

AUG 20 2012

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE GAMBLING COMMISSIONGAMBLING COMMISSION
COMM & LEGAL DEPT

In the Matter of the Suspension or
Revocation of the License to Conduct
Gambling Activities of:

RY KHIM
Seattle, Washington

Licensee.

OAH Docket No. 2012-GMB-0040

WSGC No. CR 2012-00626

INITIAL ORDER

Translation into Cambodian

If you need a Cambodian language translation of this order, contact World Language Services at (877) 700-7922.

1. HEARING:

1.1 This case came before Administrative Law Judge Douglas H. Haake for an administrative hearing on August 14, 2012, at the Washington State Gambling Commission Hearing Room in Lacey, Washington, after due and proper notice to all parties. The hearing was digitally recorded.

1.2 Ry Khim, Licensee, appeared and represented himself.

1.3 The Washington State Gambling Commission (Commission) appeared through its legal counsel, Stephanie Happold, Assistant Attorney General.

1.4 Special Agent Julie Sullivan, investigator for the Commission, appeared and testified on behalf of the Commission.

1.5 The Commission presented 9 exhibits, all of which were admitted. Mr. Khim offered one exhibit, which was not admitted.

1.6 Aaron Meng provided interpretation in Cambodian.

2. STATEMENT OF THE ISSUES:

2.1 Whether there are grounds to revoke Mr. Khim's Card Room Employee license based on his conviction for felony drug possession, his having been sentenced to community corrections, and having failed to report to the Commission that he was charged with a crime, convicted, and sentenced to community corrections based on that

conviction.

2.2 Whether the licensee can affirmatively establish by clear and convincing evidence that he is qualified to hold a gambling license in accordance with the laws and regulations governing gambling in the State of Washington.

3. FINDINGS OF FACT:

3.1 Special Agent Julie Sullivan has worked for the Gambling Commission a little over 10 years. She has received 240 hours of internal training in addition to Washington State Criminal Justice Commission and FBI training. She is a nationally certified fraud examiner. Special Agent Sullivan is a senior at the Washington State University, majoring in criminal justice, with a minor in sociology. Sullivan testimony.

3.2 Special Agent Sullivan's job duties with the Commission involve reviewing applicant and licensee criminal histories to determine their qualifications for licensing. *Id.*

3.3 Mr. Khim has held a Public Card Room Employee license since 1999. *Id.*

3.4 On May 3, 2012, Mr. Khim's application for license renewal was received by the Commission. Exhibit 2 The renewal application includes an inquiry to the applicant as follows:

CRIMINAL HISTORY / ADMINISTRATIVE STATEMENT

During the past 12 (12) months have you:

1. Forfeited bail or paid a fine over \$25 (incl. traffic fines)?
2. Been arrested?
3. Been charged with a crime?
4. Been convicted?
5. Been jailed?
6. Been placed on probation?
7. Been under court supervision?
8. Had a gambling license denied, revoked or suspended?

There are check boxes for "yes" or "no", and a requirement that if "yes" is checked, the applicant must: "provide an explanation on a separate sheet of paper, including all dates and specifics". *Id.* Mr. Khim checked the "no" box. *Id.*

3.5 The application form also includes a paragraph headed OATH OF APPLICANT, which provides in pertinent part that:

I declare under penalty of perjury, under the laws of the State of Washington, that all information provided on this application is true and complete to the best of my knowledge. I understand that untruthful, misleading, or incomplete answers

through misrepresentation, concealment, inadvertence, or mistake are cause for revocation of any gambling license(s) currently held and will be reported to my employer.

Id.

3.6 Mr. Khim signed his renewal application on May 1, 2012. *Id.*

3.7 Mr. Khim did not otherwise advise the Commission that he had been charged with a crime, convicted of a crime, or been placed on court supervision. Sullivan testimony

3.8 On May 8, 2012, Special Agent Sullivan was assigned Mr. Khim's case to determine whether he continued to qualify for a license. As a part of her investigation, Special Agent Sullivan performed a routine criminal history check. Exhibit 1 During this check, she learned that Mr. Khim had been convicted of a felony.

3.9 Special Agent Sullivan's started her investigation by accessing the Judicial Information System (JIS). The JIS is the database in which Washington courts track criminal history. Sullivan Testimony Special Agent Sullivan learned from Mr. Khim's Defendant JIS Criminal History screen (DCH) that he was charged on February 14, 2012, with CONT SUBS POSSESS – NO PRESCRIP, and 5 traffic infractions. Exhibit 3 The screen also indicated that a guilty finding was entered. *Id.* The DCH screen also showed that fines totaling \$1,098 had been imposed on the traffic infractions, and that a fine of \$1,556 was imposed on the controlled substance charge. *Id.*

3.10 Special Agent Sullivan requested certified copies of court documents related to Mr. Khim's drug possession charge from Pierce County Superior Court. The County Clerk provided an Information charging Mr. Khim in Count I with Unlawful Possession of a Controlled Substance; Cocaine, in Count II with Driving Under the Influence of Intoxicants, and in Count III with Driving While in a Suspend or Revoked Status in the Third Degree, alleged to have occurred on February 14, 2012. Exhibit 5

3.11 Special Agent Sullivan also received an Amended Information alleging Unlawful Possession of a Controlled Substance; Cocaine, alleged to have occurred on February 14, 2012. The Amended Information was filed with the Court on April 18, 2012. Exhibit 7

3.12 On April 18, 2012, Mr. Khim entered a guilty plea to the Amended Information. In entering his plea, he executed a Statement of Defendant on Plea of Guilty. Exhibit 8 The plea petition includes an Interpreter Declaration which provides that:

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the Cambodian language. I have interpreted this document for the Defendant from English into that language. I have no reason to believe that the defendant does not fully understand both the interpretation and the subject

matter of this document. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

The declaration was signed by Sarith Kim on April 18, 2012. *Id.* page 9

3.13 At Section 11 of the plea petition it states that:

The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement:

On 2/14/12 I had a controlled substance in my pocket contrary to RCW 69.50.4013(1). The controlled substance was cocaine.

Mr. Khim initialed this statement. Exhibit 8, page 8

3.14 Special Agent Sullivan also received a Judgment and Sentence Form (J&S). The J&S provides that Mr. Khim was found guilty on April 18, 2012, of Unlawful Possession of a Controlled Substance; Cocaine. Exhibit 9, page 1 Mr. Khim was ordered to serve one day in jail. *Id.* page 4 He was also placed on 12 months of community custody. *Id.* page 5 As conditions of community custody, Mr. Khim was required to remain within prescribed geographic boundaries, and to notify the community corrections officer of any change in his address or employment.

4. CONCLUSIONS OF LAW:

Jurisdiction

4.1 Office of Administrative Hearings has jurisdiction over the person and subject matter herein pursuant to RCW 9.46.140, Chapter 34.05 RCW, and Title 230.

Burden Of Proof

4.2 Licensees bear the burden of establishing their qualifications by clear and convincing evidence. RCW 9.46.153(1). Each applicant and holder of a license issued pursuant to Chapter 9.46 RCW is subject to continuous scrutiny regarding his/her general character, integrity, and ability to engage in or participate in, or associate with, gambling or related activities impacting this state. RCW 9.46.153.

Legislative Intent

4.3 The legislative intent expressed in RCW 9.46.010 justifies the high burden on licensees to demonstrate their qualifications, which provides 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 by strict regulation and control." The statute further provides: "All factors incident to the activities authorized in this chapter shall be closely

controlled, and the provisions of this chapter shall be liberally construed to achieve such end." In short, those persons who wish to work in this highly regulated industry are held to the very highest character and integrity standards.

License Suspension and Revocation

4.4 RCW 9.46.075(1) and (8) and WAC 230-03-085(1), (3), and (8), provide that the Commission may revoke a license for any reason which it finds is in the public interest, including where the licensee has violated or failed or refused to comply with the provisions, requirements, conditions, limitations, or duties imposed under Chapter 9.46 RCW or any rules adopted by the Commission under law. Likewise, WAC 230-04-400(1) and (11) provide that the Commission may revoke a license for any action which violates 9.46 RCW. The Commission may, therefore, revoke a card room employee license of any individual who fails to prove by clear and convincing evidence that he or she meets the character requirements for a gambling license. RCW 9.46.075(8).

4.5 RCW 9.46.075(7) provides that the Commission may deny or revoke a license where an applicant or licensee: "Makes a misrepresentation of, or fails to disclose, a material fact to the commission".

4.6 WAC 230-03-085 provides in pertinent part that:

We 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:

(5) Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4); or ...

(7) Fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us; or

(8) 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; ...

4.7 RCW 69.50.4013 provides that:

(1) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(2) Except as provided in RCW 69.50.4014, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

Analysis

4.9 Here, Mr. Khim was arrested for, charged with, pled guilty to, was convicted of, and sentenced for Unlawful Possession of a Controlled Substance, a felony. He was sentenced to one day of jail and placed on 12 months of community custody in violation of WAC 230-03-085(5). Community custody is "probation or community supervision" for the purposes of WAC 230-03-085(5).

4.10 Mr. Khim affirmatively failed to report his criminal history in response to Commission request on his renewal application. As such, he failed to report required information to the Commission. RCW 9.46.075(7) and WAC 230-03-085(7).

4.11 Mr. Khim has a criminal record that poses a threat to the effective regulation of gambling in violation of WAC 230-03-085(8).

4.12 Mr. Khim has not affirmatively established by clear and convincing evidence that he is qualified to hold a gambling certification in accordance with the laws and regulations governing gambling in the State of Washington. RCW 9.46.075.

4.13 Accordingly, the Commission's decision to revoke Mr. Khim's Public Card Room Employee license is supported by the evidence.

5. INITIAL ORDER:

IT IS HEREBY ORDERED,

Pursuant to law and public interest, Mr. Khim's Public Card Room Employee license is hereby revoked.

SERVED on the date of mailing.



Douglas H. Haake
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES OF APPEAL RIGHTS

You may file an appeal of this order within twenty three days from the day OAH mails this initial order to you. WAC 230-17-090(2); *see also* WAC 230 -17 -030(2), WAC 230 -17 -035(2) [Service by first class mail is complete three days after mailing.]. An appeal from an initial order is known as a "petition for review". Your petition for review should (a) identify the parts of the initial order you disagree with and (b) refer to the evidence in the record that supports your position. If you decide to petition for review, you must serve copies of your petition on all parties or their representatives at the same time you file it with the Gambling Commission. If the Commission does not receive a petition for review within 23 days, the Commission will automatically make this order its final order.

Any party may file a written response to a petition for review, known as a reply. If you wish to file a reply, it must be filed with the Commission within thirty days of the date you are served with the petition. You must serve copies of the reply on all parties or their representatives at the same time you file your reply.

Any party may file a cross appeal. Cross appeals must be filed with the commission within ten days of the date when the petition for review is filed with the Commission. WAC 230 -17 -090(5). If you wish to make a cross appeal, you must serve copies of the cross appeal upon all other parties or their representatives at the same time you file your cross appeal.

If a party timely files a petition for review, then at least a majority of the Commission members shall review the petition within 120 days and render a final order.

Certificate of Service – OAH Docket No. 2012-GMB-0040

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

Address: Ry Khim 4742 42 nd Avenue SW, Apt. #385 Seattle WA 98116	First Class US Mail, postage prepaid
Address: Stephanie U. Happold Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia WA 98504-0100	First Class US Mail, postage prepaid
Address: Washington State Gambling Commission ATTN: Maureen Pretell PO Box 42400 Olympia WA 98504	First Class US Mail, postage prepaid
Address: World Language Services PO Box 1716 Milton WA 98354	First Class US Mail, postage prepaid
Address:	
Address:	

Date: August 17, 2012



Josephine Quiles Negroni
Office of Administrative Hearings