger
- 3.3. Appellant: Oh Whatever LLC dba Draft Choice Bar and Grill
- 3.3.1. Representative: Bryan G. Hershman
- 3.4. Agency: Gambling Commission
- 3.4.1. Representative: Gregory J. Rosen, AAG
- 3.5. Documents Considered: I considered the following documents:

Doc. No.	Document Name	Document Date	No. Pages
1	Commission's Motion for Summary Judgment	9/12/18	10
2	Declaration of Julie Sullivan in support of the Motion for Summary Judgment	9/11/18	3
3	Exhibit 1: Gambling Commission Case Report	1/29/18	7
4	Exhibit 2: Filed Information for King County Superior Court No. 17-1-03961-2 KNT		1
5	Exhibit 3: Certificate of Probable Cause	5/25/17	5

6	Exhibit 4: Prosecuting Attorney Case Summary/Request For Bail or Conditions of Release	7/25/17	1
7	Exhibit 5: Superior Court Case Summary		4
8	Exhibit 6: Annual Renewal Application for Licenses: 53-20470, 05-09002, 65-07474		6
9	Exhibit 7: Gambling Commission License Application Report Requirements		8
10	Exhibit 8: Gambling Commission Letter to Licensee	1/23/18	2
11	Licensee Response in Opposition to Motion for Summary Judgment	10/12/18	4
12	Commission's Reply in Support of Summary Judgment	10/19/18	10

4. FACTS FOR PURPOSE OF SUMMARY JUDGMENT

On a motion for summary judgment, the decision maker only considers those facts for which the parties establish "no genuine issue as to any material fact".¹ "Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law."² Only evidence in the record and inferences from that evidence establish facts. If evidence in the record points to more than one possible finding of fact, then summary judgment may not rest on the moving party's version of that fact.³ Admissions, stipulations, procedural history, and uncontested declarations and affidavits establish facts for summary judgment. So, the record here supports the following facts for the purposes of summary judgment:

Jurisdiction

- 4.1. Gambling Commission issued a Notice of Administrative Charges and Summary Suspension Order in this matter on February 1, 2018 against Oh Whatever LLC dba Draft Choice. The Notice of Administrative Charges alleged that Mr. Jackson, a substantial interest holder in Licensee Oh Whatever LLC dba Draft Choice Bar and Grill, was charged with Rape in the Second Degree, a felony, and failed to report this charge, in writing, within thirty (30) days to the Gambling

¹ WAC 10-08-135. In Superior Court matters, CR 56 governs summary judgment. Where the relevant procedural rules do not conflict with CR 56, it and the cases interpreting it serve as persuasive authority in the management of summary judgment under WAC 10-08-135.

² *Verizon NW, Inc. v. Employment Sec. Dep't*, 164 Wn.2d 909, 916 (2008), citing *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App. 1, 14 (1999).

³ *Verizon NW*, 164 Wn.2d 916.

Commission. Based on those allegations, the Notice of Administrative Charges imposed a sanction of revocation of all gambling licenses.

4.2. Appellant requested a hearing on February 12, 2018.

Summary Judgment

4.3. Gambling Commission filed a Motion for Summary Judgment on September 12, 2018.

4.4. Oh Whatever LLC dba Draft Choice Bar and Grill filed a response on October 12, 2018.

4.5. Gambling Commission filed a Reply on October 19, 2018.

Draft Choice and Mr. James Jackson

4.6. James Jackson is a 50% owner of Oh Whatever, LLC, which conducts business as Draft Choice Sports Bar & Grill in Auburn, Washington. At all times relevant hereto, Oh Whatever, LLC held three gambling licenses: (1) a class "D" Punch Board/Pull Tab license, (2) a class "D" Public Card Room license, and (3) a class "A" Commercial Amusement Games license (License No. 53-20470). Ex 1.

Licensee's Failure to Disclose and/or Report Being Criminally Charged and Any Subsequent Prosecution For a Crime Involving Physical Harm

4.7. On July 31, 2017, Mr. Jackson was charged with Rape in the Second Degree in King County Superior Court. Ex. 2. The alleged victim of this crime was an employee of Oh Whatever, LLC. Ex. 1.

4.8. On August 14, 2017, the Mr. Jackson was arraigned on the charge of Rape in the Second Degree. He plead 'Not Guilty'. Ex. 5.

4.9. On December 18, 2018, the accountant for Draft Choice filed the gambling licenses renewals. In the online application, it was not disclosed that Mr. Jackson was charged with the felony of Rape in the Second Degree, which is still pending. On each of the applications appears the following:

Remember, it is your responsibility to report any changes to the information filed with your original or renewal applications. Please see our website at <http://www.wsgc.wa.gov/docs/5-018.pdf> for reporting requirements.

Ex. 6.

4.10. Each application also sets out an Oath of Application, which states in relevant part:

I understand that I am responsible to know and comply with all rules and laws, RCW 9.46 and WAC 230 which can be found on

the Internet websites of the Washington State Gambling Commission or the Washington State Legislature.

Ex 6.

- 4.11. These applications bear the electronic signature of Sue Sherer, Accountant. Id.
- 4.12. The pending criminal charge was only discovered once the annual renewal applications were researched and a routine criminal history background check was completed. The applications were then assigned to Special Agent Julie Sullivan to investigate. Special Agent Julie Sullivan obtain all the court documents relating to Mr. Jackson's pending criminal charge. Declaration of Special Agent Sullivan, see also Exs 2-5.
- 4.13. The Licensee did not notify, in writing, the Washington State Gambling Commission he had been criminally charged within 30 days of July 31, 2017. Declaration of Special Agent Sullivan.
- 4.14. The Licensee did not present any evidence calling into dispute any of the facts raised by the Board Staff, as alleged in the summary judgment motion and/or supporting exhibits or the Declaration of Julie Sullivan. The Licensee does not dispute that one of the Licensee's substantial interest holder is charged with a pending felony involving harm to another person. The Licensee does not dispute that the Licensee did not report, in writing, to the Gambling Commission the pending felony charge.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. The Office of Administrative Hearings (OAH) has jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 9.46.140(2), (4), Washington Administrative Code (WAC) 230-17-025 and chapters 34.05 and 34.12 RCW.

Summary Judgment

- 5.2. "A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." WAC 10-08-135.
- 5.3. "Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is

entitled to judgment as a matter of law.’ Civil Rule (CR) 56(c).” American Legion Post #149 v. Washington State Dept. of Health, 164 Wn.2d 570, 584, 192 P.3d 306 (2008).

The Licensee Has Not Established Any Genuine Issue of Material Fact Regarding Being Charged With Crimes Relating to Physical Harm to Another Individual

- 5.4. Revised Code of Washington (RCW) 9.46.075(9) establishes the Gambling Commission may suspend or revoke a license of anyone who is subject to current prosecution or pending charges relating to crimes involving physical harm to individuals.
- 5.5. The Licensee does not dispute the facts as outlined in the Gambling Commission’s Motion for summary judgment but argues for leniency based on mitigating factors. The Licensee puts forward the following seven reasons why the licenses should not be revoked:
- 1) The allegation was made a year before the charges were filed by the Prosecutor’s Office;
 - 2) During investigation in the criminal case, the complaining witness/victim has made inconsistent statements;
 - 3) The allegations are false;
 - 4) The bookkeeper was supposed to have sent the written disclosure to the Gambling Commission;
 - 5) All other filings and fees are current with the Commission;
 - 6) The summary suspension issued has crippled the bar revenue; and
 - 7) Mr. Jackson has suffered financially and has developed health problems due to the criminal charge and now the Commission’s request to revoke the license.
- 5.6. The Legislature expressly determined that “the public policy of the State of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.” RCW 9.46.010.
- 5.7. The only issues before this tribunal are whether or not the Licensee has a pending criminal charge involving physical harm and whether or not the Licensee failed to disclose to the Commission, in writing, within 30 days of being charged. The issue is not whether this tribunal has the authority or discretion to amend or modify the Statement of Charges seeking revocation.
- 5.8. While the Licensee puts forward numerous mitigating factors, those factors do not have any merit in the determination of whether or not the Commission’s Motion for Summary Judgment should be granted or not.

5.9. Therefore, the undersigned administrative law judge finds no genuine issue of material fact in dispute regarding the Licensee being charged with a crime involving the physical harm to another individual.

5.10. No genuine issue of material fact exists establishing the Licensee, Mr. Jackson, is 'subject to current prosecution or pending charges' for a crime involving 'physical harm', in violation of RCW 9.46.075(9). Since no genuine dispute of material fact has been established, the Washington State Gambling Commission Staff's Motion for Summary Judgment is GRANTED.

The Licensee has not established any genuine issue of material fact regarding notifying the Gambling Commission of criminal charges filed against him

5.11. Washington Administrative Code (WAC) 230-03-085 allows the Washington State Gambling Commission 'to 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:

(8) 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;...

5.12. WAC 230-06-085(1) 'Report criminal actions filed' requires: 'Licensees must report to us in writing within thirty days all criminal actions filed against the licensee;...'

5.13. Licensee does not dispute the fact that the Licensee did not notify the Commission within 30 days, in writing, that Mr. Jackson was charged with a crime involving physical harm.

5.14. Therefore, the undersigned administrative law judge finds no genuine issue of material fact regarding the Respondent failing to report being charged with three crimes to the Gambling Commission, within 30 days, of being charged on July 31, 2017, in violation of WAC 230-06-085(1) and WAC 230-03-085(8). Since no genuine dispute of material facts has been established the Commission's Motion for Summary Judgment is GRANTED.

Revocation of the Respondent's Gambling License

5.15. RCW 9.46.075(1), (8), and (9) establishes the Gambling Commission can suspend or revoke a licensee's license for failing to comply with the application statute and regulations pronounced under RCW 9.46 and WAC 230-03 and WAC 230-06, as well as failing to notify the Gambling Commission of being criminally charged within 30 days of being so charged. Finally, the burden is on a licensee to prove by 'clear and convincing evidence' he is qualified for licensure.

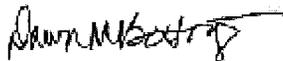
- 5.16. WAC 230-03-085(1), (7), and (8)(a) further allows the Gambling Commission to suspend or revoke a licensee's gaming license for failing to comply with applicable statutes and regulations, being subject to felony and/or misdemeanor charges and failing to report such charges to the Gambling Commission.
- 5.17. Finally, WAC 230-06-085(1) requires Licensee to notify the Commission, in writing, within 30 days of being charged with a crime.
- 5.18. Since the Licensee has established no genuine dispute of material fact, the Gambling Commission Board Staff is entitled to judgment in its favor, as a matter of law. As a result, the Washington State Gambling Commission Board Staff's Motion for Summary Judgment is GRANTED
- 5.19. Therefore, the Licensee, Oh Whatever LLC dba Draft Choice Bar and Grill's gambling license nos. 53-20470, 65-07474, and 05-09002 are REVOKED.
- 5.20. Based on the granting of the Board Staff's Summary Judgment Motion, the evidentiary hearing, scheduled for January 4, 2019, is **STRICKEN**.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. No genuine dispute of material fact exists as to whether the Licensee's substantial interest holder, Mr. James Jackson, is 'subject to current prosecution or pending charges' for Rape in the Second Degree, a felony, involving 'physical harm', in violation of RCW 9.46.075(9). Since the Licensee has raised no genuine dispute of material fact, the Washington State Gambling Commission Board Staff is entitled to Summary Judgment as a matter of law. The Washington State Gambling Commission Staff's Motion for Summary Judgment is **GRANTED**.
- 6.2. No genuine dispute of material fact exists establishing the Licensee's substantial interest holder, Mr. James Jackson, failed to report to the Washington State Gambling Commission, in writing, within thirty days of July 31, 2017, that he had been charged with the criminal charge of Rape in the Second Degree, in violation of WAC 230-06-085(1) and WAC 230-03085(8). Since the Licensee has raised no genuine dispute of material fact, the Washington State Gambling Commission Board Staff is entitled to Summary Judgment as a matter of law. The Washington State Gambling Commission Board Staff's Motion for Summary Judgment is **GRANTED**.
- 6.3. Since the Licensee has established no genuine dispute of material fact, the Washington State Gambling Commission Board Staff's allegations are established. Therefore, as a matter of law consistent with RCW 9.46.075(1), (8), and (9) and WAC 230-03-085(1),(7), and (8)(a) and WAC 230-06-085(1), the Licensee's Commercial Amusement Activity License number 53-20470, Public Card Room License number 65-07474 and Punchboard/Pull-tab license number 05-09002 are **REVOKED**.

SIGNED at Tacoma, Washington on the date of mailing.



Dawn Bettinger
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE IS ATTACHED

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. 04-2018-GMB-00049

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

Oh Whatever, LLC dba Draft Choice Sports Bar and Grill c/o James Jackson 32201 Kent Black Diamond Road SE Auburn, WA 98092 <i>Appellant-Licensee</i>	<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:
Bryan G. Hershman, Attorney at Law Law Office of Bryan Hershman 1105 Tacoma Ave S. Tacoma, WA 98402 <i>Appellant Representative</i>	<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: bryan@bryanhershman.com
Gregory J. Rosen, AAG Office of The Attorney General 1125 Washington St SE MS: 40100 PO Box 40100 Olympia, WA 98504-0100 <i>Agency Representative</i>	<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: GregR@atg.wa.gov
Haylee Mills, Staff Attorney Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504-2400 <i>Agency Contact</i>	<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: haylee.mills@wsgc.wa.gov

Date: Friday, November 02, 2018

OFFICE OF ADMINISTRATIVE HEARINGS

CBrooks

Christen Brooks
 Legal Assistant 2