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WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of: William A. Morago, Appellant.	Docket No. 11-2018-GMB-00072 **INITIAL ORDER GRANTING GAMBLING COMMISSION STAFF'S MOTION FOR SUMMARY JUDGMENT** Agency: Washington State Gambling Commission Program: Washington State Gambling Commission Agency No. 2018-01356

1. ISSUES:

1.1. If a genuine dispute of material fact exists as to whether the Appellant, William A. Morago, is facing multiple criminal charges which include: two counts of Second Degree Assault (felony), Second Degree Burglary (felony), and Harassment (gross misdemeanor)?

1.2. If no genuine issue of material exists, whether the Washington State Gambling Commission is entitled to summary judgment in its favor, as a matter of law, based on the Appellant violating RCW 9.46.075(1), (8) and (9), WAC 230-03-085(1) and (9)(a) and Yakama Tribal State Gaming Compact section V.C.(1)?

1.3. If so, whether the Appellant, William A. Morago's Class III Gambling Certification should be revoked?

2. ORDER SUMMARY:

2.1. The Appellant, William A. Morago, has raised no genuine dispute of material fact contesting he is facing multiple criminal charges, including: two counts of Second Degree Assault (felony), Second Degree Burglary (felony), and Harassment (gross misdemeanor).

2.2. Since the Appellant has raised no genuine dispute of material fact, the Washington State Gambling Commission Board Staff is entitled to Summary Judgment in its favor, as a matter of law. The Commission Staff established the Appellant violated RCW 9.46.075(1), (8) and (9), WAC 230-03-085(1) and Yakama Tribal State Gaming Compact section V.C (1). Therefore, the Washington State Gambling Commission Staff's Motion for Summary Judgment is **GRANTED.**

2.3. Therefore, the Appellant, William A, Morago's Class III Gambling Certification is **REVOKED.**

3. GAMBLING COMMSSION STAFF'S SUMMARY JUDGMENT MOTION:

3.1. Oral Argument Date: No oral argument occurred.

3.2. Administrative Law Judge: TJ Martin

3.3. Appellant/Class III Employee: William A. Morago ('Appellant')

3.3.1. Representative: The Appellant represented himself.

3.4. Agency: Gambling Commission Staff ('Commission Staff')

3.4.1. Representative: Kellen Wright, Assistant Attorney General

3.5. Documents Considered: The undersigned administrative law judge considered the following documents:

Doc. No.	Document Name	Document Date	No. Pages
1	Washington State Gambling Commission's 'Summary Suspension Order' and 'Notice of Administrative Charges'	09/10/2018	8
2	Appellant's 'Request For Stay And Administrative Hearing And Interpreter Form'	09/19/2018	3
3	Office of Administrative Hearings' 'Prehearing Conference Order' and 'Notice of Hearing'	12/20/2018	10
4	Washington State Gambling Commission Staff's Motion For Summary Judgment and Memorandum Of Authorities In Support	01/18/2019	6
5	Declaration of Special Agent Julie Sullivan in Support of Commission Staff's Motion for Summary Judgment (with Exhibit 1 through Exhibit 5)	01/18/2019	23

4. FACTS FOR PURPOSES OF SUMMARY JUDGMENT:

Jurisdiction-

4.1. On September 10, 2018, Washington State Gambling Commission issued 'Notice of Administrative Charges' and 'Summary Suspension Order' against William A. Morago alleging he is charged with four crimes, including three felonies and one gross misdemeanor. Two of the crimes, Second Degree Assault, involve physical harm to others.

4.2. Based on the Appellant's pending, criminal charges, the Washington State Gambling Commission sought revocation of the Appellant's Class III Employee certification in accordance with RCW 9.46.075(1),(8) and (9) and WAC 230-03-085(1) and (9)(a) and Section V.C.(1) of the Yakama Tribal-State Gaming Compact.

4.3. On September 19, 2018, the Appellant, William A. Morago, requested an administrative hearing regarding the Washington State Gambling Commission's 'Notice of Administrative Charges'.

Summary Judgment-

4.4. On January 18, 2018, the Washington State Gambling Commission Staff filed 'Commission Staff's Motion For Summary Judgment' and 'Declaration of Special Agent Julie Sullivan in Support of Commission Staff's Motion for Summary Judgment', with Exhibits 1 through Exhibit 5.

4.5. The Appellant did not file a Response to the Gambling Commission Staff's Motion for Summary Judgment.

The Appellant has Four Pending Criminal Charges-

4.6. The Appellant, William A. Morago, is licensed by the Washington State Gambling Commission, to engage in Class III Employee Activity at the Yakama Nation's Legends Casino in Toppenish, Washington. The Appellant's certification expired on September 29, 2018. *Declaration of Special Agent Julie Sullivan in Support of Commission Staff's Motion for Summary Judgment ('Dec. of Sullivan'): Exhibit ('Ex.') 1; Page ('Pg.') 1, Line ('Ln.') 15-17.*

4.7. On May 27, 2018, at around midnight, the Appellant was involved in a disturbance at the Branding Iron Restaurant in Toppenish, Washington, where he allegedly was asked to leave the restaurant due to his intoxication. He left, but came back a short time later and threatened two employees with a knife. *Dec. of Sullivan: Ex. 1; Pgs. 1-2, Lns. 20-6 and Ex. 5.*

4.8. On June 29, 2018, Yakima Superior Court charged the Appellant with two counts of Second Degree Assault (felony), Second Degree Burglary (felony), and Harassment (gross misdemeanor), based on his actions on May 27-28, 2018. *Dec. of Sullivan: Pg. 2; Ln. 7-10 and Ex. 4.*

4.9. On July 10, 2018, the Appellant notified the Washington State Gambling Commission, via an 'Affidavit- Undisclosed Criminal History', regarding his four, pending criminal charges. *Dec. of Sullivan: Ex. 3.*

4.10. On August 30, 2018, Washington State Gambling Commission Special Agent Julie Sullivan conducted a 'Suitability Investigation on Individual Licensee-Criminal History' of the Appellant, based on his pending charges. *Dec. of Sullivan: Ex. 2.*

4.11. On September 10, 2018, Washington State Gambling Commission Director, David Trujillo, issued a 'Notice of Administrative Charges' against the Appellant, seeking to revoke his Class III Employee certification. The 'Notice of Administrative Charges' were based on Special Agent Julie Sullivan's investigation into the Appellant's pending, criminal matter, *Dec. of Sullivan: Ex. 1.*

4.12. On January 18, 2019, the Washington State Gambling Commission filed 'Washington State Gambling Commission Staff's Motion for Summary Judgment', with the 'Declaration of Special Agent Julie Sullivan in Support of Commission Staff's Motion for Summary Judgment'.

4.13. As per the Office of Administrative Hearings' 'Prehearing Conference Order', dated December 20, 2018, the Appellant had until February 1, 2019 in which to file a 'Response' to the Washington State Gambling Commission's motion.

4.14. The Appellant failed to file any 'Response' by the February 1, 2019 deadline.

4.15. As of the date of this Order, the Respondent has not filed any response nor presented any evidence disputing any of the facts raised in the 'Washington State Gambling Commission Staff's Motion for Summary Judgment' or the 'Declaration of Special Agent Julie Sullivan in Support of Commission Staff's Motion for Summary Judgment'.

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) 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 no genuine issue as to any material fact and 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).

5.4. Civil Rule 56(e) provides: "If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."

5.5. Further, the failure to file a response to a summary judgment motion results in finding no contested facts. Without any genuine dispute of material facts, summary judgment is warranted. *State v. WWJ*, 138 Wn.2d 595 (1999).

The Appellant has not established any genuine issue of material fact regarding being charged with crimes relating to physical harm to another individual-

5.6. As applied to the present matter, 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;
>
> (9) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (4) of this section: PROVIDED, That at the request of an applicant for an original license, the commission may defer decision upon the application during the pendency of such prosecution or appeal;

5.7. WAC 230-03-085 'Denying, suspending, or revoking an application, license or permit', in relevant part, provides:

> We [Gambling 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;...
>
> (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;

[Continued]

5.8. Finally, the 'Tribal-State Compact for Class III Gaming Between the Confederated Tribes and Bands of the Yakama Indian Nation and the State of Washington (1996) provides, as pertaining to the present case:

> V. 'LICENSING AND CERTIFICATION PROCEDURES': C. 'Grounds for Revocation, Suspension, or Denial of State Certification'
>
> The State Gaming Agency may revoke, suspend or deny a State certification under the provisions of RCW 9.46.075, and rules promulgated thereunder, for any reason or reasons it deems to be in the public interest. In addition, these reasons shall include, but shall not be limited to when an applicant or holder of certification or principal of an entity:
>
> 1. Is determined to be a person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the effective regulation of gaming or create or enhance the chances of unfair or illegal practices, methods and activities in the conduct of the gaming activities permitted pursuant to this Compact; or the person has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by any provision of a Tribal-State Compact.

5.9. On December 20, 2018, Administrative Law Judge Debra Pierce issued a 'Prehearing Conference Order', which included a 'Case Schedule'. The 'Case Schedule' outlined a briefing schedule if either party filed a dispositive motion, such as a summary judgment motion. If either party filed a dispositive motion, such a summary judgment motion, by January 18, 2019, the other party until February 1, 2019 to file a reply.

5.10. On January 18, 2019, the Washington State Gambling Commission Board Staff filed 'Commission Staff's Motion for Summary Judgment and Memorandum of Authorities'. The summary judgment motion included the 'Declaration of Special Agent Julie Sullivan in Support pf Commission Staff's Motion for Summary Judgment', along with Exhibits 1 through 5.

5.11. Based on the 'Prehearing Conference Order' and 'Case Schedule, established by Administrative Law judge Debra Pierce, the Appellant, William A. Morago, had until February 1, 2019 to file a response to the Gambling Commission Staff's summary judgment motion.

5.12. The Appellant/Licensee did not file a 'Response' by Friday, February 1, 2019. In fact, as of the date of this Order, the Appellant/Licensee has provided no written documentation, via affidavit, declaration, or pleading, contesting the facts as alleged by the Board Staff in its Motion for Summary Judgment.

5.13. In accordance with Civil Rule 59(e), due to the Appellant's failure to provide a 'Response' to the Board Staff's Motion for Summary Judgment, he has failed to raise any genuine dispute of material fact.

5.14. Therefore, the undersigned administrative law judge finds no genuine issue of material fact disputing the Appellant has four, criminal charges pending including: two counts of Second Degree Assault (felony), Second Degree Burglary (felony), and Harassment (gross misdemeanor).

5.15. Since no genuine issue of material fact exists disputing the Appellant, William A. Morago, is 'subject to current prosecution or pending charges', the undersigned administrative law judge finds the Appellant violated RCW 9.46.075(1), (8) and (9), WAC 230-03-085(1) and (9)(a) and Yakama Tribal State Gaming Compact section V.C.(1). The Washington State Gambling Commission Staff's Motion for Summary Judgment is **GRANTED.**

Revocation of the Appellant's Gambling License

5.16. 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 applicable statutes and regulations within RCW 9.46 and WAC 230-03 and WAC 230-06. In addition, the burden is on a licensee to prove by 'clear and convincing evidence' he is qualified for licensure.

5.17. 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 statues and regulations and being subject to felony and/or misdemeanor charges.

5.18. Since the Appellant has established no genuine dispute of material fact, and the Gambling Commission Board Staff is entitled to judgment in its favor, as a matter of law, the Appellant, William A. Morago's Class III Gaming Certification is **REVOKED.**

5.19. Based on the granting of the Board Staff's Summary Judgment Motion, the evidentiary hearing, scheduled for Monday, March 18, 2019, is **STRICKEN.**

[Continued]

6. INITIAL ORDER:

IT IS HEREBY ORDERED THAT;

6.1. The Appellant, William A. Morago, has raised no genuine dispute of material fact contesting he is facing multiple criminal charges, including: two counts of Second Degree Assault (felony), Second Degree Burglary (felony), and Harassment (gross misdemeanor).

6.2. The Appellant has raised no genuine dispute of material fact. As a result, the Washington State Gambling Commission Board Staff is entitled to Summary Judgment in its favor, as a matter of law, since the Appellant violated RCW 9.46.075(1), (8) and (9), WAC 230-03-085(1) and Yakama Tribal State Gaming Compact section V.C (1). Therefore, the Washington State Gambling Commission Staff's Motion for Summary Judgment is **GRANTED.**

6.3. Therefore, the Appellant, William A, Morago's Class III Gambling Certification is **REVOKED.**

6.4. Based on the Gambling Commission Board Staff's Motion for Summary Judgment being granted, the evidentiary hearing scheduled for Monday, March 18, 2019, is **STRICKEN.**

SIGNED at 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-00072

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

William A. Morago PO Box 1514 Toppenish, WA 98948 ***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: Wednesday, February 27, 2019

OFFICE OF ADMINISTRATIVE HEARINGS

Hailey Miles

Hailey Miles
Legal Assistant 3