

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

WSGC
JAN 10 2020
RECORDS

In the matter of:

Sports Bar & Grill,

License No. 05-21166

Appellant.

Docket No. 12-2019-GMB-00140

INITIAL ORDER

Agency: Gambling Commission
Program: License Fees & Reports
Agency No. CR 2019-02085

1. ISSUES

- 1.1. Issue No. 1. Based on the Washington State Gambling Commission's 'Notice of Administrative Charges', dated December 17, 2019, whether the Appellant/Licensee, Sports Bar and Grill, failed to timely submit the quarterly license fee and quarterly license report which was due on October 30, 2019, in violation of Washington Administrative Code (WAC) 230-05-124 and WAC 230-05-132?
- 1.2. Issue No. 2. If so, whether the Gambling Commission's revocation of the Sports Bar and Grill's gambling license, under Revised Code of Washington (RCW) 9.46.075(1) and WAC 230-03-085(1) & (5) should be affirmed?

2. ORDER SUMMARY

- 2.1. Order No. 1. **AFFIRMED.** The Appellant/Licensee, Sports Bar and Grill, failed to timely submit the quarterly license fee and quarterly license report which was due October 30, 2019, in violation of WAC 230-05-124 and WAC 230-05-132. The Washington State Gambling Commission's 'Notice of Administrative Charges' is affirmed.
- 2.2. Order No. 2. **AFFIRMED.** The Gambling Commission's revocation of the Appellant/Licensee, Sports Bar and Grill's Gambling License No. 05-21166 is affirmed.

3. HEARING

- 3.1. Hearing Date: January 7, 2020
- 3.2. Administrative Law Judge: Charles F. Bryant
- 3.3. Appellant: Sports Bar & Grill
 - 3.3.1. Representative: No one appeared on behalf of the Appellant.
- 3.4. Agency: Gambling Commission

- 3.4.1. Representative: Doug Van de Brake, AAG
- 3.4.2. Witnesses: The Gambling Commission did not call any witnesses.
- 3.5. Exhibits: Gambling Commission's Exhibits 1 through 10 were admitted. The Appellant did not submit any exhibits.
- 3.6. Other: The hearing was conducted as a brief adjudicative proceeding under RCW 34.05.485 and WAC 230-17-150 through 155.

4. FINDINGS OF FACT

Under RCW 34.05.461(4):

Findings of fact shall be based exclusively on the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding. Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding officer determines that doing so would not unduly abridge the parties' opportunities to confront witnesses and rebut evidence. The basis for this determination shall appear in the order.

In this case, the documentary evidence presented by the Gambling Commission is hearsay. Hearsay evidence is admissible in an administrative hearing, "...if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." RCW 34.05.452(1). The exhibits provided in this case are legal notices and business records, and consequently I conclude, are the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

The findings below are based exclusively on the hearsay evidence admitted into the record because I have determined that doing so would not unduly abridge the Appellant's opportunity to confront witnesses and rebut evidence. My determination is based on the following: (1) the Appellant was given notice of the hearing, which was mailed by the Gambling Commission on December 17, 2019, to its last known mailing address. (2) The Appellant filed no exhibits to rebut the exhibits filed by the Gambling Commission. (3) The Appellant did not appear at the hearing, where it could have rebutted the evidence. (4) The Appellant could have appeared and requested that the Brief Adjudicative Proceeding be converted to a full evidentiary hearing, where it could have confronted and examined witnesses under oath, but failed to do so.

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

Jurisdiction

- 4.1. On December 17, 2019, the Gambling Commission issued and served a 'Notice of Administrative Charges' (CR 2019-02085) alleging that Sports Bar & Grill (License No. 05-21166) failed to timely submit the quarterly license fee and quarterly license report for the third quarter of 2019, which were due no later than October 30, 2019. *Exhibit ('Ex.')* 2.
- 4.2. The Gambling Commission referred the Appellant's matter to the Office of Administrative Hearings ('OAH') to assign an administrative law judge to conduct a Brief Adjudicative Proceeding on the matter, as provided by WAC 230-17-150(5). *Ex. 1.*
- 4.3. On December 17, 2019, the Gambling Commission served notice on the Appellant regarding the Brief Adjudicative Proceeding hearing, scheduled for January 7, 2020. *Ex. 1.*
- 4.4. The Appellant did not appear for the hearing. *Hearing Record.*

Failure to submit quarterly license fee and report

- 4.5. The Appellant/Licensee, Sports Bar & Grill, located in Kent, Washington, has been licensed to operate Punch Boards/Pull-Tabs since 2013. *Ex. 3; Page ('Pg.')* 3.
- 4.6. The Appellant's license expires on March 21, 2020. It had no previous material administrative history in the twelve months prior to December of 2019. *Ex. 3; Pg. 1 & 3.*
- 4.7. From September 30, 2019, to October 31, 2019, the Gambling Commission sent three emails and one letter to the Appellant regarding the need to file a quarterly license fee and quarterly license report for the third quarter of 2019. *Ex. 5-8.*
- 4.8. The Sports Bar & Grill (License No. 05-21166) failed to timely submit the quarterly license fee and quarterly license report for the third quarter of 2019, which were due no later than October 30, 2019. *Exhibit ('Ex.')* 2.
- 4.9. As of December 17, 2019, the Appellant still had not filed a quarterly license fee and quarterly license report for the third quarter of 2019. *Ex. 2; Pg. 4.*
- 4.10. On December 17, 2019, based on the Appellant's failure to submit a license fee and report for the third quarter of 2019, the Gambling Commission issued a 'Notice of Administrative Charges' against the Appellant. *Ex. 2.*

5. CONCLUSIONS OF LAW

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

Jurisdiction

- 5.1. The undersigned administrative law judge has jurisdiction over the person and subject matter of this case under Chapter 34.05 RCW, Chapter 9.46 RCW and WAC 230-17-151(e).

Violation charged

- 5.2. All organizations licensed by the Washington State Gambling Commission must submit activity reports quarterly, regardless of whether they previously submitted reports annually, quarterly or semi-annually and whether their permit or license year ends. WAC 230-05-102(1).
- 5.3. Reports must be submitted for any licensed period, even if no gambling activity occurred. WAC 230-05-124(6).
- 5.4. Quarterly license fees must be submitted in the format required by the Gambling Commission, along with the quarterly report, when due. WAC 230-05-124(3).
- 5.5. The third quarterly report required to be filed in 2019 covers the period from July 1, 2019, through September 30, 2019, and must be received by the Gambling Commission no later than October 30, 2019. WAC 230-05-102; WAC 230-05-124.
- 5.6. Licensees are afforded one thirty-day filing and payment grace period after their quarterly license reports and quarterly license fees are due. WAC 230-05-132(2). However, Licensees who do not file their quarterly reports and/or pay quarterly license fees within thirty days from the end of each quarter are in violation of WAC 230-05. WAC 230-05-132(1).
- 5.7. The Appellant/Licensee, Sports Bar and Grill, is an organization licensed by the Gambling Commission and subject to reporting requirements and fees of WAC 230-05. WAC 230-05-102(1).
- 5.8. Sports Bar and Grill was required to submit a quarterly license fee and quarterly license report for the third quarter of 2019. The deadline for submitting license reports and fees for the third quarter of 2019 was October 30, 2019. The Appellant failed to submit a quarterly license fee and quarterly license report for the period at issue. The appellant also failed to submit a late quarterly license fee and a late quarterly license report for the period at issue by November 30, 2019.

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5.9. Therefore, Sports Bar and Grill, by failing to timely submit a quarterly license fee and report for the third quarter of 2019 violated WAC 230-05-124 and WAC 230-05-132(1). Because the Sports Bar and Grill committed these violations, the Washington State Gambling Commission's 'Notice of Administrative Charges' was correct, and should be **affirmed**.

5.10. The Gambling Commission is authorized to suspend or revoke any license or permit issued by the Commission because of violation of gambling law or regulations. RCW 9.46.075(1).

5.11. The Gambling Commission may suspend or revoke a gambling license when the licensed organization has failed to pay a quarterly license fee and/or failed to submit a quarterly license report. WAC 230-03-085(5).

5.12. A revoked licensee is responsible for any late fees and additional costs associated with collection of the fees and costs, before a new license is approved. WAC 230-03-085(5).

Revocation and/or penalty

5.13. Under WAC 230-03-085, the Gambling Commission may deny, suspend or revoke any license or permit when the licensee "Has failed to pay a quarterly license fee or submit a quarterly license report." As discussed above, the appellant failed to pay a quarterly license fee and failed to submit a quarterly license report. Thus, the Gambling Commission properly exercised its discretion to revoke Sports Bar and Grill's gambling license under RCW 9.46.075 and WAC 230-03-085. Therefore, the Gambling Commission's revocation of Sports Bar and Grill's gambling license, No. 05-21166 should be **affirmed**.

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INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 5.14. **AFFIRMED.** The Appellant/Licensee, the Sports Bar and Grill, failed to timely submit the quarterly license fee and report for the third quarter of 2019 in violation of WAC 230-05-124 and WAC 230-05-132(1). The Washington State Gambling Commission's 'Notice of Administrative Charges' is affirmed.
- 5.15. **AFFIRMED.** The Commission properly exercised its authority to revoke the Sports Bar and Grill's gambling license under RCW 9.46.075 and WAC 230-03-085. The Gambling Commission's revocation of the Sports Bar and Grill's Gambling License No. 05-20019 is **affirmed**.

Issued from Tacoma, Washington on the date of mailing.



Charles F. Bryant
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. WAC 230-17-152(1). 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-one (21) days from the date this initial order was mailed to the parties. WAC 230-17-152(2). A copy of the petition for review must be sent to all parties of record. WAC 230-17-152(4). 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 petition for review must contain any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider. WAC 230-17-152(3).

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 12-2019-GMB-00140

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

Sports Bar & Grill 12753 SE 298th Place Auburn, WA 98092-2301 <i>Appellant</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
Ashlie Laydon Washington State Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504 <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
Doug Van de Brake, AAG Office of the Attorney General P.O. Box 40100 MS: 40100 Olympia, WA 98504 <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
Chad Standifer, AAG Office of the Attorney General P.O. Box 40100 MS: 40100 Olympia, WA 98504 <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
Cheri Jackson Washington State Gambling Commission P.O. Box 42400 MS: 42400 Olympia, WA 98504 <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

Date: Thursday, January 09, 2020

OFFICE OF ADMINISTRATIVE HEARINGS

Carla Sullivan

Carla Sullivan
 Legal Assistant 2