WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:	Docket No. 11-2018-GMB-00074
John W. Newfield,	**INITIAL ORDER**
Appellant.	Agency: Gambling Commission Program: Washington State Gambling Commission Agency No. CR 2018-01093

1. ISSUES:

1.1. Whether the Appellant, John W. Newfield, on June 29, 2018, participated in a cheating conspiracy to defraud the Great American Casino in violation of RCW (Revised Code of Washington) 9.46.185, RCW 9.46.190(1) and RCW 9.46.1961?

1.2. Whether the Appellant can prove by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1)?

1.3. Whether the Gambling Commission is authorized to revoke the Appellant's Public Card Room Employee License, pursuant to RCW 9.46.075(1),(2) and (8) and WAC (Washington Administrative Code) 230-03-085(1),(3) and (9)(a)?

2. ORDER SUMMARY:

2.1. **Affirmed.** On June 29, 2018, the Appellant, John W. Newfield participated in a cheating conspiracy to defraud the Great American Casino in violation of RCW 9.46.185, RCW 9.46.190(1), and RCW 9.46.1961

2.2. **Affirmed.** The Appellant, John W. Newfield, cannot prove by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1).

2.3. **Revoked.** The Gambling Commission is authorized to revoke the Appellant's Public Card Room Employee License, pursuant to RCW 9.46.075(1),(2) and (8) and WAC 230-03-085(1),(3) and (9)(a).

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3. HEARING:

3.1. Hearing Date: February 28, 2019

3.2. Admin. Law Judge: TJ Martin

3.3. Appellant: John W Newfield (Appellant)

3.3.1. Representative: The Appellant represented himself.

3.3.2. Witnesses: The Appellant did not call any witnesses

3.4. Agency: Gambling Commission Staff (Commission Staff)

3.4.1. Representative: Kellen Wright, Assistant Attorney General (AAG)

3.4.2. Witnesses: Steve Thomas, Great American Casino Surveillance Director
Keith Wittmers, Gambling Commission Special Agent

3.5. Exhibits: Commission Staff Exhibits 1 through 5 were admitted.

The Appellant did not submit any exhibits.

3.6. Other: At the hearing, the Gambling Commission Staff moved to amend 'Issue No. 1' by adding RCW 9.46.1961. The Appellant did not object.

4. FINDINGS OF FACT:

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

Jurisdiction-

4.1. On September 11, 2018, the Washington State Gambling Commission Staff (Commission Staff) issued a 'Notice of Administrative Charges' against John W. Newfield (Appellant). The Notice alleged on June 29, 2018, Newfield engaged in a cheating conspiracy to defraud the Great American Casino and other players during a poker tournament. *Exhibit (Ex.) 1.*

4.2. On September 19, 2018, Newfield appealed the 'Notice of Administrative Charges'.

The Appellant and Conspiracy to Cheat-

4.3. A dispute of fact exists as to whether the Appellant, John Newfield, engaged in a cheating conspiracy on June 28-29, 2018, during a poker tournament held at the Great American Casino. Therefore, a credibility finding is warranted.

4.4. The undersigned administrative law judge finds the evidence and testimony presented by the Gambling Commission Staff to be more credible than the Appellant, John Newfield's testimony for the following reasons:

(1) Newfield claimed not to know Roeun Chan, the shift manager at the Great American Casino. Chan was responsible for 'washing' the deck and who set aside the winning card, the Ace of Spades, which Newfield picked to gain entry into the final poker tournament round. However, the undersigned administrative law judge does not find Newfield's testimony regarding not knowing Chan credible for several reasons:

(a) To begin, Newfield walked into the restricted pit area to talk with Chan, who did not tell or gesture for Newfield to leave the area immediately. Instead, Chan and Newfield then walked away from the other employees to hold a private conversation, out of the earshot of other employees. For two people who do not know each other, this interaction is highly suspicious; (b) Next, Newfield says he attends the Great American Casino industry poker tournament each week. It is highly unlikely Newfield and Chan, who are both shift managers at their respective casinos, have never talked prior to June 28-29, 2018 incident, since Newfield admitted to attending the poker tournament each week; (c) After the tainted 'wash' by Chan, he approached Newfield and whispered something, lasting only several seconds, into Newfield's ear, while Newfield was at another table. Newfield alleged Chan was apologizing for the poker tournament procedures. However, it would be seem more likely Chan was telling Newfield the Ace of Spades' location such as 'The Ace will be under my right arm'; (d) Finally, when interviewed by Gambling Commission Specials Agent Keith Wittmers, Newfield never mentioned he first approached Chan to discuss tournament procedures. However, at the evidentiary hearing, Newfield alleged the flaws in tournament procedures were the reason he approached Chan in the first place. The undersigned administrative law judge finds the two men, Newfield and Chan, knew each other.

(2) Newfield, when picking a card for entry into the final poker hand, took no deliberations in deciding which card to choose. Rather, he immediately picked the card set aside by Chan.

(3) At the hearing, Newfield did not call any witnesses, including Chan, to collaborate his version of events of June 28-29, 2018. Whereas, the Gambling Commission presented the testimonies of Gambling Commission Specials Agent Keith Wittmers and Great American Casino Surveillance Director Steve Thomas. Both men, trained and well-experienced in gambling activities including cheating conspiracies, were convinced, after reviewing the video surveillance footage, there was 'no doubt' cheating occurred involving John Newfield and Roeun Chan.

(4) Chan, involved in the cheating conspiracy on June 28-29,2018, did not challenge his termination from Great American Casino nor the revocation of his gambling license for his involvement in the cheating incident on the date in question.

4.5. Based on the above-cited credibility finding, the undersigned administrative law judge finds the following events occurred, by a 'preponderance of the evidence':

4.6. The Great American Casino is located in Des Moines, Washington. *Testimony of Keith Wittmers (Testimony of Wittmers).*

4.7. On the evening of June 28 through the early morning hours of June 29, 2018, the Great American Casino held an 'industry poker tournament', where persons working in the casino/gambling industry are allowed to participate for free without any 'buy-in'. *Testimony of Steve Thomas (Testimony of Thomas).*

4.8. The players in the final poker round are guaranteed winnings, ranging from a free buy-in for the seventh place winner up, to $3,000 for the first place winner. *Testimony of Thomas.*

4.9. The 'industry poker tournament' is held each week. *Testimony of John Newfield (Testimony of Newfield).*

4.10. As a part of the tournament, the final round consists of seven people: Six of those players win their various, respective rounds and earn entry, while a seventh 'wildcard' player, who was eliminated earlier, obtains entry through a 'final card draw'. *Testimony of Thomas.*

4.11. Players eliminated earlier in the tournament can gain entry into the final round through a 'final card draw', where the person with the highest card, the Ace Spades, or closest to the card, is allowed entry. *Testimony of Thomas.*

4.12. John Newfield is the Emerald Downs Casino Manager. He has been the manager at Emerald Downs since 2016. He has over 21 years of experience in the gaming industry, including working as a dealer. *Testimony of Wittmers and Testimony of John Newfield (Testimony of Newfield).*

4.13. John Newfield had been eliminated earlier in the tournament, but was allowed to take part in the ' final card draw', in order to gain entry into the final round of the poker tournament. *Testimony of Thomas.*

4.14. Prior to the 'final card draw', Newfield approached Chan, the poker tournament shift manager. The two men had a brief conversation. *Testimony of Thomas & Ex. 5.*

4.15. Following the conversation between Newfield and Chan, Chan went to Table 12 to prepare the 'final card draw' to determine the last entry into the final hand of the poker tournament. *Testimony of Thomas.*

4.16. Chan took one deck of cards, all face down, and placed them on the table. He then separated the Ace of Spades, the highest card, from the rest of the deck. He began 'washing' (mixing/shuffling) the cards on the table, making sure to keep the Ace of Spades away from the other cards being shuffling. *Testimony of Thomas.*

4.17. If the cards had been properly 'washed', even Chan, the person responsible for the wash, would not have known what any of the cards were or their placement on the table. *Testimony of Thomas.*

4.18. After mixing the cards for only a few seconds, Chan lifted up the Ace of Spades to ensure it was still away from the other, mixed cards. He then placed the Ace of Spades closest to the dealer position. *Testimony of Thomas and Ex. 5.*

4.19. Chan then left the cards and walked over to Newfield, who was sitting at another table. Chan whispered something into Newfield's ear. The conversation only lasted several seconds and no one else was privy to the conversation. *Testimony of Thomas and Ex. 5.*

4.20. Moments later, Chan announced the 'final card draw'. Several participants come over to Table 12, where the 'final card draw' was to occur. *Testimony of Thomas.*

4.21. When the first person draws, Chan conceals the Ace of Spades under his right arm/elbow. *Testimony of Thomas and Ex. 5.*

4.22. When Newfield draws second, Chan lifted his right arm, exposing the Ace of Spades card's placement. Newfield immediately picks the Ace of Spades, the winning card, thereby guaranteeing his spot in the final tournament hand and guaranteeing winning some type of prize since he would place somewhere between seventh and first place in the tournament. *Testimony of Thomas and Ex. 5.*

4.23. Since Newfield picked the Ace of Spades, the highest valued card, the other players did not need to draw since Newfield had already won a place into the final hand of the tournament. *Testimony of Thomas.*

4.24. Steve Thomas, the Director of Surveillance at Great American Casino, reviewed the video surveillance footage of the June 28-29, 2018 poker tournament. *Testimony of Thomas.*

4.25. Upon reviewing the video surveillance footage of the June 28-29, 2018 incident, Thomas observed several abnormalities, including: (1) Chan only spoke with Newfield prior to the 'final card draw' wash (mixing/shuffle); (2) Newfield stepped into the pit to talk with Chan. The pit is off limits to patrons and any one not an employee of the casino; (3) Chan failed to properly 'wash' the cards. He only washed the cards for several seconds. In the industry, cards are usually 'washed' 45 seconds to one minute; (4) Chan pulled the Ace of Spades up after the wash to ensure it was kept away from the other cards; (5) Chan made sure the Ace of Spades was kept away from the other cards and concealed by his right arm/elbow; and (6) Chan only spoke with Newfield after the wash. *Testimony of Thomas.*

4.26. While it is not uncommon for a shift manager, such as Chan, to speak with players, it is highly irregular for him to speak only to Newfield immediately before and after the 'final card draw', in which Newfield picks the winning card. *Testimony of Thomas.*

4.27. Based on his review, Thomas had no doubt a conspiracy to cheat had occurred involving Chan and Newfield. *Testimony of Thomas.*

4.28. On June 28, 2018, Newfield placed second in the tournament. *Testimony of Thomas.*

4.29. However, the pool of winnings was divided up equally between the seven players, with each player taking home more than $700. *Testimony of Newfield.*

Gambling Commission Investigation of June 28-29, 2018 Incident-

4.30. On July 13, 2018, Great American Casino Compliance and Surveillance Director Stacey Hess (Hess) contacted Washington State Gambling Commission Special Agent Keith Wittmer (Wittmer) regarding possible cheating during a poker tournament on June 28-29, 2018 at the Great American Casino. *Testimony of Wittmers and Ex. 2; Page (Pg.) 3.*

4.31. Hess' investigation stemmed from a complaint from a customer/poker player, who believed the Great American Casino Shift Manager Roeun Chan had set a high card aside for John Newfield, a shift manager at the Emerald Queen Casino, to pick in order for Newfield to participate in the final round of the poker tournament. *Testimony of Wittmers and Ex. 2; Pg. 3 and Exs. 3 & 4.*

4.32. Hess reviewed the video surveillance footage of the incident and determined Newfield approached Chan prior to the final round card draw and whispered something to him. *Ex. 2; Pg. 3.*

4.33. Chan then appeared to shuffle the cards and 'wash them' (mix/shuffle) on the table, spreading them out for the poker player to then draw from in order to get into the final round. *Ex. 2; Pg. 3.*

4.34. However, Chan intentionally pulled the highest card, the Ace of Spades, aside and concealed it under his right elbow while the players drew cards. *Ex. 2; Pg. 3.*

4.35. However, when Newfield approached to draw his card, Chan unshielded the card and Newfield immediately picked the concealed card, the Ace of Spades, the winning card to gain entry into the final round. *Ex. 2; Pg. 3.*

4.36. By picking the winning card, Newfield guaranteed himself a spot in the final round of the poker tournament and a guaranteed monetary payout, even if he finished last in the final round. *Testimony of Wittmers.*

4.37. On July 16, 2018, the Great American Casino terminated Rouen Chan for his involvement in the June 28-29, 2018 cheating incident. *Ex. 2; Pg. 3.*

4.38. When interviewed by Great American Casino management regarding the incident, Chan denied any involvement and claimed not to like Newfield. *Ex. 2; Pg. 4.*

4.39. On August 15, 2018, Gambling Commission Special Agent Keith Wittmers reviewed the June 28, 2018 video surveillance at the Great American Casino. *Testimony of Wittmers and Ex. 2; Pg. 4.*

4.40. Special Agent Wittmers observed Chan and Newfield talking immediately before Chan 'washed' the cards and intentionally placed the Ace of Spades under his right elbow, concealing it until Newfield drew his card. *Testimony of Wittmers and Ex. 2; Pg. 4.*

4.41. Chan isolating the Ace of Spades from the rest of the cards was 'very unusual'. *Testimony of Wittmers.*

4.42. Upon reviewing the video surveillance footage at the evidentiary hearing, the Appellant admitted the 'wash' by Chan was bad. *Testimony of Newfield.*

4.43. Based on his observations, Special Agent Wittmers, who is trained in observing cheating and conspiracies to commit cheating, was convinced Chan and Newfield conspired together for Newfield to pick the winning card to gain entry into the final poker tournament round. *Testimony of Wittmers and Ex. 2; Pg. 4.*

4.44. 'I firmly believe Chan and Newfield conspired so Newfield got the Ace of Spades, based on my training and experience'. *Testimony of Wittmers.*

4.45. On August 29, 2018, Special Agent Wittmers interviewed Newfield, who denied cheating or being involved with any conspiracy with Chan to pick the winning card. *Testimony of Wittmers and Ex. 2; Pg. 4.*

4.46. Based on the June 28-29, 2018 incident, Chan was terminated by the Great American Casino and his gambling license was revoked by the Gambling Commission. He did not challenge the revocation of his license. *Testimony of Wittmers.*

4.47. Based on its investigation, Gambling Commission a 'Notice of Administrative Charges', against John W. Newfield, alleging he cheated on June 28-29, 2018 during the poker tournament at the Great American Casino. *Ex. 1.*

[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) 230-17-001(2), WAC 230-17-025 and Chapters 34.05 and 34.12 RCW.

The Appellant engaged in a cheating conspiracy-

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.

5.4. RCW 9.46.075 authorizes the Gambling Commission to deny, suspend, or revoke a gambling license. Specifically, the statute provides, in pertinent part:

> 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;
>
> (2) Knowingly causes, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of the commission;
>
> (8) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter;
>
> RCW 9.46.075.

5.5. RCW 9.46.185 'Causing person to violate rule or regulation' provides:

> Any person who knowingly causes, aids, abets, or conspires with another to cause any person to violate any rule or regulation adopted pursuant to this chapter shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021.

5.6. RCW 9.46.190(1) 'Violations relating to fraud or deceit' makes it a violation for:

> Any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation: (1) Employ any device, scheme, or artifice to defraud.

5.7. RCW 9.46.1961 'Cheating in the first degree':

> (1) A person is guilty of cheating in the first degree if he or she engages in cheating and:
> (a) Knowingly causes, aids, abets, or conspires with another to engage in cheating; or
> (b) Holds a license or similar permit issued by the state of Washington to conduct, manage, or act as an employee in an authorized gambling activity.
> (2) Cheating in the first degree is a class C felony subject to the penalty set forth in RCW 9A.20.021. In addition to any other penalties imposed by law for a conviction of a violation of this section the court may impose an additional penalty of up to twenty thousand dollars on adult offenders.

5.8. In the present case, the Gambling Commission Staff has established, by a 'preponderance of the evidence' on June 28-29, 2018, John Newfield, with the assistant of Roeun Chan, engaged in a cheating conspiracy. The cheating conspiracy occurred when, at the request for Newfield, Chan set aside the winning card, the Ace of Spades, during a faux 'wash' of cards for entry into the 'final hand draw', thereby allowing Newfield to enter the final hand of a poker tournament, where Newfield was guaranteed to win money. The actions by Newfield, and Chan, resulted in fraud to the Great American Casino and other players, who were not allowed into the final round of the poker tournament based on Newfield's scheme.

5.9. For these reasons, the Appellant, John Newfield, by engaging in a cheating scheme to defraud the Great American Casino and another player, violated RCW 9.46.185, RCW 9.46.190(1) and RCW 9.46.1961. **Affirmed.**

[Conrinued]

Appellant has failed to Establish by 'Clear and Convincing Evidence'-

5.10. RCW 9.46.153(1) requires applicants to prove their eligibility for a license:

> It shall be the affirmative responsibility of each…licensee to establish by ***clear and convincing evidence*** the necessary qualifications for licensure of each person required to be qualified under this chapter,…[.]" ***Emphasis Added.***

5.11. "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).

5.12. In the present case, the Appellant, John Newfield, has failed to establish he is qualified for licensure by 'clear and convincing evidence' based on the finding he engaged in a cheating conspiracy with Roeun Chan to defraud the Great American Casino as well as other poker tournament players on June 28-29, 2018, in violation of RCW 9.46.185, RCW 9.46.190(1) and RCW 9.46.1961.

5.13. Therefore, the Appellant, John W. Newfield, cannot prove by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1). **Affirmed.**

Revocation of the Appellant's Public Card Room Employee License-

5.14. WAC 230-03-085 authorizes the Gambling Commission to deny, suspend, or revoke a gambling license and/or an application for a gambling license. Specifically, the regulation provides, in pertinent part:

> (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…
>
> WAC 230-03-085.

5.15. In the present matter, based on the Gambling Commission's 'Notice of Administrative Charges' being affirmed, the Gambling Commission is authorized to revoke the Appellant's Public Card Room Employee License, pursuant to RCW 9.46.075(1),(2) and (8) and WAC 230-03-085(1),(3) and (9)(a). **Revoked.**

6. INITIAL ORDER:

IT IS HEREBY ORDERED THAT;

6.1. **Affirmed.** The Gambling Commission's 'Notice of Administrative Charges', dated September 11, 2018 is affirmed.

6.2. **Affirmed.** On June 29, 2018, the Appellant, John W. Newfield, participated in a cheating conspiracy to defraud the Great American Casino in violation of RCW 9.46.185, RCW 9.46.190(1), and RCW 9.46.1961.

6.3. **Affirmed.** The Appellant, John W. Newfield, cannot prove by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1).

6.4. **Revoked.** The Gambling Commission is authorized to revoke the Appellant's Public Card Room Employee License, pursuant to RCW 9.46.075(1),(2) and (8) and WAC 230-03-085(1),(3) and (9)(a).

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. 11-2018-GMB-00074

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

John W. Newfield 9703 10th Ave E Tacoma, WA 98445 ***Appellant***	☒ First Class Mail ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☐ Campus Mail ☐ Facsimile ☐ E-mail
Kellen Wright, AAG Office of the Attorney General MS: 40100 PO Box 40100 Olympia, WA 98504 ***Agency Representative***	☐ First Class Mail ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☒ Campus Mail ☐ Facsimile ☐ E-mail
Ashlie Laydon Washington State Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504 ***Agency Contact***	☐ First Class Mail ☐ Certified Mail, Return Receipt ☐ Hand Delivery via Messenger ☒ Campus Mail ☐ Facsimile ☐ E-mail

Date: Monday, April 29, 2019

OFFICE OF ADMINISTRATIVE HEARINGS

Nathan Robinson
Legal Assistant 3