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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE GAMBLING COMMISSION

GAMBLING COMMISSION
COMM & LEGAL DEPT

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

THE CLUB,

Licensee

OAH No. 2009-GMB-0069
Nos. CR 2009-01046 & 2009-01054

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND INITIAL ORDER

STATEMENT OF THE CASE

Administrative Law Judge John M. Gray, conducted an administrative hearing in this matter on December 14, 2009, at the Gambling Commission Office, 4565 7th Avenue SE, Lacey, Washington. The issues presented are:

1. Whether the Washington State Gambling Commission ("Commission") has grounds to revoke The Club's gambling license pursuant to RCW 9.46.075(1) and WAC 230-03-085(1), which provide that the Commission may revoke a license if the licensee has violated, failed, or refused to comply with the provisions, requirements, conditions, limitations, or duties imposed by Chapter 9.46 RCW or any Commission rules.
2. Whether the Commission has grounds to revoke The Club's gambling license under WAC 230-03-085(3), which provides that the Commission may revoke any and all licenses when the licensee has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level.
3. Whether the Commission has grounds to revoke The Club's gambling license under WAC 230-15-740(2) and (3), which require house banked card rooms to submit financial

statements covering all financial activities conducted on the licensee's premises for each business year within one hundred twenty days following the end of the licensee's business year, and which further provide for a one-time sixty-day extension for this deadline if requested by the licensee.

4. Whether The Club complied with WAC 230-15-725, which requires house bank card rooms to keep and maintain card game records in the format the Commission requires.

5. Whether The Club violated WAC 230-15-115(1)(b), which requires house banked card room licensees to safeguard all cards.

6. Whether The Club violated WAC 230-15-430(5)(c), which requires the security department of house banked card room licensees to ensure that security personnel control and oversee the disposal or destruction of used playing cards.

7. Whether The Club can establish by clear and convincing evidence the necessary qualifications to hold a gambling license under applicable state gambling laws and regulations, as required under RCW 9.46.075(8) and .153(1).

8. Whether revocation is an appropriate penalty in light of the June 10, 2009, Settlement Order, and whether the Settlement Order restricts the potential penalty for alleged violations contained herein to the imposition of the deferred suspension days.

The Law Offices of John A. Sterbick, P.S., and Tommy T. Hightower, appeared and represented The Club. Anthony Marson appeared in person as a witness for The Club. Jennifer Brown, Donna Harkness, and Robert Downing appeared telephonically as witnesses for The Club.

Bruce Marvin, Assistant Attorney General, appeared and represented the Commission. Special Agent Stephanie Hamilton; and Special Agent Genevieve Kapp appeared in person as witnesses for the Commission.

The Director of the Commission issued a Notice of Administrative Charges to the Licensee. On or about August 27, 2009, The Club requested an administrative hearing. The Director of the Commission issued an Amended Notice of Administrative Charges and Opportunity for Administrative Hearing to The Club on September 14, 2009, alleging grounds for the suspension or revocation of The Club's licenses.

Having fully considered the entire record, the undersigned Administrative Law Judge enters the following Findings of Fact, Conclusions of Law, and Initial Order:

FINDINGS OF FACT

1. The Club holds a Class "E" Punchboard/Pull-Tab license and a Class "14" House-banked Card Room license. The Club is the "doing business as" name of Fair Deal, Inc., a Washington for-profit corporation.
2. The Washington State Gambling Commission is an agency of the State of Washington created and governed by ch. 9.46 RCW.
3. Stephanie Hamilton is a Special Agent employed by the Commission in its Financial Investments Unit. She investigated The Club regarding its 2008 financial statement.
4. All licensees are required to file a financial statement for each year no more than 120 days following the end of the business year. The Club's business year ends on December 31 of each year. Thus, its 2008 financial statement was due on April 30, 2009.
5. The Club's Controller, Jennifer Brown, contacted the accounting firm of Greenwood,

Ohlund and Co., LLP ("Greenwood"), in March 2009 to ask that firm to prepare The Club's 2008 financial statement. Greenwood, however, was busy with the tax season, which culminates on April 15 of each year. In an email dated April 9, 2009, Greenwood told The Club it could not work on The Club's financial statement. On April 15, 2009, Ms. Brown emailed Special Agent Hamilton to ask for a sixty-day extension. Special Agent Hamilton replied that same day, approving an extension for The Club until July 1, 2009.

6. On April 24, 2009, Fair Deal, Inc. filed a petition for Chapter 11 Bankruptcy in Seattle.

7. Fair Deal, Inc. retained Bankruptcy counsel to represent it in the Bankruptcy proceedings. Bankruptcy counsel advised Fair Deal, Inc. to continue operating normally. Fair Deal, Inc. informed Bankruptcy counsel that it needed approval from the Bankruptcy Court in order to hire and pay Greenwood to prepare its 2008 financial statement. However, Bankruptcy counsel did not seek approval from the Bankruptcy Court to hire or pay Greenwood. Consequently, The Club did not file its 2008 financial statement by July 1, 2009, the extended deadline for such filing.

8. The Bankruptcy Court dismissed Fair Deal, Inc.'s case on September 3, 2009, and denied Fair Deal, Inc.'s motion for reconsideration on September 18, 2009.

9. On September 23, 2009, Greenwood wrote to Fair Deal, Inc., submitting its proposal to review The Club's financial records for 2008. One of the terms in the proposal was that Fair Deal, Inc. was required to pay a downpayment of \$3,000 before Greenwood would begin the engagement. Robert C. Downing, The Club's Director of Operations, emailed a signed copy of the engagement letter to Special Agent Hamilton on September 23, 2009, and stated that Greenwood would start the review in the first week of October 2009. Mr. Downing did not

inform Special Agent Hamilton that The Club had not paid the down payment, and would not do so for another two weeks.

10. In a visit to The Club on October 6, 2009, Special Agent Hamilton learned that The Club still had not paid the down payment to Greenwood. The Club paid Greenwood the down payment on October 7, 2009. The Club delivered the financial statement to the Commission on or about December 9, 2009, more than four months after the extended deadline for its 2008 financial statements.

11. The Commission previously warned The Club in writing, in September 2007, about the late submission of financial statements.

12. The Club has Gaming Equipment Inventory and Destruction Procedures to comply with the statutory requirements to document and destroy decks of cards that are no longer to be used in play. The Club's policy requires its licensed security Staff member and Shift Manager to verify and recount cards after they are cancelled and before they sign the card destruction log. The Club's policy specifically provides that poker cards are to be accounted for in the same manner as other cards, but must be accounted for on separate inventory and destruction logs.

13. Special Agent Genevieve Kapp is a Special Agent employed by the Commission in its Northwest Field Operations Unit. On June 18, 2009, she went to the Club to determine The Club's compliance with the laws regarding destruction of card decks. She examined records for both house bank card decks and poker card decks. She found no unaccounted house banked card decks, but found she could not account for 34 poker card decks.

14. The Club destroyed poker cards, but could not provide Special Agent Kapp with the

poker card destruction log when she requested it on June 18, 2009.

15. The Commission attempted to reconcile The Club's house-banked and poker card decks. I note that the Commission's Exhibit No. 7 refers to an earlier reconciliation date, February 6, 2009, and the earlier reconciliation inventory sheet was not an exhibit in this hearing.

16. Bob Thomas, The Club's Security Manager, did not have a copy of the "internal controls" (Gaming Equipment Inventory and Destruction Procedures) and did not understand his responsibilities with regard to the destruction of card decks.

17. Jennifer Brown, The Club's Controller, and Donna Harkness, The Club's manager, had a professional relationship with Special Agent Kapp. Robert Downing, The Club's Director of Operations, felt that Special Agent Kapp's demeanor was unprofessional because she said, on September 16, 2009, to a Club employee on the gaming floor, that the employee may want to start looking for another job, intimating that The Club was about to be closed by the Commission. On another occasion, Special Agent Kapp allegedly told a Club employee to "take off his hat, it was unprofessional." At least as of September 16, 2009, The Club instituted a policy of asking its employees for written memoranda summarizing their contacts with Special Agent Kapp.

18. The June 10, 2009, Settlement Order states, in relevant part: "Eighteen (18) days of the suspension shall not be currently served, but shall be deferred for a period of one year from the date of entry of this Settlement Order subject to the following: [t]he licensee must not violate the terms of this Settlement Order or Washington's gambling statutes or regulations during the (1) year term. If the licensee violated the terms of this Order, gambling statutes, or

regulations, and if violation is the type that warrants filing administrative [charges], the Director may impose the 18-day suspension of the current gambling licenses and any subsequently acquired gambling licenses.”

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the persons and subject matter herein pursuant to RCW 9.46.140; Chapter 34.05 RCW and Title 230 WAC.
2. The Commission may revoke or suspend a license of any license holder that fails to prove itself qualified by clear and convincing evidence. RCW 9.46.075(8).
3. The Commission may suspend or revoke any license 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 where a licensee, or any person with any interest therein “[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.” RCW 9.46.075(1).
4. The Club had an affirmative duty to submit its 2008 financial statements to the Commission no later than July 1, 2009 (the extended deadline). It failed to do so. I conclude that The Club violated WAC 230-15-740(2) and (3).
5. Fair Deal, Inc.’s Bankruptcy case did not relieve it of its obligation to timely file its 2008 financial statements with the Commission. Specifically, 11 U.S.C. sec. 362 (the “automatic stay”) did not relieve The Club of its obligation to timely file its financial statements.

6. Fair Deal, Inc.'s failure to obtain approval from the Bankruptcy Court to pay Greenwood to prepare The Club's financial statements for timely filing with the Commission does not bar the Commission from revoking The Club's licenses. The Club, like other debtors, must comply with state regulatory laws for the post-petition operation of its business. The failure to seek Bankruptcy Court approval for Greenwood, or any other independent, certified public accounting firm licensed by the Washington State Board of Accountancy, was solely the responsibility and obligation of the debtor.

7. A month elapsed from September 3, 2009 (the date The Club knew its Bankruptcy case was dismissed) until October 7, 2009 (when The Club paid Greenwood's down payment for its auditing services). All of these events occurred after the final due date for The Club's 2008 financial statements. When Greenwood faxed its September 23, 2009, offer for services to The Club, The Club knew, because the term was in the written document, that Greenwood would not begin its work until The Club paid the \$3,000 down payment. The Club knew on that date that it had not paid the down payment to Greenwood. Yet, in Mr. Downing's email to Special Agent Hamilton, bearing the same date of September 23, 2009, he made no mention of The Club's nonpayment to Greenwood, or that Greenwood's terms meant it would not begin review in the first week of October as a result. The email conveyed a different meaning: Greenwood would start on the review in the first week of October. I conclude that The Club has failed to prove by clear and convincing evidence that it is qualified to hold gambling licenses in accordance with the provisions of chapter 9.46 RCW and Title 230 WAC. RCW 9.46.075(8); 9.46.153; WAC 230-03-085(1).

8. The uncontradicted evidence was that The Club did not provide the poker card

destruction log when requested by Special Agent Kapp. I conclude that The Club's failure to maintain a poker card destruction log violated WAC 230-15-725. I note in passing that The Club also did not adhere to its own Gaming Equipment Inventory and Destruction Procedures.

9. The Club has not proved by clear and convincing evidence that it has accounted for all of its poker card decks. Consequently, I conclude that The Club violated WAC 230-15-115(1)(b).

10. The testimony and exhibits show that The Club's own Security Manager did not know his own responsibilities with regard to destruction of card decks. I conclude that The Club violated WAC 230-15-430(5).

11. In argument, The Club contended that The Commission is engaged in a "war" against The Club, creating a "toxic" environment, and engaged in "capricious and hostile enforcement" of laws against The Club. The Club specifically alleged that Special Agents Kapp and Hamilton are hostile toward The Club. The Club alleged that Special Agent Kapp's verbal comments to an employee that he should "look for another job," and to another employee that he should "take off his hat - it is unprofessional," shows her hostility toward The Club. The Club also claimed that Special Agent Hamilton was disingenuous in her conclusion that The Club was "willfully deceitful" in the September 23, 2009, email regarding its engagement of Greenwood. The Club also contends that the Commission pursued only the issues presented in this hearing, so the other issues "lacked merit."

In Washington, the presumption is that public officers will properly and legally perform their duties until the contrary is shown. *Rosso v. State Personnel Board*, 68 Wn.2d 16, 20, 411 P.2d 138 (1966). Has the contrary been shown? Special Agent Kapp's statement to a

gaming floor employee that he might want to start looking for another job was made in the context that The Club (Fair Deal, Inc.) had found it necessary to file a Bankruptcy case, and that case had been dismissed by the Bankruptcy Court, and knowing of the violations in the present case and in 2009-GMB-0017. Neither that statement, nor the one (denied by Special Agent Kapp) telling another employee to "take off your hat," shows that Special Agent Kapp would not or could not legally and properly perform her duties. As for The Club's contention that Special Agent Hamilton was hostile because she concluded the September 23, 2009, email was "willfully deceitful," I have already concluded that the email was intended to convey the impression to her that Greenwood would begin its work in the first week of October, when The Club knew Greenwood would not do so because The Club had not paid Greenwood's down payment. I conclude that The Club has not shown evidence that either Special Agent Kapp or Hamilton would not or could not properly and legally perform their duties.

Finally, The Club's argument that the Commission winnowed the violations down to the ones presented in this case contradicts The Club's major premise; to wit, "the Commission is out to get The Club." If anything, it shows that the Commission examined its case and proceeded against The Club with some restraint. Therefore, I further conclude that The Club has not shown evidence that the Commission will not or cannot properly and legally perform its duties. I conclude that the Commission, and Special Agents Kapp and Hamilton, acted professionally with the personnel of The Club.

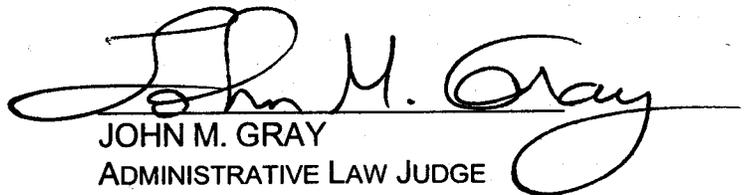
12. I conclude that, contrary to The Club's argument, the June 10, 2009, settlement order does not mean that the Commission is limited to suspending The Club's licenses for only 18 days. The Order is plain on its face that The Club's licenses were suspended in that case (CR

2008-00213) for 20 days, 18 of which were suspended for a period of one year from the date of entry of that Order. That means the suspension period expired by the Order's own terms on June 20, 2009. The June 10, 2009 Order does not control in the present case.

ORDER

IT IS HEREBY ORDERED That, in the public interest, the Gambling Commission's decision to revoke The Club's licenses is **AFFIRMED**.

Dated and Mailed this 2nd day of February 2009 at Olympia, Washington.

A handwritten signature in black ink that reads "John M. Gray". The signature is written in a cursive style with a horizontal line underneath it.

JOHN M. GRAY
ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings
2420 Bristol Court SW
PO Box 9046
Olympia, WA 98507-9046

NOTICE TO THE PARTIES

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.

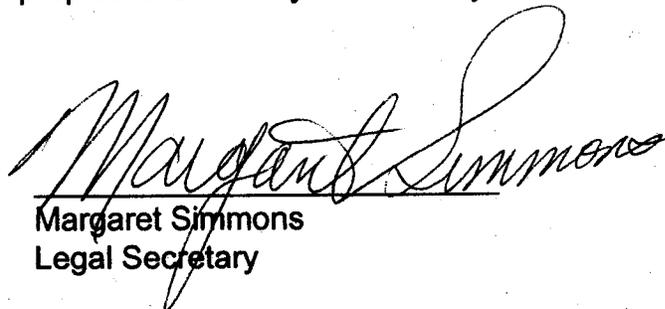
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Certification of Mailing

I certify that I mailed true and exact copies of the Findings of Fact, Conclusions of Law and Initial Order to the following parties, postage prepaid this 2nd day of February 2010 at Olympia, Washington.



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