

DEC 16 2013

Gambling Commission
Comm. & Legal DivisionSTATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE GAMBLING COMMISSION

In The Matter Of:

JING-RU LU
Seattle, Washington

Number: 68-14746

OAH Docket No. 2013-GMB-0040
GMB No. CR 2012-00938INITIAL ORDER REVOKING
GAMBLING LICENSE

<p style="text-align: center;">TRANSLATION INTO CANTONESE/CHINESE: If You Need A Cantonese/Chinese Translation Of This Decision, Call: Morales Dimmick at (208) 365-2622</p>
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Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on October 15, 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"). Linda Smith, Snoqualmie Casino Director of Table Games; Susan Lee, Snoqualmie Casino Lead Gaming Agent/Licensing Specialist; Donald Chad Ryan, Snoqualmie Gaming Commission Gaming Agent; and Brandon Duffy, Snoqualmie Casino Senior Surveillance Observer, appeared and testified as the witness for the Commission. Mr. Duffy appeared and testified telephonically at the Commission's request and without objection.

Terence K. Wong, attorney at law, appeared and represented Jing-Ru Lu ("Mr. Lu") at the October 15 hearing. Mr. Lu testified on behalf of himself.

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

PROCEDURAL HISTORY

On June 10, 2013, the Commission issued Findings of Fact, Conclusions of Law, and Order of Summary Suspension of License of Mr. Lu.

On June 13, 2013, Jess Lohse personally served Mr. Lu with copies of a cover letter, the Findings of Fact, Conclusions of Law, and Order of Summary Suspension of License, Application for Brief Adjudicative Proceeding (Stay Hearing), and Application for Adjudicative Proceeding and Request for Hearing and Request for Interpreter.

On June 17, 2013, the Commission received Mr. Lu's Application for a Stay Hearing, which included a request for a Cantonese/Chinese interpreter.

Also on June 17, 2013, the Commission received Mr. Lu's Request for Hearing and Interpreter Form.

On June 17, 2013, the Office of Administrative Hearings ("OAH") received a Notice of Appearance on behalf of Mr. Lu from Terence K. Wong, attorney at law.

On June 18, 2013, the Commission issued a Notice of Telephonic Stay Hearing to the parties and to OAH.

On June 24, 2013, ALJ Lisa Dublin conducted a stay hearing regarding the summary suspension of Mr. Lu's gambling license. Kim O'Neal, Senior Counsel, Attorney General's Office, represented the Commission. Terence K. Wong, attorney at law, represented Mr. Lu. ALJ Dublin issued the Order Denying Request for Stay on July 1, 2013 (the order itself is dated June 28, 2013).

On July 17, 2013, the Commission issued the Notice of Hearing for the October 15 hearing on the merits.

At the hearing, the Commission offered fifteen exhibits, numbered 1 through 15, all of which were admitted over Mr. Lu's objections to Exhibits No. 1, 2, 5, 9, 10, and 11 on the grounds of hearsay content and lack of foundation. The undersigned Administrative Law Judge overruled all objections. The Commission's Exhibit and Witness List identified Exhibit No. 14 as "WSGC Case Report #2013-00938 Attachment AT06, Video Surveillance, previously issued to the court and counsel in June 2013." The DVD is part of the OAH file from the June 24 Stay Hearing.

Mr. Lu offered no exhibits.

All witnesses were sworn before they testified. Before testifying telephonically, Mr. Duffy affirmed that he was physically present in Washington State for his testimony.

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

FINDINGS OF FACT

1. Mr. Lu possesses a public card room employee license, no. 68-14746, issued by the Commission, and works at the Riverside Casino in Tukwila. The license is a type 68, class B. Without more, the license would have expired on August 19, 2013.

2. Mr. Lu works at the Riverside Casino in Tukwila. Exhibit 1, page 3. Chinese, Cantonese dialect is Mr. Lu's primary language.

3. Mr. Lu frequently played games at the Snoqualmie Casino, but was not employed there. His favorite game is baccarat. He was a high bettor, often betting hundreds or even two thousand dollars in a game. During 2013, his attendance at the Snoqualmie Casino decreased in frequency. Testimony of Mr. Lu.

4. The Snoqualmie Casino is tribal casino.

5. The Snoqualmie Casino uses a player tracking system (known by the name Casino Marketing Place, and the initials "CMP") to rate its patrons who play games. The rating is performed by the casino's floor supervisors or by dual-rated dealers. "Dual-rate" means that the person has some supervisory authority.

6. The rating is based on a combination of two main factors: (a) the amount of money that the patron bets and (b) the amount of time that the patron spends at the table.

7. The casino forbids rating of patrons who are not physically present playing a game on the date and at the time of the rating.

8. A patron may receive points from the rating system that the patron may use at the casino for gifts from the gift store, food and beverages from the casino's restaurants and bars, and cash. The number of points allotted to a patron do not equate to a one-on-one dollar value. In other words, if a player has 1,800 points, the player does not necessarily have \$1,800 worth of gifts or food and beverages, and may not necessarily cash out the points for \$1,800. The casino has a formula to determine the dollar values for the various goods for which those points may be exchanged.

9. Points in the CMP rating system expire one year after the date of entry into the system.

10. Mr. Lu participated in the Snoqualmie Casino's player rating system between at least November 26, 2008, and January 2, 2013. Exhibit 11.

11. Lei Zhong was an employee of the Snoqualmie Casino. Mr. Lu met Ms. Zhong when they worked together in house-banked card rooms. Mr. Lu helped her get a job and assisted her in rising through the employee ranks.

12. Mr. Lu and Ms. Zhong were not only friends, but also sexually intimate companions for approximately two years.

13. Ms. Zhong became a table dealer and a dual-rated supervisor at the Snoqualmie Casino.

14. Approximately one or two years ago, Ms. Zhong told Mr. Lu that she added points to his player account at times when Mr. Lu was not in the casino. She told him to get points and to go and eat. Exhibit 7.

15. Mr. Lu told Ms. Zhong that her plan was wrong and not to do it. Ms. Zhong replied "I got it, I got it."

16. Mr. Lu did not inform anyone at the Snoqualmie Casino or the Commission before February 14, 2013, about Ms. Zhong's statement to him that she was adding points to his account when he was not there. Mr. Lu did not report Ms. Zhong because he thought that he had dissuaded her.

17. Mr. Lu cashed out points for cash on September 12, 2012, for \$600, and again on January 2, 2013, for \$300. January 2, 2013 was the last date of activity in Mr. Lu's CMP account at the Snoqualmie Casino. Exhibit 11.

18. At some point, possibly the cash out on September 12, 2012, Mr. Lu gave at least \$425 in cash converted from his points to Mr. Zhong to help her with her personal financial problems.

19. Mr. Lu broke off his intimate relationship with Ms. Zhong in approximately mid-February 2013. Exhibit 8, page 1.

20. On February 14, 2013, Mr. Lu telephoned Linda Smith at the Snoqualmie Casino.

21. Linda Smith is the table games director at the Snoqualmie Casino and has worked in that capacity since July 1, 2008. She first began working in the gambling industry in 1973. Her duties at the Snoqualmie Casino include managing approximately 300 employees, taking care of business and staffing needs, and managing all aspects of the table games.

22. Ms. Smith received a telephone call on February 14, 2013, from a man with a heavy Asian accent. The caller refused to identify himself. The caller told Ms. Smith that Lei Zhong, an employee of the Snoqualmie Casino, was rating Jing-Ru Lu when Mr. Lu was not at the casino playing games.

23. Ms. Smith also received two letters, one in February 2013 and the other in March 2013, addressed to "Table Game Director," that repeated the substance of the telephone call: that Ms. Zhong was adding points to Mr. Lu's account when he was not

at the casino playing games. The March 2013 letter also stated, "I have witnessed Lei Zhong logging in her friend's account on the 5x and 6x points multiplier days to award her friends enough points to turn it into a substantial profit." The February letter was signed "anonymous." The March letter was signed "A Snoqualmie casino employee." Exhibits 3 and 4.

24. Ms. Smith notified the Tribal Gaming Agency and the Snoqualmie Casino's surveillance office on February 21, 2013, of the substance of the February 14 telephone call.

25. Brandon Duffy, Senior Surveillance Observer employed by the Snoqualmie Casino, undertook two reviews of videos of the gaming tables at which Ms. Zhong worked. The Snoqualmie Casino uses a system of video cameras in the gaming portion of the casino to record all activity on the gambling floor and at the tables.

26. Snoqualmie Casino's surveillance system, on the one hand, and its CMP, on the other hand, do not work together; that is, each system operates independently of the other. However, each system records events by date and time. The surveillance system may be used to view events on the floor to determine who was present when data were entered into the CMP system.

27. Mr. Duffy's first review of videos occurred on February 21, 2013, and his second review of videos occurred on March 23, 2013. On February 21, Mr. Duffy reviewed videos showing Ms. Zhong working at various gaming tables on February 3, 4, 10, 11, and 18, 2013. On March 23, Mr. Duffy reviewed videos showing Ms. Zhong working at various gaming tables on March 2, 5, 9, 11, 12, 16, 17, and 18, 2013. On

both February 21 and March 23, Mr. Duffy also had information from the CMP system. Mr. Lu does not appear in the videos; either he was not present or no one could identify him. According to the CMP system, someone rated Mr. Lu a total of 17 times on February 21 and March 23, 2013. In other words, someone entered data into the CMP system, awarding him points for playing when Mr. Lu was, in fact, not present and playing at all. Mr. Duffy wrote a report summarizing his surveillance review and gave the report to Chad Ryan.

28. Donald Chad Ryan is a Gaming Agent employed by the Snoqualmie Gaming Commission. He has worked there for one year and eight months. Before becoming a Gaming Agent, he worked as a table games supervisor and dealer. He previously worked as a security officer at the Muckleshoot Casino and at other casinos. His duties include conducting investigations, conducting audits and reviews, removing trespassing guests, and responding to calls on the floor. He reports to Susan Lee.

29. Susan Lee is the Lead Gaming Agent at the Snoqualmie Casino. She has worked at the Snoqualmie Casino since 2008 and has been the Lead Gaming Agent for approximately thirteen months. She has conducted over 100 investigations for the Snoqualmie Casino.

30. On April 10, 2013, Ms. Lee met with Diane Dodson (Snoqualmie Gaming Commission General Manager) and Ms. Smith in Ms. Smith's office. Using the telephone system, they were able to call the telephone number from which the February 14 anonymous call was made to Ms. Smith. The telephone number was that of Mr. Lu.

31. The April 10 call was made over a speaker phone. After some discussion, Mr. Lu agreed to come to the Snoqualmie Casino's offices the next day, April 11, 2013, at 1:00 PM to meet with casino officials and to discuss further the matter of awarding points to Mr. Lu without Mr. Lu being present and playing.

32. At this point, the testimony of the parties conflicted on material points. Ms. Lee and Ms. Smith testified that Mr. Lu acknowledged, during the April 10, 2013, telephone call, that he was the author of the two anonymous letters sent to Ms. Smith (Exhibits 3 and 4). In the October 15 hearing, Mr. Lu denied writing either of those letters. Having carefully considered and weighed all the evidence, including the demeanor and motivations of the parties, the reasonableness of the testimony, and the totality of the circumstances presented, I resolve the conflicting testimony of the authorship of the two anonymous letters in favor of the Commission's witnesses. Since part of Mr. Lu's case is that he "did the right thing," it makes no sense that he would deny notifying the Snoqualmie Casino that Ms. Zhong was wrongfully adding points to his CMP account. Additionally, both Ms. Lee and Ms. Smith were quite specific that each heard Mr. Lu say, over the speaker phone, that Mr. Lu had written the two anonymous letters. I find the Ms. Lee's and Ms. Smith's testimony to be more logically persuasive than Mr. Lu's. In entering my findings, I need not be persuaded beyond a reasonable doubt as to the true state of affairs, nor must the persuasive evidence be clear, cogent, and convincing. The trier of fact need only determine what most likely happened.

33. Mr. Lu met with Ms. Lee and Ms. Dodson on April 11. Ms. Lee acted as the scribe and wrote a statement based on what Mr. Lu said. Mr. Lu did not ask for an interpreter and he affirmed to Ms. Lee and Ms. Dodson that he could understand and read English, although he has difficulty writing in English. Among other things, Mr. Lu said:

“I came to discuss this situation involving ZHONG [emphasis in the original] freely and no promises were made to me nor payment provided to me for discussing my concerns about ZHONG.”

“ZHONG adding points to my account started about 2 years ago. She told me she was adding to my account when I was not in the casino. She said to me you can get some points. Go and eat. I told her to stop doing this.”

“I told her not to do this...add points. I told her you could get in trouble. She knew it was wrong to do this. She said to me, ‘I got it, I got it’.”

One or two years ago she told me. I tell her I gamble and I have a lot of points. She said to me I can go and eat or something. She said I give you points/log you in.”

“She told me she was logging me in when I was not here. I did not say anything until now.” Exhibit 7.

34. Mr. Lu’s written statement contains first and last paragraphs that state,
in full:

“The following statement was dictated to SGC Gaming Manager Diane F. Dodson with lead Gaming Agent Susan Lee asking questions to Guest

Jing LU on April 11, 2013 beginning at 1315 hours and ending at 1400 hours.¹ Interview was inside the SGC Gaming Agent Lead office.”

[emphasis in the original].

...
“This is a true account of what I said to Susan Lee and Diane Dodson on April 11, 2013 during my meeting with them in the SGC office. I read the statement and it is correct and accurate.” Exhibit 7.

35. Mr. Lu, Ms. Lee, and Ms. Dodson signed the Voluntary Statement on April 11, 2013. Exhibit 7.

36. Ms. Zhong met with Ms. Lee and Mr. Ryan on April 15, 2013. Ms. Lee again acted as the scribe and wrote a statement based on what Ms. Zhong said, among other things: “I have been giving Jing Lu points when he is not here.” Exhibit 8, page 1.

37. Ms. Zhong's written statement contains first and last paragraphs that state, in full:

The following statement was dictated to Lead Gaming Agent Susan Lee while Gaming Agent Donald Chad Ryan was asking questions to Employee Lei Zhong. The interview took place on April 15th, 2013, beginning at 19:04 and ending at 20:28, took place in the SGC Commissioners Office.

...

¹ The Voluntary Statement uses the 24-hour clock when referring to time of day. To convert to “PM,” subtract “12” from the first two numbers of the 24-hour time reference. For example, “1315” becomes “1:15 PM.”

This is a true account of what I said to Susan Lee and Donald Ryan on April 15th, 2013 during my meeting with them in the SGC Commissioners Office. I read the statement and it was read aloud to me by Susan Lee with Donald Ryan present. The statement is true and accurate. I gave this statement freely. Exhibit 8.

38. When the Commission summarily suspended Mr. Lu's gambling license, he requested a hearing to stay the summary suspension. ALJ Lisa Dublin conducted the stay hearing on June 24, 2013. Mr. Wong represented Mr. Lu. Senior Counsel Kim O'Neal represented the Commission. Mr. Lu testified at the stay hearing. Among other things, Mr. Lu testified:

"Q: After she told you two – about three years ago that she wanted to add points to your rating system, did you have any further conversation after that first conversation?"

"A: No, we have not talked about it, and I have not checked my account to see any extra points or not." Exhibit 12, page 34², lines 9 – 13.

"Q: And you told the agents that you've known for two years that Zhong was adding points to your account that you hadn't earned, correct?"

"A: I knew that she was going to put points into my account, but did not know whether she did so or not." Exhibit 12, page 38, lines 8 – 12.

² Each page of Exhibit 12, the transcription of the Stay Hearing of Mr. Lu, contains two different page numbers. The page numbers referenced in these Findings of Fact refer to the original page numbers made by the court reporter; i.e., those that appear at the center bottom of each page.

39. Mr. Lu frequently used points from the CMP system to buy meals for himself and others, including Ms. Zhong, at the Snoqualmie Casino.

40. Ms. Zhong gave points to Mr. Lu in 2013, when he was not present at the casino. Exhibit 13, page 20, line 4.

41. Mr. Lu last used the CMP system on January 2, 2013, when he cashed in points to receive \$300. Exhibit 11, page 1.

42. Mr. Lu requested a Cantonese/Chinese interpreter for the October 15 hearing.

43. Allen Han is not court certified in Washington State. However, he has worked as an interpreter for 15 years, 10 of those years in Oregon. He studied English as a student in China and is proficient in English and Chinese, both Cantonese and Mandarin, as well as another dialect.

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 June 13, 2013, by personal service. Mr. Lu requested both a stay hearing and a hearing on the merits, seeking a Cantonese/Chinese interpreter in both hearings. The Commission received both requests on June 17, 2013, four days after personal service on Mr. Lu. WAC 230-17-010(2)(c) requires that the Commission receive the licensee's request for hearing within twenty days after personal service of the administrative charges. The twentieth day after service on Mr. Lu was Wednesday, July 3, 2013.

Therefore, Mr. Lu timely filed his request for a hearing on the issues raised in the Notice of Administrative Charges.

2. The issuance of the administrative charges, the Stay Hearing, the Order Denying Stay, and the issuance of the Notice of Hearing for the October 15, 2013, hearing all occurred before Mr. Lu's license was set to expire on August 19, 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. Lu's gambling license on the provisions of RCW 9.46.075(1), (8), and (10); RCW 9.46.153(1); WAC 230-03-085(1) and (8)(a) and (d). Conclusions of Law No. 6 through 10 contain the applicable language of these statutes and administrative rules.

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;

(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];

(10) has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain[.]

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. On multiple occasions in February and March 2013, Ms. Zhong added points to Mr. Lu's CMP account in violation of the casino's rules.

12. However, the evidence is unclear as to when Ms. Zhong actually added points to Mr. Lu's accounts earlier than February 2013. Ms. Zhong did not testify in this case. The only evidence from Ms. Zhong is her interview with Ms. Lee and Mr. Ryan on April 15, 2013 (Exhibit 8) and the transcription of her Stay Hearing (Exhibit 13).

13. In her interview (Exhibit 8), Ms. Zhong said "I have been giving Jing Lu points when he is not here." Exhibit 8, page 1. She also said, "I have been giving him points when he is not here since last year." Exhibit 8, page 2.

14. However, in her Stay Hearing, Ms. Zhong variously testified that "at the beginning of the year of '12 I seldom add any points to him, but I did started the second half year." Exhibit 13, page 18, lines 13-14. Then, she testified, "I started in 2013." Exhibit 13, page 20, line 4.

15. For his part, Mr. Lu said, in his interview, "Zhong adding points to my account started about 2 years ago." Does this statement mean that Mr. Lu knew, two

years ago, that Ms. Zhong started adding points to his account or does it mean that Mr. Lu learned recently that, two years ago, Ms. Zhong started adding points to his account? The statement is susceptible of either meaning. Exhibit 7, page 1, 5th paragraph. However, Mr. Lu also said, in his interview, "One or two years ago she told me." Exhibit 7, page 1, 8th paragraph.

16. Both interviews (Exhibits 7 and 8) are written by Ms. Lee, and are her writing of someone else's verbal statements. Although Mr. Lu signed his interview (Exhibit 7) and it appears that Ms. Zhong signed her interview (Exhibit 8), neither Mr. Lu nor Ms. Zhong was under oath, either in person by someone authorized to administer an oath or through the provisions of RCW 9A.72.085. Exhibits 7 and 8 were offered into evidence by the Commission and without objection from Mr. Lu and may be used for any purpose. How much weight the undersigned Administrative Law Judge accords those statements, however, is discretionary with the Administrative Law Judge.³

17. RCW 34.05.452(1) provides that "evidence, including hearsay evidence, is admissible 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."

18. RCW 34.05.452(2) provides that "if not inconsistent with subsection (1) of this section, the presiding officer shall refer to the Washington Rules of Evidence as guidelines for evidentiary rulings."

19. ER 801(d)(1)(i) provides is the evidence rule concerning prior testimony. It states that a statement is not hearsay if (1) "the declarant testifies at the trial or

³ This conclusion is not intended as either professional or personal criticism of Ms. Lee. The problem arises with the use of the interview in this hearing.

hearing and is subject to cross examination concerning the statement and the statement is (i) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceedings, or in a deposition[.]”

20. *State v. Nieto*, 119 Wn. App. 157, 79 P.3d 473 (2003) involved the use of a witness's unsworn statement during an interview at a police station. The Court examined the oath requirement and “other proceeding” requirement of ER 801(d)(1)(i) and found that the oath was lacking (even though it contained language such as “I certify (or declare) under the laws of the State of Washington that the foregoing is true and correct.” *State v. Nieto*, 119 Wn. App. At 160-61. With regard to the “other proceeding” requirement, the Court held that “‘reliability is the key’ in determining whether a prior inconsistent statement should be admitted. Here the trial court erred in admitting WB’s statement as substantive evidence.” *State v. Nieto*, 119 Wn. App. at 164.

21. I conclude that there is a serious question as to the reliability of Mr. Lu’s statement in Exhibit 7 and Ms. Zhong’s statement in Exhibit 8. Neither Mr. Lu nor Ms. Zhong were sworn before they made their statements, and there is no indication that either Mr. Lu or Ms. Zhong were informed that their statements were to be treated as sworn testimony. The interview meetings on April 11 and 15, 2013, were not an “other proceeding” within the scope of ER 801(d)(1)(i) when compared with the other examples provided in the ER rule about “other proceedings”: trial, hearing, or deposition.” There is the additional issue of Mr. Lu’s limited understanding of English,

and the fact that no interpreter was present at the April 11, 2013, meeting.⁴ While Mr. Lu's statement in Exhibit 7 constitutes evidence in this case, its lack of safeguards concerning notice to Mr. Lu as to how the interview could be used and the absence of an oath or other method of verifying the veracity of his statements lead me to conclude that little weight should be placed on Exhibit 7 with reference to when he learned that Ms. Zhong actually was adding points to his CMP account; i.e., what did he know and when did he know it. The same concerns about lack of safeguards attaches to Ms. Zhong's interview.⁵

22. The Commission attempts to impeach Mr. Lu by his refusal to characterize Ms. Zhong as his girlfriend; Mr. Lu acknowledges Ms. Zhong as a "close friend." The Commission argues that the sexual relationship between Mr. Lu and Ms. Zhong detracts from Mr. Lu's credibility on his other testimony. However, regardless of the name attached to the relationship, Mr. Lu acknowledged on cross-examination that he and Ms. Zhong had a sexual relationship for approximately two years, although he denied that intimacy on his direct examination. What appears most likely is that he did not want to report Ms. Zhong to the casino and, in doing so, end an affair with Ms. Zhong that he was enjoying. He had told her not to add the points to his account when he was not there and, so far as he was concerned, that was it, unless he found actual evidence – beyond her statements – that she was doing so. Interestingly, Mr. Lu's telephone call and letters to the casino were made at about the same time that the affair ended.

⁴ However, it is worth noting that, in the hearing on the merits, Mr. Lu himself offered to dispense with the interpreter's services in order to shorten the length of the hearing. The undersigned Administrative Law Judge declined Mr. Lu's offer and ruled that Mr. Han would continue to interpret during the hearing.

⁵ Having said that, I also found Ms. Zhong's statement to be reliable as to when her affair with Mr. Lu ended. See, Finding of Fact No. 19.

23. Most importantly, the evidence does not show if Ms. Zhong added any points to Mr. Lu's account before he cashed out on January 2, 2013. For all we know, Mr. Lu earned all of those points.

24. There is no evidence of collusion between Ms. Zhong and Mr. Lu that Ms. Zhong would wrongfully add points to his account and that Mr. Lu would benefit from her action. Collusion to cheat cannot be assumed from the sexual relationship between Ms Zhong and Mr. Lu.

25. The Commission has failed to prove by a preponderance of the evidence that Mr. Lu has violated the statutory and administrative rule provisions cited above in these Conclusions of Law.

26. Despite Conclusion of Law No. 25, the inquiry does not stop there. RCW 9.46.085(8) and 9.46.153(1) place an affirmative obligation on a licensee to show, by clear and convincing evidence, that he or she is qualified to hold a gambling license. This statutorily imposed obligation exists both for revocation hearings such as this one and as an obligation by applicants and licensees to the Commission outside of a revocation hearing.

27. Thus, even though the Commission failed to meet its burden of proving that Mr. Lu knew that he was benefitting from points wrongfully added to his CMP account by Ms. Zhong, Mr. Lu must prove that he is qualified to hold a gambling license.

28. Mr. Lu came across as evasive throughout his testimony both in this hearing and in his dealings with the Snoqualmie Casino. First, the undersigned Administrative Law Judge found it very instructive that Mr. Lu requested an interpreter

and then, during the hearing, offered to forego the interpreter if that meant the hearing would proceed faster. This fact suggests that Mr. Lu has relied on his English as a second language to try to explain that he simply did not understand what was being said to him, and yet was capable of understanding what was being said to him. This conclusion has implications for understanding what transpired in his interview at Snoqualmie Lodge on April 11, 2013. Second, Mr. Lu testified that he knew Ms. Zhong was adding points to his account, but hedged that statement when he testified, in so many words, that he did not know for a factual certainty that she was adding points to his account. Mr. Lu waited until the relationship between them ended before he notified the Snoqualmie Casino of Ms. Zhong's actions. Was that a coincidence or did it correspond with his cash out on January 2, 2013, in the sense that he then had knowledge of extra points in his CMP account? Third, Mr. Lu acknowledged to Ms. Smith and Ms. Lee that he sent the two letters, then he denied it in the hearing. This evasiveness is not evidence of the necessary qualifications for licensure even by the lower "preponderance of the evidence" standard, let alone the higher "clear and convincing" standard.

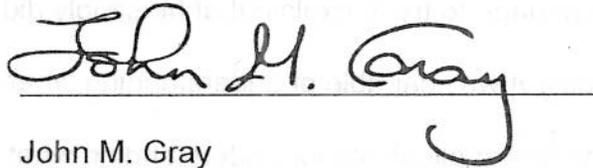
29. I conclude that Mr. Lu has failed to prove his qualifications for licensure under RCW 9.46.075(8) and 9.46.153(1).

From the foregoing conclusions of law, NOW, THEREFORE,

INITIAL ORDER

IT IS ORDERED That the Mr. Lu's card room employee license, no. 68-14746, is **REVOKED**.

DATED at Tacoma, Washington, this 13 day of December, 2013.



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).

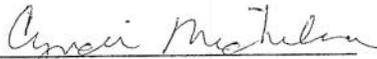
“Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us.” WAC 230-17-090(5).

“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 13 day of December, 2013 at Tacoma, Washington.


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