

JUN 10 2019

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

GOVERNMENT COMPLIANCE
& ENFORCEMENT

In the matter of:

Docket No. 07-2018-GMB-00065

Nai C. Saechin,

INITIAL ORDER

Appellant/Licensee.

Agency: Washington State Gambling Commission
Program: Gambling Commission
Agency No. 2018-00133

1. ISSUES:

- 1.1. Whether, on or about January 15, 2018, the Appellant, Nai C. Saechin, engaged in unlawful activity constituting theft, as defined by Revised Code of Washington (RCW) 9A.56.020?
- 1.2. Whether the Appellant's acceptance of a \$100 poker chip from other players, which she returned after placing a winning bet, is a violation of Washington Administrative Code (WAC) 230-15-040(4)?
- 1.3. Whether the Appellant cannot show by 'clear and convincing evidence' she is qualified for licensure, as required by RCW 9.46.153(1)?
- 1.4. Whether the Gambling Commission is authorized to revoke the Appellant's gambling license, pursuant to RCW 9.46.075(1)&(8) and WAC 230-03-085(9)(a) and (d)?

2. ORDER SUMMARY:

- 2.1. On January 15, 2018, the Appellant, Nai C. Saechin, did not engage in unlawful activity constituting theft, as defined by RCW 9A.56.020. The Gambling Commission's 'Notice of Administrative Charges' regarding this issue is **REVERSED**.
- 2.2. The Appellant's acceptance of the \$100 poker chip from another player, which she returned after placing a winning bet, is a violation of WAC 230-15-040(4) and WAC 230-15-040(3)(c). The Gambling Commission's 'Notice of Administrative Charges' regarding this issue is **AFFIRMED**.
- 2.3. The Appellant cannot show by 'clear and convincing evidence' she is qualified for licensure, as required by RCW 9.46.153(1). The Gambling Commission's 'Notice of Administrative Charges' regarding this issue is **AFFIRMED**.
- 2.4. In accordance with RCW 9.46.075(1)&(8) and WAC 230-03-085(9)(a) and (d), the Appellant's gambling license is **REVOKED**.

[Continued]

3. HEARING:

- 3.1. Hearing Date: March 20, 2019
- 3.2. Admin. Law Judge: TJ Martin
- 3.3. Appellant: Nai C. Saechin (Appellant)
- 3.3.1. Representative: Nichole Fisher, Attorney
- 3.3.2. Witnesses: The Appellant did not call any witnesses.
- 3.4. Agency: Washington State Gambling Commission Staff
(Gambling Commission Staff)
- 3.4.1. Representative: Gregory J. Rosen, Senior Counsel
- 3.4.2. Witnesses: Kevin Maxwell, Gambling Commission Special Agent
- 3.5. Exhibits: Gambling Commission Staff's Exhibits 1 through 15 were admitted.
Appellant's Exhibits A through K were admitted.
- 3.6. Other: Gambling Commission Staff moved to strike (9)(c) from WAC 230-03-085 of 'Issue No. 4'. The Appellant did not object. The Gambling Commission Staff's motion was GRANTED.

4. FINDINGS OF FACT:

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

Jurisdiction-

- 4.1. On May 9, 2018, the Washington State Gambling Commission (Gambling Commission) filed 'Notice of Administrative Charges CR 2018-00133' against Nai C. Saechin (Appellant).
- 4.2. On May 21, 2018, the Appellant appealed the 'Notice of Administrative Charges'.

January 15, 2018 Incident-

- 4.3. The Appellant holds a Public Card Room Employee License. She has worked as a poker dealer in the gaming industry for over 17 years. *Testimony of Nai Saechin (Testimony of Saechin).*
- 4.4. On January 15, 2018, the Appellant worked a shift as a poker dealer at the Riverside Casino from 3:00 p.m. until getting off early around 9:00 p.m. *Testimony of Saechin.*

- 4.5. The Riverside Casino is located at 14060 Interurban Avenue South, Tukwila, Washington. *Testimony of Kevin Maxwell ('Testimony of Maxwell')*.
- 4.6. On January 15, 2018, after getting off of work around 9:00 p.m., the Appellant did not eat. Instead, she went to the bar and had three drinks with her friend, Tia Wu, a regular customer at the casino. *Testimony of Saechin*.
- 4.7. A short time later, Saechin and her friend played Pai Gow. During this time, she had another three drinks. *Testimony of Saechin*.
- 4.8. Due to her level of intoxication, the Appellant doesn't recall the events after beginning to play Pai Gow. She is only aware of the events based on what she was later told by Tiffany Stevens, the shift supervisor, and by watching video of the January 15, 2018 incident. *Testimony of Saechin*.
- 4.9. Later, the Appellant moved to Table 9 and began playing Dragon Bonus Mini-Baccarat. *Testimony of Maxwell and Ex. 1; Pg. 5*.
- 4.10. At 10:49 p.m., Chao Wu (Wu), a customer, went to Table 9 and also began playing Mini-Baccarat. *Testimony of Maxwell and Ex. 1; Pg. 5*.
- 4.11. At 11:17 p.m., Wu left the Table 9, leaving \$2,000 in poker chips at spot 5. *Testimony of Maxwell and Ex. 1; Pg. 5*.
- 4.12. At 11:22 p.m., the Appellant moved from her spot at Mini-Baccarat table, walked to spot 5, took Wu's \$2,000 in poker chips and placed \$1,500 in her pocket and continued playing with the remaining \$500. *Testimony of Maxwell and Ex. 1; Pg. 5*.
- 4.13. After taking Wu's poker chips, the Appellant remained at spot 5. *Testimony of Maxwell and Ex. 1; Pg. 5*.
- 4.14. During this time, the Appellant accepted a \$100 poker chip from another player, Wei Liang, who had received it from Jennifer Su. The Appellant placed the Liang/Su wager with her wager at her spot. After winning, she gave the winnings to Liang and Su and kept \$100 of the payout. *Testimony of Maxwell and Ex. 1; Pg. 5*.
- 4.15. The Appellant acknowledged accepting the \$100 poker chip and placing it with her bet to make a joint wager. *Testimony of Saechin*.
- 4.16. Mini-Baccarat rules only allow one player to place a wager on one spot, prohibiting multiple players from joining together to make a single wager. *Testimony of Maxwell and Ex. 6 (Same as Ex. J)*.
- 4.17. At 11:23 p.m., Wu returned to his spot at Mini-Baccarat Table 9 to find his poker chips missing. *Testimony of Maxwell and Ex. 1; Pg. 5*.
- 4.18. Wu confronted the Appellant regarding his missing poker chips. Without argument, the Appellant immediately pulled the poker chips from her pocket and returned them to Wu. *Testimony of Maxwell and Ex. 1; Pg. 5*.

- 4.19. The Appellant and Wu do know one another. *Testimony of Saechin.*
- 4.20. The Floor and/or Shift Manager did not have to intervene in the interaction between Wu and the Appellant. *Testimony of Maxwell and Ex. 2.*
- 4.21. The Appellant never obtained permission from Wu to use his poker chips. *Testimony of Saechin.*
- 4.22. The Riverside Casino conducted an investigation regarding the Appellant committing possible theft and making a joint wager with another player on January 15, 2018. *Testimony of Maxwell and Ex. 2 (Same as Ex. B).*
- 4.23. On July 10, 2018, the Riverside Casino, in a 'Performance Correction Notice: Final Written Notice', suspended the Appellant for four days and banned her for six months from drinking and gambling at the Riverside Casino, based on the January 15, 2018 incident. *Testimony of Saechi and Exs. 13 (later Ex. 14).*
- 4.24. As a part of her July 10, 2018 sanction, the Appellant also received copies of the Casino's internal controls and Washington State Gambling Commission Mini-Baccarat Game Rules and applicable state regulations. *Ex. F.*

Investigation of Appellant's January 15, 2018 Actions-

- 4.25. On January 17, 2018, the Riverside Casino filed a complaint with the Gambling Commission regarding the Appellant's actions on January 15, 2018. *Testimony of Maxwell and Ex. 2; Pg. 4 (Same as Ex. B).*
- 4.26. Gambling Commission investigated the complaint. *Testimony of Maxwell and Ex. 1 (Same as Ex. C).*
- 4.27. On March 13, 2018, Special Agent Maxwell went to the Riverside Casino to retrieve video of the January 15, 2018 incident. He reviewed the video footage two days later. *Ex. 1; Pg. 5 and Exs. 3, 4 & 7.*
- 4.28. On March 23, 2018, Special Agent Maxwell and Special Agent Richard Schulte met with the Appellant to discuss the January 15, 2018 incident. *Testimony of Maxwell and Ex. 1; Pg. 6 and Ex. E.*
- 4.29. During the March 23, 2018 interview, the Appellant acknowledged being wrong for taking Wu's poker chips. The Appellant asserted her extreme intoxication was to blame for her actions during the incident. *Testimony of Maxwell and Ex. 1; Pg. 6.*
- 4.30. During the interview, the Appellant could not recall sharing a wager with Wei Liang and/or Jennifer Su. *Testimony of Maxwell and Ex. 1; Pg. 6.*
- 4.31. The Appellant provided a written statement regarding the January 15, 2018 incident. She claimed to not recall much of the incident due to her level of intoxication. *Ex. D.*

- 4.32. The Appellant also acknowledged, on November 3, 2017, taking money from another player, Carla Garrett-Bailey, to place a joint wager. *Testimony of Maxwell and Ex. 1; Pg. 6.*
- 4.33. After the conclusion of his investigation, Special Agent Maxwell forwarded the matter to the Gambling Commission's Legal Division for possible charging against the Appellant regarding her actions on January 15, 2018. *Testimony of Maxwell and Ex. 1; Pg. 6.*

Appellant's Previous Warnings and Sanctions-

- 4.34. During regular briefings, Riverside Casino poker Shift managers remind poker dealers of the strict gaming rules, including prohibiting 'bet sharing' by players. *Testimony of Saechin.*
- 4.35. On May 21, 2016, the Casino counseled the Appellant regarding her failure to properly set a hand of Pai Gow, which could have resulted in a \$200 casino loss. *Ex. 8; Pg. 2 and Ex. 15.*
- 4.36. On October 14, 2017, the Appellant, while playing, slipped poker chips under the table to another player to bet on the player's spot. The Appellant's actions constituted a violation of Mini-Baccarat, casino and Gambling Commission rules. *Ex. 8; Pg. 2 and Exs. 9-11 (Ex. 12 pertains to this incident but is dated incorrectly).*
- 4.37. On November 3, 2017, Saechin gave \$75 in poker chips to Carla Garrett-Bailey to wager. The Appellant considered the \$75 to be 'lucky money', meaning, money given as a "gift", without an expectation of it being returned. *Ex. 1; Pgs. 5 & 6 and Ex. 5.*
- 4.38. However, Garrett-Bailey returned the \$75 to Saechin when she didn't win. *Ex. 1; Pg. 5 & 6.*
- 4.39. The Riverside Casino gave the Appellant a verbal warning for providing Garrett-Bailey with a loan or gift to place a wager, in violation of WAC 230-15-040(3)(c) and WAC 230-06-035(1). *Ex. 1; Pg. 5.*
- 4.40. The Gambling Commission also gave the Appellant a verbal warning. *Testimony of Maxwell and Exs. 5; Pg. 6, Ex. 8; Pg. 1, Ex. H & I.*
- 4.41. At the time of the Special Agent's verbal warning to the Appellant about providing chips to another player, he was unaware of the Appellant's counseling the previous month (October 2017) for the same activity. *Ex. 8; Pg. 2.*
- 4.42. Aside from the Gambling Commission's verbal warning to the Appellant, she has not received any other sanctions from the Gambling Commission during her 17 years in the gaming industry. *Testimony of Saechin.*

[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 (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.

Gambling Commission's Enforcement of Gaming Rules and Regulation-

5.2. RCW 9.46.010 establishes:

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.

5.3. RCW 9.46.040 authorizes the Washington State Gambling Commission to enforce the rules and regulations relating to gambling activities in the State of Washington.

Burden of Proof-

5.4. The burden of proof is on the Gambling Commission Staff to prove the administrative charges by a 'preponderance of the evidence'. However, this burden shifts to the Appellant on 'Issue No. 3', requiring the Appellant to establish by 'clear and convincing evidence' she is qualified for licensure.

5.5. A 'preponderance of the evidence' is evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition thereto. *Yamamoto v. Puget Sound Lbr. Co.*, 84 Wash. 411, 146 Pac. 861 (1915).

Lack of Intent to Steal Poker Chips-

5.6. RCW 9A.56.020 'Theft' makes it a crime to wrongfully exert unauthorized control over the property of another with intent to deprive the person of such property.

5.7. The Gambling Commission Staff alleges the Appellant committed theft on January 15, 2018, when she exerted unauthorized control over Chao Wu's poker chips when he left his spot at the Mini-Baccarat table and the Appellant placed his poker chips in her pocket and began playing.

- 5.8. In order to prove 'theft', the Gambling Commission Staff must demonstrate: (1) Unauthorized control over the property of another; and (2) Intent to deprive the individual of such property.
- 5.9. Neither the Gambling Commission Staff nor the Appellant disputes the Appellant exerted unauthorized control over Wu's poker chips. No evidence suggests Wu consented to the Appellant using his poker chips.
- 5.10. However, the element of the 'intent to deprive' is lacking. While the Appellant may have placed Wu's poker chips in her pocket, she remained at the table, playing in his position. When confronted about the missing poker chips, the Appellant immediately returned them without argument or intervention by casino staff. If the Appellant had denied taking the poker chips or attempted to leave the area with the poker chips, then the 'intent' element of the theft would have been established. Based on the facts of the January 15, 2018 incident, the 'intent to deprive' Wu of his poker chips has not been proven.
- 5.11. Therefore, on January 15, 2018, the Appellant, Nai C. Saechin, did not engage in unlawful activity constituting theft, as defined in RCW 9A.56.020. The Gambling Commission's 'Notice of Administrative Charges' regarding this issue is **REVERSED**.

Violation of Casino Rules & Gambling Regulations-

- 5.12. WAC 230-15-040(4) establishes the requirements for authorized card games, including Mini-Baccarat.
- 5.13. WAC 230-15-040(3)(c) prohibits players from placing wagers on any other player's or the house's hand or make side wagers with other players.
- 5.14. In the present case, the Gambling Commission Staff has established, by a preponderance of the evidence, on January 15, 2018, the Appellant accepted a \$100 poker chip from another player, Wei Liang. The Appellant then combined the wager with her own wager at her spot at the Mini-Baccarat table. After winning, she gave the winnings back to Liang, but retained \$100 of the payout. By combining the wagers, the Appellant 'cheated' her own casino, since it had to pay out more money due to the combined wager, than by two, individual wagers.
- 5.15. The Appellant does not dispute the facts, as asserted by the Gambling Commission Staff. Rather, she contends her extreme intoxication resulted in the bad decisions she made on January 15, 2018. However, such a defense does not negate the violation committed.

[Continued]

5.16. As a result, the Appellant's acceptance of the \$100 poker chip from Liang/Su to place with her own bet to make a joint wager is a violation of WAC 230-15-040(4) and WAC 230-15-040(3)(c). The Gambling Commission's 'Notice of Administrative Charges' regarding this issue is **AFFIRMED**.

Clear and Convincing Evidence-

5.17. RCW 9.46.153(1) establishes:

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;

5.18. In the present case, the burden is on the Appellant to establish 'by clear and convincing evidence' she is qualified for continued gaming licensure.

5.19. As the Gambling Commission Staff has established, on January 15, 2018, the Appellant's acceptance of a \$100 poker chip from another player to place with her wager resulted in a violation of WAC 230-15-040(4) and WAC 230-15-040(3)(c).

5.20. However, the January 15, 2018 incident is not the Appellant's first such violation of internal controls, casino rules and/or Gambling Commission rules and regulations regarding 'bet sharing'.

5.21. The Appellant's January 15, 2018 'bet sharing' violation is the Appellant's third, such violation in less than two years, demonstrating a clear disregard for gaming rules.

5.22. The Appellant previous violations of 'bet sharing' include: (1) On October 14, 2017 the Appellant slipped poker chips under the table to another player to bet share on the player's spot, a violation of WAC 230-15-040(3)(c); (2) On November 3, 2017, less than one month later, the Appellant gifted money to another player, a violation of WAC 230-06-035; and (3) The present January 15, 2018 incident, another bet share action, constituting a violation under WAC 230-15-040(3)(c).

5.23. In each of the above-cited instances, the Appellant, as a poker dealer with over 17 years experience, knew the casino and Gambling Commission rules and chose to repeatedly disregard them.

5.24. The Appellant had been repeatedly coached by the Riverside Casino and the Gambling Commission as a result of the violations as well as sanctioned, including suspension for the repeated violations. The Appellant failed to adhere to those coachings, verbal warnings and suspensions and continued with her blatant disregard for the Riverside Casino's internal rules, Mini-Baccarat rules and Gambling Commission rules and regulations.

5.25. For these reasons, the Appellant cannot show by 'clear and convincing evidence' she is qualified for continued licensure, as required by RCW 9.46.153(1). The Gambling Commission's 'Notice of Administrative Charges' regarding this issue is **AFFIRMED**.

Revocation of the Appellant's Gaming License-

5.26. RCW 9.46.075 establishes:

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

5.27. WAC 230-03-085 authorizes the Gambling Commission to suspend or revoke a Licensee's gaming license for:

- (9) 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
 - ...
 - (d) Habits;

5.28. In the present case, the Gambling Commission has established, by a preponderance of the evidence, the Appellant, on January 15, 2018, accepted a \$100 poker chip from another player and placed it with her own wager, a violation of WAC 230-15-040(4) and WAC 230-15-040(3)(c).

5.29. Further, the Appellant cannot prove by 'clear and convincing evidence' she is qualified for licensure, as required by RCW 9.46.153(1), due to her repeated violations of 'bet sharing' and 'gifting', despite 17 years in the gaming industry.

5.30. In accordance with RCW 9.46.075(1)&(8) and WAC 230-03-085(9)(a) and (d), the Appellant's gambling license is **REVOKED**.

[Continued]

6. INITIAL ORDER:

IT IS HEREBY ORDERED THAT;

- 6.1. On January 15, 2018, the Appellant, Nai C. Saechin, did not engage in unlawful activity constituting theft, as defined in RCW (Revised Code of Washington) 9A.56.020. The Gambling Commission's 'Notice of Administrative Charges' regarding this issue is **REVERSED**.
- 6.2. The Appellant's acceptance of a \$100 poker chip from another player, which she returned after placing a winning bet, is a violation of WAC 230-15-040(4) and WAC 230-15-040(3)(c). The Gambling Commission's 'Notice of Administrative Charges' regarding this issue is **AFFIRMED**.
- 6.3. The Appellant cannot show by 'clear and convincing evidence' she is qualified for licensure, as required by RCW 9.46.153(1). The Gambling Commission's 'Notice of Administrative Charges' regarding this issue is **AFFIRMED**.
- 6.4. In accordance with RCW 9.46.075(1)&(8) and WAC 230-03-085(9)(a) and (d), the Appellant's gambling license is **REVOKED**.

Issued from Tacoma, Washington on the date of mailing.



TJ Martin
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE 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.

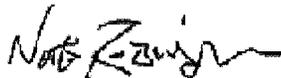
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 07-2018-GMB-00065

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

<p>Nai C. Saechin 35737 26th Ave S Federal Way, WA 98003 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>David Otto & Nicole Fisher Martin Davis Law, PLLC 1200 Westlake Ave N Ste 802 Seattle, WA 98109 Appellant Representatives</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: dotto@martindavislaw.com nfisher@martindavislaw.com</p>
<p>Gregory Rosen, AAG Office of the Attorney General MS: 40100 PO Box 40100 Olympia, WA 98504 Agency Representative</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: gregr@atg.wa.gov</p>
<p>Ashlie Laydon Washington State Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504 Agency Contact</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, June 07, 2019

OFFICE OF ADMINISTRATIVE HEARINGS



Nathan Robinson
Legal Assistant 3