

Received

JAN 10 2014

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE GAMBLING COMMISSION

Gambling Commission
Comm. & Legal Division

In The Matter Of the Revocation of the
License to Conduct Gambling Activities
of:

WASHING J. CHEN
Kent, Washington

Number: 68-04232

OAH Docket No. 2013-GMB-0028
GMB No. CR 2012-01635

INITIAL ORDER REVOKING
GAMBLING LICENSE

TRANSLATION INTO CANTONESE/CHINESE:
If You Need A Cantonese/Chinese Translation Of This Decision, Call:
Morales Dimmick at (208) 365-2622

Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on December 19, 2013, at the Gambling Commission Office, 4565 7th Avenue, Lacey, Washington.

Gregory Rosen, Assistant Attorney General, Attorney General's Office, appeared and represented the Washington State Gambling Commission ("Commission"). Special Agent Kevin Maxwell attended as a potential witness for the Commission, but did not testify.

Greg Magee, attorney at law, appeared and represented Washing J. Chen ("Mr. Chen") at the December 19 hearing. Mr. Chen testified on behalf of himself.

Allen Han served as the interpreter in this hearing. Mr. Chen asked for a Cantonese/Chinese interpreter when he filed his Request for Hearing.

Handwritten notes at the top of the page, including "MAGEE" and "CHEN".

PROCEDURAL HISTORY

On January 30, 2013, the Commission issued Notice of Administrative Charges and Opportunity for Adjudicative Proceeding ("the notice"). The Notice named Mr. Chen.

On February 14, 2013, the Commission received Mr. Chen's Request for Administrative Hearing and Interpreter.

On February 14, 2013, the Commission received Mr. Magee's Notice of Appearance.

On May 16, 2013, this case was set for a prehearing conference, to be conducted on July 23, 2013, at 10:00 AM telephonically.

On July 5, 2013, Mr. Chen filed a motion to continue the prehearing conference. The hearing on Mr. Chen's motion was heard on July 12, 2013, at 9:00 AM telephonically.

The undersigned Administrative Law Judge granted Mr. Chen's motion for a continuance in an Order dated July 12, 2013. The prehearing conference was reset for September 4, 2013, at 3:00 PM telephonically.

On September 4, 2013, the undersigned Administrative Law Judge conducted a prehearing conference in this matter. Both parties were represented by counsel. The prehearing conference order was issued on September 11, 2013, and the hearing date was set for December 19, 2013, beginning at 9:00 AM at the Commission's hearing room in Lacey, Washington.

On November 15, 2013, the Commission issued a Notice of Amended Administrative Charges.

The parties stipulated to undisputed facts in the case on December 3, 2013. The parties also jointly requested that the Commission's Exhibits 2 through 6 be offered and admitted into evidence at the hearing. Subsequently, at the hearing on December 19, 2013, Mr. Chen extended his request to include the Commission's Exhibit No. 1.

Mr. Chen offered no exhibits other than his request with the Commission for the offer and admission of Commission Exhibits 1 through 6.

Mr. Chen was sworn before he testified.

The Administrative Law Judge, having considered the evidence, now enters the following Findings of Fact:

FINDINGS OF FACT

1. Mr. Chen possesses a public card room employee license, no. 68-04232, issued by the Commission, and works at the Roman Casino in Seattle. The license is a type 68, class B. Without more, the license would have expired on February 13, 2013.

2. Findings of Fact No. 3 through 6 are the Stipulated Facts contained in the parties' Stipulation to the Facts and Admission of Exhibits.

3. That on September 24, 2010, a Criminal Complaint was issued that alleged that Washington State Gambling Commission Licensee Washing Chen and five other defendants "Conspire to Manufacture and Manufacture More than 1000 Marijuana Plants" and "Knowingly Maintaining a Place Used for the Manufacture of Marijuana.[" See Exhibit 2, *United States v. Sang Ly, et al*, U.S. District Court Cause No. 2:10 mj-

00290 KJN.

4. That on October 7, 2010, an Indictment was issued that charged Washing Chen and five other defendants with one count of Conspiracy to Manufacture at Least 1,000 Marijuana Plants, in violation of 121 U.S.C. §§ 846 and 841(a)(1). See Exhibit 3, *United States v. David Chang aka Sang Ly et al*, U.S. District Court Cause No. 2:10-cr-00427-KJM.

5. That on March 13, 2013, Washing Chen pled guilty to a superseding information that alleged that Mr. Chen knowingly and intentionally manufactured at least 100 Marijuana Plants, a Schedule I Controlled Substance, in violation of Title 21, United States Code, Section 841(a)(1). See Exhibit 4, Superseding Information, *United States v. Washing Chen*, U.S. District Court Cause No. 2:10-CR-00427-KJM, and Exhibit 5, Plea Agreement, *United States v. Washing Chen*, U.S. District Court Cause No. 2:10-CR-427-KJM. The parties agree that Mr. Chen's federal court conviction above is a Class B felony.

6. That on July 10, 2013, a Judgment was entered by the U.S. District Court that sentenced Washing Chen for his conviction to imprisonment for time served, supervised release for a term of 24 months, as well as other conditions. See Exhibit 6, Judgment In A Criminal Case, *United States v. Washing Chen*, U.S. District Court Cause No. 2:10-CR-00427-KJM.

7. In addition to the Stipulated Facts above, Mr. Chen is a 53 year old man who wishes to work as a card room dealer until he is 65 years old. He has a wife and a six year old son who live with him at the family home. He also has at least two adult children who live elsewhere.

8. Mr. Chen disclosed his then-pending Federal criminal charges to the Commission in an on-line renewal application on January 13, 2011. Exhibit 1, page 3.

9. Despite Mr. Chen's disclosure in 2011, the Commission renewed his public card room employee license in 2011 and again in 2012.

10. In the events that led to his conviction, Mr. Chen met with an individual that he had first met thirty years earlier. The individual offered Mr. Chen \$5,000 to water one or more indoor marijuana gardens for approximately two weeks. Mr. Chen accepted the offer. Exhibit 5, page 9 and testimony of Mr. Chen.

11. Mr. Chen was arrested at the location of one of the indoor marijuana gardens. Exhibit 23, page 12.

12. Mr. Chen requested a Chinese/Cantonese interpreter for the December 19 hearing.

13. Allen Han is fluent in English and Chinese/Cantonese, as well as Chinese/Mandarin. He was an English major at university in China. He has resided in the United States for 25 years. He is court certified in Oregon. He has worked as an interpreter in both trials and administrative hearings for 15 years, 10 of those years in Oregon.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Administrative Law Judge now enters the following Conclusions of Law:

1. The Commission filed and served the Notice of Administrative Charges on January 30, 2013, by regular United States mail and by certified United States mail.

Mr. Chen requested both a hearing on the merits and a Cantonese/Chinese interpreter.

The Commission received Mr. Chen's request for an adjudicative hearing and Mr. Magee's Notice of Appearance on February 14, 2013, fifteen days after service on Mr. Chen by mail. WAC 230-17-010(2)(a) requires that the Commission receive the licensee's request for hearing within twenty-three days after service of the administrative charges by regular United States mail. The twenty-third day after service on Mr. Chen was Friday, February 22, 2013. Therefore, Mr. Chen timely filed his request for a hearing on the issues raised in the Notice of Administrative Charges.

2. The issuance of the Notice of Administrative Charges occurred before Mr. Chen's license was set to expire on February 15, 2013.

3. Neither the Commission nor the OAH lost jurisdiction to hear this case because "once a professional disciplinary tribunal lawfully acquires jurisdiction over a proceeding, its jurisdiction continues until the proceeding is concluded." *Nims v. Wa. Board of Registration*, 113 Wn. App. 499, 506-07, 53 P.3d 52 (2002).

4. The Office of Administrative Hearings has jurisdiction to hear and initially decide this matter in an adjudicative proceeding. RCW 9.46.140; 34.05.413, 34.12.030(1), and WAC 230-17-025.

5. Mr. Han is qualified to serve as the Cantonese/Chinese interpreter in this hearing.

6. The Commission bases its proposed revocation of Mr. Chen's gambling license on the provisions of RCW 9.46.075(1), (4) and (8); RCW 9.46.153(1) and WAC 230-03-085(1). Conclusions of Law No. 7 through 10 contain the applicable language of these statutes and administrative rules. Commission's Opening Statement and

Memorandum of Legal Authorities.

7. RCW 9.46.075 is the Commission's legislative grant of authority to deny, suspend, or revoke gambling licenses or permits. "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;

...

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude;

[Emphasis supplied.]

...

(8) fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of [chapter 9.46 RCW];

8. RCW 9.46.153(1) is a statute containing a separate statement of RCW 9.46.075(8):

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[.]

9. "Clear and convincing evidence" 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).

10. The Commission also relies on its administrative rules. WAC 230-03-085 states in plain language when the Commission will deny, suspend, or revoke an application, license or permit. "We [referring to the 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;

...

(8) poses a threat to the effective regulation of gambling, 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

...

(d) habits[.]

11. Mr. Chen pleaded guilty in 2013 to a federal crime based on acts that he committed in 2010. Consequently, Mr. Chen's conviction comes with the scope of the final clause of RCW 9.46.075, "any crime, whether a felony or misdemeanor."

[Emphasis supplied] The real question in this case is whether the federal crime to which Mr. Chen pleaded guilty involves "moral turpitude."

12. Moral turpitude has been defined in Washington law. "A crime involves moral turpitude if it is an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men or to society in general." *Seattle v. Jones*, 3 Wn. App. 431, 437, 475 P.2d 790 (1970). Further, "without doubt, by contemporary community standards possession and sale of narcotics, unless authorized by law, is a crime which by its very nature involves 'moral turpitude.' Crimes which involve moral turpitude are categorized as crimes mala in se." *State v. Hennings*, 3 Wn. App. 483, 489, 475 P.2d 926 (1970).

13. Even with the passage of Initiative 502 and, subsequently, chapter 3, Laws of 2013, the growing, manufacturing, and sale of marijuana remains illegal in Washington State except when conforming in all respects to the standards prescribed by chapter 3, Laws of 2013. See, e.g., RCW 69.50.342(12).

14. As the Commission argued in its Memorandum of Authorities, "there is a world of difference between the now-legal possession of limited amounts of marijuana under RCW 69.50.360(3), and Mr. Chen's federal conviction of the class B felony of

Manufacture of At Least 100 Marijuana Plants.” Mr. Chen certainly should have been tipped off to illegal activity when he accepted an offer to water one or more indoor marijuana gardens for approximately two weeks in exchange for \$5,000, an extraordinary amount of money for watering plants for a couple of weeks.

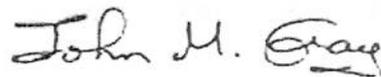
15. I conclude that the crime to which Mr. Chen pled guilty involved moral turpitude. Even if public attitudes toward the possession of marijuana are changing, the law still makes clear that the scale of growing and distributing marijuana, to which Mr. Chen played a part, remains an activity that constitutes moral turpitude when done outside the scope of the legalization that was permitted under Washington law. Mr. Chen’s took his actions two years before the Washington law changed, and the federal law remains unchanged. I conclude that the Commission is within its authority to seek to revoke Mr. Chen’s gambling license.

From the foregoing Conclusions of law, NOW, THEREFORE,

INITIAL ORDER

IT IS ORDERED That the Mr. Chen’s card room employee license, no. 68-04232, is **REVOKED**.

DATED at Tacoma, Washington, this 9th day of January, 2014.



John M. Gray
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES

Initial orders must be entered in accordance with RCW 34.05.461(3). WAC 230-17-085(1). An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-090. WAC 230-17-085(2). Petitions for review are governed by WAC 230-17-090:

“RCW 34.05.464 governs the review of initial orders.” WAC 230-17-090(1).

“Any party to an adjudicative proceeding may file a petition for review of an initial order. “Parties must file the petition for review with us within twenty days of the date of service of the initial order unless otherwise stated. Parties must serve copies of the petition to all other parties or their representatives at the time the petition for review is filed.” WAC 230-17-090(2).

“Petitions must specify the portions of the initial order the parties disagree with and refer to the evidence in the record on which they rely to support their petition.” WAC 230-17-090(3).

“Any party to an adjudicative proceeding may file a reply to a petition for review of an initial order. Parties must file the reply with us within thirty days of the date of service of the petition and must serve copies of the reply to all other parties or their representatives at the time the reply is filed.” WAC 230-17-090(4).

“Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us.” WAC 230-17-090(5).

“Copies of the petition or the cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed.” WAC 230-17-090(6).

“After we receive the petition or appeal, the commissioners review it at a regularly scheduled commission meeting within one hundred twenty days and make a final order.” WAC 230-17-090(7).

Certification of Mailing

I certify that I mailed true and correct copies of the **Initial Order Revoking Gambling**

License to the following parties, postage prepaid this 9th day of January 2014 at
Tacoma, Washington.

Cynthia Michelena
Legal Secretary

Washing J. Chen
11619 SE 233rd Place
Kent, WA 98031

Greg Magee
Magee Law Office
705 South 9th Street, #303
Tacoma, WA 98405

Gregory J. Rosen Assistant Attorney General
Office of the Attorney General
PO Box 40100
Olympia, WA 98504-0100

Washington State Gambling Commission
Communications and Legal Department
PO Box 42400
Olympia, WA 98504-2400