

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Tuyet Nhung T Nguyen,

Appellant.

Docket No. 01-2021-GMB-00169

**INITIAL ORDER ON SUMMARY
JUDGMENT MOTION**

Agency: Gambling Commission
Program: Washington State Gambling
Commission
Agency No. 2020-01240

Language Access Notice

English

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Vietnamese

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1. ISSUES:

- 1.1. Whether Tuyet Nhung Nguyen (“Appellant”) violated Washington Administrative Code (“WAC”) 230-15-180(1) and (2), by acting as a player’s representative on a card game?
- 1.2. Whether Appellant violated Revised Code of Washington (“RCW”) 9.46.1961(1)(a) and (b), by cheating in the first degree?
- 1.3. Whether Appellant violated RCW 9A.56.050, by wrongfully obtaining unauthorized control over the property of another?
- 1.4. Whether Appellant can prove by ‘clear and convincing evidence’ she is qualified for licensure, as required by RCW 9.46.153(1)?
- 1.5. Whether the Gambling Commission is authorized to revoke Appellant’s Public Card Room Employee (“CRE”) License, pursuant to RCW 9.46.075(1) and (8), RCW 9.46.153(1), and WAC 230-03-085(1) and (9)?
- 1.6. If Appellant’s CRE License is revoked, whether an evidentiary, fact-finding hearing is warranted?

2. ORDER SUMMARY:

- 2.1. No genuine dispute of material fact exists as to whether Appellant acted as a player’s representative on a card game, cheated in the first degree, or wrongfully obtained unauthorized control over the property of another pursuant to WAC 230-15-180(1) and (2), RCW 9.46.1961(1)(a) and (b), and RCW 9A.56.050, respectively. The Gambling Commission’s Motion for Summary Judgment is **GRANTED**.
- 2.2. Appellant has not proven by ‘clear and convincing evidence’ she is qualified for licensure, as required by RCW 9.46.153(1).
- 2.3. The Gambling Commission is authorized to revoke Appellant’s CRE License based on RCW 9.46.075(1) and (8), RCW 9.46.153(1), and WAC 230-03-085(1) and (9). The Gambling Commission’s revocation of Appellant’s CRE License, is **AFFIRMED**.
- 2.4. Since the revocation of Appellant’s CRE License is **AFFIRMED**, no fact-finding hearing is warranted. Therefore, the evidentiary hearing, scheduled for May 24, 2021, is **CANCELLED**.

3. GAMBLING COMMISSION’S MOTION FOR SUMMARY JUDGMENT:

- 3.1. Hearing Date: The Gambling Commission Staff’s Motion for Summary Judgment decided without oral argument.
- 3.2. Admin Law Judge: Dan Gerard
- 3.3. Appellant: Tuyet Nhung T Nguyen
- 3.4. Agency: Gambling Commission
 - 3.4.1. Representative: Doug Van de Brake, Assistant Attorney General
- 3.5. Documents Considered: The following documents were considered for purposes of the Gambling Commission’s Motion for Summary Judgment:

Doc. No.	Document Name	Document Date	No. Pages
1	Gambling Commission’s Notice of Administrative Charges	12/10/20	8
2	Appellant’s Request for Administrative Hearing	12/30/20	2
3	Office of Administrative Hearings (OAH) Prehearing Conference Order	02/12/21	9
4	Gambling Commission Staff’s Motion for Summary Judgment	03/24/21	11

5	Declaration of Special Agent Jess Lohse in Support of Gambling Commission's Motion for Summary Judgment, with attached Exhibits 1-5	03/24/21	97
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4. FACTS FOR PURPOSE OF SUMMARY JUDGMENT:

Jurisdiction

- 4.1. On December 10, 2020, the Washington State Gambling Commission issued a Notice of Administrative Charges revoking the CRE License of Appellant, Tuyet Nhung T Nguyen. The Gambling Commission revoked Appellant's License No. 68-06459 because Appellant acted as a player's representative on a card game in violation of WAC 230-15-180(1) and (2), cheated in the first degree in violation of RCW 9.46.1961(1)(a) and (b), and obtained unauthorized control over the property of another in violation of RCW 9A.56.050.
- 4.2. On December 30, 2020, the Appellant contested the Gambling Commission's revocation of her CRE License and requested an administrative hearing.

Gambling Commission Motion for Summary Judgment

- 4.3. On February 24, 2021, the Gambling Commission ("Commission") filed a Motion for Summary Judgment, along with the Declaration of Special Agent Jess Lohse in Support of Commission's Motion for Summary Judgment, with attached Exhibits 1-5.
- 4.4. The Appellant did not file a response to the Commission's Motion for Summary Judgment.
- 4.5. As of the date of this Initial Order, the Appellant has failed to file any response, or provide any documentation, challenging the Commission's motion.

Appellant's Card Room Employee License and Gaming Activities

- 4.6. Washington State Gambling Commission issued to Appellant Public Card Room Employee License No. 68-06459. *Exhibit ("Ex.") 5.* Appellant's CRE license expires on November 16, 2021. *Id.*
- 4.7. Appellant was an employee of Macau Casino, in Tukwila, Washington during the events described below. *Id.*
- 4.8. Macau Casino issues free play coupons to its gambling players. *Declaration of Washington State Gambling Commission Special Agent Jess Lohse ("Lohse Declaration")*. Free play coupons are a type of comp that players can place as a bet on gaming tables. If the bet is won, the player is paid the amount of the coupon. If the bet is lost, the player does not receive anything from the casino.

- The coupon is single use and retrieved by the casino if the player wins or loses, but remains in play if the bet is pushed. *Id.*
- 4.9. The dollar amount of the free play coupon and the frequency in which the coupons are given to players is determined upon the gambling history of the player. *Id.* The free coupons are issued through the player tracking system, Sonoma and associated with specific player accounts. *Id.; Ex. 5.*
 - 4.10. On September 16, 2020 and continuing through September 17, 2020, while working as a supervisor for Macau Casino, Appellant gave nine “free play” coupons to player Be Nguyen (“Player Nguyen”). *Lohse Declaration; Ex. 1; Ex. 3; Ex. 4.*
 - 4.11. Three coupons were from Player Nguyen’s account. *Ex. 1.* Six of the coupons Appellant gave to Player Nguyen were not from Player Nguyen’s account, but from other gambling players’ accounts. *Id.* The six free play coupons from players other than Player Nguyen were valued at \$250, \$250, \$250, \$200, \$50, and \$50. *Id.* Macau policy does not allow employees to give free play coupons to anyone other than the player associated with the free play coupon. *Id.*
 - 4.12. After Appellant gave some of the free play coupons to Player Nguyen, Player Nguyen placed the bets on the gambling table and played the cards as directed by Appellant. *Lohse Declaration; Ex. 1; Ex. 2.*
 - 4.13. For one bet, Player Nguyen placed a \$250 free play coupon bet, played the hand according to the instruction of Appellant, and won. *Id.* Player Nguyen placed the winnings separate from her other chips and gave Appellant the chips later in Appellant’s work shift. *Lohse Declaration; Ex. 3.*
 - 4.14. On October 4, 2020, Appellant manually recorded that player Jacqueline Duong (“Player Duong”) was rated at betting \$1,336 per hand from 21:16 through 21:29 and was rated at betting \$1500 per hand from 21:29 through 23:11. *Id.* Player Duong was not gambling during these periods on October 4, 2020. *Lohse Declaration.*
 - 4.15. Appellant printed free play coupons from various accounts and used them for her personal gambling. *Lohse Declaration; Ex. 1; Ex. 4.*

Complaint and Investigation

- 4.16. On September 28, 2020, the Commission received a voicemail complaint on the agency’s main line. *Ex. 1; Ex. 5.* The complaint alleged that Appellant was routinely asking players to place bets for her while Appellant was working. *Id.*
- 4.17. On October 6, 2020, Special Agent Jess Lohse (“Agent Lohse”) met with Brian McQuade, Assistant General Manager of Macau Casino, about the complaint. *Lohse Declaration; Ex. 1; Ex. 5.*

- 4.18. On October 9, 2020, Mr. McQuade emailed Agent Lohse about two incidents involving Appellant. *Id.* The first incident was the free play coupons Appellant gave to Player Nguyen on September 16, 2020 and September 17, 2020. The second incident was involving suspicious activity on Player Duong's player account. *Id.*
- 4.19. On October 12, 2020, Mr. McQuade gave Agent Lohse the video surveillance from on September 16, 2020, September 17, 2020 and October 4, 2020. *Lohse Declaration; Ex. 1; Ex. 3.* Mr. McQuade also gave Agent Lohse a "Rewards Issue Detail" form from the Sonoma player tracking system. *Lohse Declaration; Ex. 1.*
- 4.20. Agent Lohse's review of the surveillance on September 16, 2020 and September 17, 2020, showed Appellant approaching Player Nguyen numerous times throughout the evening and giving her numerous free play coupons. *Ex 1; Ex. 3.* Some coupons were folded, others were not folded. *Id.* All the unfolded coupons were for Player Nguyen's player account. *Id.* The folded coupon were folded to conceal the player's name. *Id.* The folded coupons were free play coupons from players other than Player Nguyen. *Id.*
- 4.21. Agent Lohse's review of the surveillance further showed Appellant receiving playing chips from Player Nguyen and instructing Player Nguyen on how to play some hands involved with the free play coupons. *Id.*
- 4.22. Agent Lohse reviewed the Sonoma player tracking information for Player Duong and video surveillance for the property on October 4, 2020. *Ex. 1.* Agent Lohse confirmed Appellant entered Player Duong's bet rating at \$1,336 per hand from 21:16 through 21:29 and bet rating at \$1500 per hand from 21:29 through 23:11. *Ex. 1; Ex. 3.* Agent Lohse's review of the video surveillance determined Player Duong did not gamble at these times. *Id.*
- 4.23. In entering these bet ratings, Appellant credited Player Duong's account with 18,740 points, with the approximate comp value of \$187. *Ex. 1.*
- 4.24. On October 21, 2020, Agent Lohse interviewed Appellant. *Lohse Declaration; Ex. 4.* During the interview, Appellant admitted to printing free play coupons from various customers' accounts without their permission and using them for her personal gambling. *Ex. 1; Ex. 4.*
- 4.25. On December 10, 2020, Gambling Commission Director, David Trujillo, issued the Notice of Administrative Charges revoking Appellant's CRE License. *Ex. 5.*

5. CONCLUSIONS OF LAW:

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.

Summary Judgment Motions, Applicable Statutes, Regulations and Case Law

- 5.2. WAC 10-08-135 'Summary judgment' provides:
 - A motion for summary judgment may be granted and an order issued if the written record shows 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.
- 5.3. "Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law." *Verizon NW, Inc. v. Employment Sec. Dep't*, 164 Wn.2d 909, 916 (2008), citing *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App. 1, 14 (1999).
- 5.4. Admissions, stipulations, procedural history, and uncontested declarations and affidavits establish facts for summary judgment.
- 5.5. In Superior Court matters, CR 56 governs summary judgment. Where the relevant procedural rules do not conflict with CR 56, it and the cases interpreting it serve as persuasive authority in the management of summary judgment under WAC 10-08-135.
- 5.6. Civil Rule 56(e) provides: "If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."

Gambling Commission Policy, Rules & Regulations

- 5.7. 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.
- 5.8. RCW 9.46.040 also authorizes the Gambling Commission to enforce the rules and regulations relating to gambling activities in the State.
- 5.9. WAC 230-15-180 prohibits playing for or assisting other players. Specifically, no person may allow a representative to sit in on a card game on their behalf for any purpose or act as a representative on anyone's behalf. WAC 230-15-180(1) and (2).
- 5.10. Cheating is defined as actions which:
 - 1) Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator;

- 2) Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator;
- 3) Engage in any act, practice, or course of operation while participating in a gambling activity with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; or
- 4) Cause, aid, abet, or conspire with another person to cause any other person to violate subsections (1) through (3) of this section.

RCW 9.46.196

5.11. 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.

RCW 9.46.1961(1)(a) and (b)

5.12. Theft in the third degree is the theft of property or services which (a) does not exceed seven hundred fifty dollars in value. RCW 9A.56.050(1).

5.13. RCW 9.46.153(1) establishes:

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted.

5.14. WAC 230-03-085 authorizes the Gambling Commission Staff to revoke a license if such a licensee commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075 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 prior activities. WAC 230-03-085(1) and (9)(a).

5.15. The Gambling Commission may deny a license application, revoke or suspend a license for:

- 1) Violating, failing or refusing to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW...;
- 8) 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) and (8).

Application of the Law

- 5.16. On September 17, 2020, Appellant instructed Player Nguyen on what hands to play and Appellant received the winnings from one of those hand, thereby allowing Player Nguyen to act as her representative on the card game, in violation of WAC 230-15-180(1).
- 5.17. On September 16, 2020 and September 17, 2020, Appellant assisted Player Nguyen in which cards to play while gambling for bets where Player Nguyen won, thereby acting as Player Nguyen's representative, in violation of WAC 230-15-180(2).
- 5.18. On September 16, 2020 and September 17, 2020, Appellant defrauded players and Macau Casino when she issued unearned free player coupons to Player Nguyen and printed out the free play coupons for her own use, in violation of RCW 9.46.196(1) and RCW 9.46.196(1)(a) and (b).
- 5.19. On October 4, 2020, Appellant defrauded Macau Casino by fraudulently entering information into Player Duong's player account which resulted in a free play coupon with value of \$187, in violation of RCW 9.46.196(1)
- 5.20. On September 16, 2020 and September 17, 2020, Appellant unlawfully obtained six free play coupons from other players' accounts and Macau Casino valued at \$250, \$250, \$250, \$200, \$50, and \$50, and kept the coupons for her personal gambling or gave to Player Nguyen, in violation of RCW 9A.56.050.
- 5.21. Appellant did not file any response to the Commission's Motion for Summary Judgment, contesting she acted as a player's representative on a card game, cheated in the first degree, or wrongfully obtained unauthorized control over the property of another.
- 5.22. Therefore, the Appellant has raised no genuine dispute of material fact as to whether or not her acting as a player's representative on a card game, cheating in the first degree or wrongful obtaining of unauthorized control over the property of another does not constitute a sufficient basis for the revocation of her Public Card Room Employee License in accordance with RCW 9.46.075 and WAC 230-

03-085. Therefore, the Commission's Motion for Summary Judgment is **GRANTED**.

- 5.23. The Gambling Commission is authorized to revoke Appellant's CRE License on RCW 9.46.075(1) and (8), and WAC 230-03-085(1) & (9)(a). The Gambling Commission's revocation of Appellant's CRE License, is **AFFIRMED**.
- 5.24. Since the revocation of Appellant's CRE License is **AFFIRMED**, no fact-finding hearing is warranted. Therefore, the evidentiary hearing, scheduled for May 24, 2021, is **CANCELLED**.

6. INITIAL ORDER:

- 6.1. No genuine dispute of material fact exists as to whether Appellant acted as a player's representative on a card game, cheated in the first degree, or wrongfully obtained unauthorized control over the property of another, pursuant to WAC 230-15-180(1) and (2), RCW 9.46.1961(1)(a) and (b), and RCW 9A.56.050. The Gambling Commission's Motion for Summary Judgment is **GRANTED**.
- 6.2. Appellant has not proven by 'clear and convincing evidence' she is qualified for licensure, as required by RCW 9.46.153(1).
- 6.3. The Gambling Commission is authorized to revoke Appellant's CRE License based RCW 9.46.075(1) and (8), RCW 9.46.153(1), and WAC 230-03-085(1) and (9)(a). The Gambling Commission's revocation of Appellant's CRE License, is **AFFIRMED**.
- 6.4. Since the revocation of Appellant's CRE License is **AFFIRMED**, no fact-finding hearing is warranted. Therefore, the evidentiary hearing, scheduled for May 24, 2021, is **CANCELLED**.

SIGNED at Tacoma, Washington on the date of mailing.



Dan Gerard
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE IS 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. 01-2021-GMB-00169

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

<p>Tuyet Nhung T Nguyen 2821 SW 106th St Seattle, WA 98146 Appellant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail</p>
<p>Doug Van de Brake, AAG Office of the Attorney General MS: 40100 PO Box 40100 Olympia, WA 98504 Agency Representative</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail: Doug.VandeBrake@atg.wa.gov LalOlyEF@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 Agency Contact</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail Ashlie.laydon@wsgc.wa.gov</p>

Date: Friday, May 14, 2021

OFFICE OF ADMINISTRATIVE HEARINGS



Julie Sahagian
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