

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Artem E. Babayan,

Appellant.

Docket No. 07-2020-GMB-00156

INITIAL ORDER

Agency: Gambling Commission
Program: Washington State Gambling
Commission
Agency No. 2020-00544

1. ISSUES

Based on Notice of Administrative Charges No. CR 2020-00544, issued June 25, 2020:

- 1.1. Whether the alleged conduct occurred;
- 1.2. If so, is revocation of the Appellant's card room license an appropriate penalty?
- 1.3. Whether the Appellant has proven, by clear and convincing evidence, that he is qualified for licensure, as required by RCW 9.46.153(1).

2. ORDER SUMMARY

- 2.1. Yes. The alleged conduct occurred; however, it did not constitute the violation of RCW 9A.36.041 and/or Chapter 9.46 RCW, as alleged.
- 2.2. Revocation of the Appellant's cardroom license is not an appropriate penalty; and
- 2.3. The Appellant has proven, by clear and convincing evidence that he is qualified for licensure, as required by RCW 9.46.153(1).
- 2.4. Accordingly, the Notice of Administrative Charges No. CR 2020-00544, here on appeal, is **REVERSED**, and the Revocation of the Appellant's Card Room Dealer License therein is **SET ASIDE**.

3. HEARING

- 3.1. Hearing Date: December 22, 2020
- 3.2. Record Close: December 29, 2020
- 3.3. Administrative Law Judge: Micah Larripa
- 3.4. Appellant: Artem E. Babayan, *pro se*
- 3.5. Agency: Gambling Commission
 - 3.5.1. Representative: Doug Van de Brake, Assistant Attorney General
 - 3.5.2. Witnesses:

- 3.5.2.1. Charly Lanier, Assistant General Manager, Wizards Casino
- 3.5.2.2. Special Agent Robert Raimond, Wash. State Gambling Commission
- 3.6. Exhibits: Gambling Commission Exhibits 1 through 5 were admitted.

4. FINDINGS OF FACT

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

Jurisdiction

- 4.1. On June 25, 2020, the Washington State Gambling Commission (“Commission”) issued Notice of Administrative Charges No. CR 2020-00544 against Artem Babayan (“Appellant”). The Notice alleged that on February 26, 2020, the Appellant engaged in conduct amounting to Assault in the Fourth Degree, in violation of RCW 9A.36.041 and RCW 9.46.075(1) & (8). *Exhibit (“Ex”) 5.*
- 4.2. On July 7, 2020, the Appellant timely appealed the Notice of Administrative Charges.

The February 26, 2020 Incident

- 4.3. During the dates at issue in this appeal, the Appellant was an employee of Wizards Casino (“Casino”), located in Burien, Washington. At approximately 1:45 AM on February 26, 2020, Casino staff began to conduct “pick up,” to secure patrons’ alcoholic drinks in accordance with “last call” protocols. *Testimony of Mr. Babayan & Ms. Lanier; Ex 3.*
- 4.4. During “pick up,” a server approached Mr. Seven Dethlefs, a patron, and attempted to take his alcoholic drink. Mr. Dethlefs told the server, “If you touch my beer, I’m going to punch you in the face,” or words to that effect. *Testimony of Mr. Babayan & Ms. Lanier; Ex 3.*
- 4.5. The Appellant was playing pool in the Casino, and was preparing to leave when he observed and heard Mr. Dethlefs threaten the server. The Appellant was an employee of the Casino, but off duty at the time. *Testimony of Mr. Babayan.*
- 4.6. The Appellant approached Mr. Dethlefs, and demanded that he apologize to the server he threatened. Mr. Dethlefs was a regular at the Casino, and the Appellant was familiar with him. *Id.* The Appellant and Mr. Dethlefs had no prior conflicts or altercations with one another. *Id.*
- 4.7. Without warning, Mr. Dethlefs spit directly into the Appellant’s face and eyes. Immediately thereafter, the Appellant pushed Mr. Dethlefs to the ground with an open hand on Mr. Dethlefs’s neck. Mr. Dethlefs’s baseball cap fell off his head when he hit the floor. The Appellant kicked Mr. Dethlefs’s hat, legs, and buttocks three to five times before he disengaged. *Testimony of Mr. Babayan, Special Agent (“SA”) Raimond & Ms. Lanier; Ex 3.*

- 4.8. The Appellant pushed Mr. Dethlefs to the ground immediately after being spit upon, and the entire incident ended within less than a minute. *Testimony of Ms. Lanier*. The Appellant did not use “full force” while kicking Mr. Dethlefs in the legs and buttocks. *Id.*
- 4.9. The Casino’s security guards intervened and separated the Appellant from Mr. Dethlefs. The Appellant regained his composure, and went to the Casino restroom to wash Mr. Dethlefs’s spit from his face and eyes. The Appellant voluntarily left the Casino at approximately 1:51 AM on February 26, 2020.
- 4.10. Mr. Dethlefs left the Casino minutes later, at approximately 1:54 AM. As Mr. Dethlefs walked towards his vehicle, another patron rushed towards him and attempted to “sucker punch” him from behind. The Appellant blocked the patron’s punch and restrained him, allowing Mr. Dethlefs to leave the Casino parking lot without further incident. *Testimony of Mr. Babayan & SA Raimond; Ex 4.*
- 4.11. The Casino did not contact law enforcement or emergency services following the altercation between Mr. Dethlefs and the Appellant. Mr. Dethlefs did not seek medical attention for any injuries related to the February 26, 2020 incident. *Ex 4.*
- 4.12. The Casino discharged the Appellant from its employment on February 26, 2020. *Testimony of Ms. Lanier & Mr. Babayan; Ex 3.*
- 4.13. Both parties’ witnesses testified credibly at the hearing and the foregoing facts are not in dispute.

Gambling Commission Investigation

- 4.14. On February 27, 2020, Ms. Charly Lanier, the Casino’s Assistant General Manager, contacted the Commission to report the incident described above. *Ex 3 & 4.* Special Agent Raimond opened an investigation in response to Ms. Lanier’s report. *Id.*
- 4.15. During his investigation, Special Agent Raimond interviewed Mr. Dethlefs and the Appellant, and reviewed the Casino’s video surveillance footage from the date and times at issue. *Testimony of SA Raimond; Ex 4.*
- 4.16. Based on his investigation, Special Agent Raimond concluded that the Appellant was the “primary aggressor” in the February 26, 2020 altercation because he kicked Mr. Dethlefs while he was on the ground. Based on the foregoing, Special Agent Raimond determined that the Appellant committed Assault in the Fourth Degree and recommended Revocation of the Appellant’s Card Room Employee license on that basis. *Id.*
- 4.17. Mr. Dethlefs declined to cooperate as a victim in any case against the Appellant, and Special Agent Raimond did not forward his investigation to the King County Prosecutor’s Office. *Id.* Mr. Dethlefs did not appear or testify at the hearing.

- 4.18. The Appellant has no prior disciplinary history during approximately nine years of licensure, and the February 26, 2020 incident is the sole basis for Special Agent Raimond's recommendation to revoke the Appellant's Card Room Employee license. *Testimony of SA Raimond; Ex 4.*
- 4.19. Based on Special Agent Raimond's investigation, the Commission issued Notice of Administrative Charges No. CR 2020-00544 on June 25, 2020. *Ex 5.*

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

Burden of Proof

- 5.2. The burden of proof is upon the Commission to prove the Administrative charges by a preponderance of the evidence; however, this burden does not apply to Issue No. 1.3 herein.
- 5.3. 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).

Gambling Commission's Enforcement of Gaming Rules and Regulations

- 5.4. RCW 9.46.010 establishes, in relevant part:

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.

- 5.5. RCW 9.46.040 also authorizes the Gambling Commission to enforce the rules and regulations relating to gambling activities in the State. Based on the Notice of Administrative Charges here on appeal, the following provisions apply:
- 5.6. The Gambling Commission may deny a license application, revoke or suspend a license for:
 - Violating, failing or refusing to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW...;

- Failing to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter 9.46 RCW.

RCW 9.46.075(1) & (8).

5.7. The Gambling Commission is authorized to deny, suspend or revoke any application, license or permit, for any of the following reasons, in relevant part:

- Committing any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or
- Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or
- 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
 - (b) Criminal record; or
 - (c) Reputation; or
 - (d) Habits; or
 - (e) Associations;

WAC 230-03-085(1),(2), & (9).

5.8. Here, the Commission has not established, by a preponderance of the evidence, that the Appellant's conduct on February 26, 2020 amounted to Assault in the Fourth Degree, or any willful disregard for ordinances, statutes, administrative rules or court orders. Based on the evidence presented, the undersigned rejects the Commission's conclusion that the Appellant became the "primary aggressor" at any point during the altercation at issue. Mr. Dethlefs threatened a Casino staff member who was acting within the scope of her duties. When the Appellant intervened, Mr. Dethlefs spat in his face and eyes without warning. The act of spitting in the Appellant's face was an assaultive and violent act, and the Appellant reacted in self-defense by pushing Mr. Dethlefs to the ground.

5.9. Detached reflection suggests that Mr. Dethlefs no longer presented an immediate threat to the Appellant, or others, once he was on the ground; however, based on the testimony presented, the undersigned concludes that the Appellant's kicks to Mr. Dethlefs's ball cap, legs, and buttocks, immediately following the push, were part of the same continuum of effort to subdue an attacker. The entire altercation lasted approximately one minute, and the evidence does not establish that the

Appellant's actions were disproportionate to the threat Mr. Dethlefs initially posed, or unreasonable under the circumstances. Furthermore, the Appellant's subsequent effort to defend Mr. Dethlefs from another patron's attack in the Casino parking lot, minutes after the altercation at issue, is probative of the Appellant's intention not to harm Mr. Dethlefs, or use more force than necessary when Mr. Dethlefs assaulted him.

- 5.10. Based on the foregoing, the undersigned concludes that the Appellant did not commit Assault in the Fourth Degree in violation of RCW 9A.36.041, as alleged. The Appellant's actions on February 26, 2020, serving as the sole basis for the Commission's Notice of Administrative Charges here on appeal, do not otherwise constitute misconduct or grounds for denying, suspending, or revoking his license under RCW 9.46.075 and/or WAC 230-03-085.
- 5.11. Accordingly, Notice of Administrative Charges No. CR 2020-00544 should be REVERSED.

Qualification for Licensure

- 5.12. 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,...[.]”
- 5.13. “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).
- 5.14. Here, the Appellant has no previous disciplinary actions or sanctions against him during his approximately nine years in the gaming industry. The Commission does not allege any circumstances, other than the February 26, 2020 altercation, to suggest that the Appellant's conduct or character as a licensee is anything less than exemplary. Based on the findings and conclusions herein, the Appellant's actions on February 26, 2020 were reasonable, and should not disqualify him for licensure.
- 5.15. For the foregoing reasons, the Appellant is qualified for licensure, as required by RCW 9.46.153(1).
- 5.16. Notice of Administrative Charges No. CR 2020-00544 is REVERSED, and the Appellant has established qualification for licensure, by clear and convincing evidence, pursuant to RCW 9.46.153(1). Accordingly, the Commission's revocation of the Appellant's Card Room Employee license is SET ASIDE.

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6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. Notice of Administrative Charges No. CR 2020-00544 is **REVERSED**.
- 6.2. The alleged conduct occurred; however, it did not constitute the violation of RCW 9A.36.041 and/or Chapter 9.46 RCW, as alleged.
- 6.3. Revocation of the Appellant's cardroom license is not an appropriate penalty; and
- 6.4. The Appellant has proven, by clear and convincing evidence that he is qualified for licensure, as required by RCW 9.46.153(1).
- 6.5. Accordingly, the Notice of Administrative Charges No. CR 2020-00544, here on appeal, is **REVERSED**, and the Revocation of the Appellant's Card Room Dealer License therein is **SET ASIDE**.

Issued from Tacoma, Washington on the date of mailing.



Micah Larripa
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.

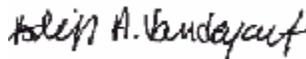
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 07-2020-GMB-00156

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

<p>Artem E. Babayan 566 S 158th St Burien, WA 98148 <i>Appellant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail: babayanartem2@gmail.com</p>
<p>Doug Van de Brake, AAG Office of the Attorney General MS: 40100 PO Box 40100 Olympia, WA 98504 <i>Agency Representative</i></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail: doug.vandebrake@atg.wa.gov jordan.nimon@atg.wa.gov gceef@atg.wa.gov</p>
<p>Ashlie Laydon Washington State Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504 <i>Agency Contact</i></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail: ashlie.laydon@wsgc.wa.gov legal@wsgc.wa.gov</p>

Date: Monday, March 1, 2021

OFFICE OF ADMINISTRATIVE HEARINGS



Ashleigh Vandeyacht
Legal Assistant 2