

JAN 31 2019

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

GOVERNMENT COMPLIANCE
& ENFORCEMENT

In the matter of:

Docket No. 07-2018-GMB-00060

Boots Bar & Grill,

INITIAL ORDER

Appellant/Licensee.

Agency: Gambling Commission
Program: WA State Gambling Commission
Agency No. 2018-00563

1. ISSUES

- 1.1. Whether Licensee, Boots Bar and Grill and Teresa Boots failed to report in writing within 30 days of December 13, 2017 to the Washington State Gambling Commission of her husband being criminally charged in violation of WAC 230-03-085?
- 1.2. Whether the Licensee's husband, is subject to current prosecution for two pending felony criminal charges, one involving physical harm to an individual(s)?
- 1.3. Whether the Licensee cannot show by 'clear and convincing evidence' that she is qualified for licensure, as required by RCW 9.46.153(1) and WAC 230-03-065?
- 1.4. Whether the Washington State Gambling Commission ("Commission") is authorized to revoke the Licensee's Punchboard/Pull Tab license, in accordance with RCW 9.46.075(1), (7), (8), and (9) and WAC 230-03-085(1), (8), and (9A) and WAC 230-06-085(1)?

2. ORDER SUMMARY

- 2.1. Teresa Boots, licensee, failed to report in writing within 30 days of December 13, 2017 to the Washington State Gambling Commission that her husband was charged with class B felonies in violation of WAC 230-03-085.
- 2.2. Teresa Boots' husband is subject to current prosecution for two class B felonies. One of these criminal charges is a charge involving physical harm to an individual(s).
- 2.3. Licensee therefore cannot show by 'clear and convincing' evidence that she is qualified for licensure as required by RCW 9.46.153(1) and WAC 230-03-065.
- 2.4. The Commission is authorized to revoke the Licensee's Punchboard/Pull Tab license pursuant to RCW 9.46.075(1), (7), (8), and (9) and WAC 230-03-085(1), (8), and (9A) and WAC 230-06-085(1).
- 2.5. The Licensee's Punchboard/Pull Tab license issued is **REVOKED**.

3. HEARING

- 3.1. Hearing Date: January 28, 2019
- 3.2. Administrative Law Judge: Dawn Bettinger
- 3.3. Appellant: Failed to Appear
- 3.4. Agency: Gambling Commission
 - 3.4.1. Representative: Gregory J. Rosen, Assistant Attorney General
 - 3.4.2. Witnesses:
 - 3.4.2.1. Julie Sullivan, Special Agent
- 3.5. Exhibits: Exhibits 1 through 9 were admitted.

4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

- 4.1. The Commission issued a Notice of Administrative Charges on April 30, 2018 alleging that Licensee failed to disclose to the Commission within thirty days in writing that one of the substantial interest holders was criminally charged. Additionally, the Commission alleged that the Licensee could not show by 'clear and convincing evidence' that the licensee is qualified for licensure. As a result, the Commission sought revocation of the Punchboard/Pull Tab license.
- 4.2. Licensee timely filed an appeal.

Theresa Boots and Boots Bar and Grill

- 4.3. Theresa Boots is the owner and sole proprietor of Boots Bar and Grill. Frank Boots is married to Theresa Boots. Boots Bar and Grill has a Class A Punchboard/Pull Tab gambling license. Exhibit 1.
- 4.4. On March 26, 2018, Theresa Boots electronically submitted the annual license renewal for her and Frank Boots to the Commission for approval. Exhibit 2.

Investigation

- 4.5. On March 27, 2018, Special Agent Julie Sullivan was assigned the Boots Bar and Grill renewal application for investigation.
- 4.6. Special Agent Sullivan has been with the Commission eighteen years and is a member of the licensing investigations unit.
- 4.7. Special Agent Sullivan began her investigation by running a criminal history background check of both Theresa and Frank through the Judicial Information System ("JIS"). Testimony Special Agent Sullivan.

4.8. Special Agent Sullivan noticed on Mr. Boots' case history, through JIS, there were two pending felony charges. Mr. Boots is charged with residential burglary and assault in the second degree strangulation and/or suffocation, both of which are Class B felonies. The date of this incident was December 10, 2017. Mr. Boots was formally charged and arraigned on December 13, 2017 and December 22, 2017 respectively. Exhibits 4, 5, and 9.

4.9. Special Agent Sullivan requested and obtained all related court documents from Skagit County Superior Court regarding Mr. Boots' criminal charges. Exhibits 5-9.

4.10. Next, Special Agent Sullivan looked at the online renewal application from March 2018 and noticed that the criminal charges were not disclosed by either Mr. or Mrs. Boots. Exhibit 2 and Testimony Special Agent Sullivan.

4.11. 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.

Exhibit 2.

4.12. 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.

Exhibit 2.

4.13. This application bears the electronic signature of Theresa Boots. Id.

4.14. Special Agent Sullivan also looked to see if any written disclosure had been submitted and found nothing had ever been disclosed to the Commission. Testimony Special Agent Sullivan.

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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.

Mr. Boots is a Substantial Interest Holder of the Licensee

- 5.2. A “Substantial Interest Holder” is a person who had actual or potential influence over the management or operation of any organization, association, or other business entity. WAC 230-03-045(1).
- 5.3. Teresa Boots is a substantial interest holder in Boots Bar and Grill.
- 5.4. Additionally, “applicant’s spouses must also meet the qualifications to hold a gambling license when married person who maintain marital community apply for or hold a license to operate gambling activities. This includes but not limited to owners and substantial interest holders of commercial establishments.” WAC 230-03-065(1).
- 5.5. Washington State is a community property state. Mr. Boots is a substantial interest holder in Boots Bar and Grill not only because he directly or indirectly profited from Boots Bar and Grill or he assumed liability for debts and expenditures of the entity but also because he also became an applicant when Theresa Boots included his name on the online renewal application. See WAC 230-03-045(2)(b) and Exhibit 2.

Mr. Boots is charged with a crime involving physical harm to another individual.

- 5.6. 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.
- 5.7. 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.
- 5.8. Mr. Boots is charged with two class B felonies. One of which is a charge of Assault in second degree—Strangulation and/or suffocation. It is alleged that Mr. Boots threw a beer at the alleged victim, tackled him and start fighting. The alleged victim told the police officers that at one point Mr. Boots’ hands were around his

neck attempting to strangle him. Exhibit 6. This is a crime involving physical harm to another individual. See RCW 9.46.075(4) and WAC 230-03-085(2).

Licensee failed to disclose criminal charged to the Commission as required.

5.9. 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;...

5.10. 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;...'

5.11. To date, the Licensee has not disclosed either through the online application or in writing within thirty days to the Commission as required. This failure to disclose the criminal charges against Mr. Boots is a failure to report a material fact to the Commission. See RCW 9.46.075(7).

Revocation of the Respondent's Gambling License

5.12. 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.

5.13. 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.

5.14. Finally, WAC 230-06-085(1) requires Licensee to notify the Commission, in writing, within 30 days of being charged with a crime.

5.15. Therefore, the Licensee, Boots Bar and Grill's Punchboard/Pull Tab gambling license is **REVOKED**.

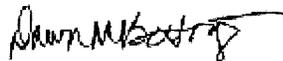
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6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. Teresa Boots, licensee, failed to report in writing within 30 days of December 13, 2017 to the Washington State Gambling Commission that her husband was charged with class B felonies in violation of WAC 230-03-085.
- 6.2. Teresa Boots' husband is subject to current prosecution for two class B felonies. One of these criminal charges is a charge involving physical harm to an individual(s).
- 6.3. Licensee therefore cannot show by 'clear and convincing' evidence that she is qualified for licensure as required by RCW 9.46.153(1) and WAC 230-03-065.
- 6.4. The Commission is authorized to revoke the Licensee's Punchboard/Pull Tab license pursuant to RCW 9.46.075(1), (7), (8), and (9) and WAC 230-03-085(1), (8), and (9A) and WAC 230-06-085(1).
- 6.5. The Licensee's Punchboard/Pull Tab license issued is **REVOKED**.

Issued from Tacoma, Washington on the date of mailing.



Dawn Bettinger
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-00060

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

Boots Bar & Grill c/o Theresa M. Boots 584 Hamilton Avenue Hamilton, WA 98255 Appellant	<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
Boots Bar & Grill c/o Theresa M. Boots PO Box 55 Hamilton, WA 98255 Appellant	<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
Gregory J. Rosen, AAG Office of The Attorney General 1125 Washington St SE MS: 40100 PO Box 40100 Olympia, WA 98504-0100 Agency Representative	<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
Ashlie Laydon Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504-2400 Agency Contact	<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

Date: Wednesday, January 30, 2019

OFFICE OF ADMINISTRATIVE HEARINGS

LCB Brooks

Christen Brooks
 Legal Assistant 2