

FEB 24 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:

CHOPSTICKS
Vancouver, Washington

Licensee.

OAH Docket No. 2012-GMB-0001

WSGC No. CR 2011-01253

INITIAL ORDER

CANTONESE LANGUAGE TRANSLATION

If you need a translation of this Order into the Cantonese Language,
contact: Morales Dimmick Translation at (208) 365-2622 between
the hours of 9:00 am and 4:00 pm, Monday through Friday.

1. HEARING:

1.1 This case came before Administrative Law Judge Douglas H. Haake for an administrative hearing on February 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 Chopsticks, Licensee, appeared by Yan Ke Chen, who indicated a desire to proceed without representation.

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

1.4 Special Agents Stephanie Beach, Allen Esparza, and Roger Sauve, investigators for the Commission appeared and testified on behalf of the Commission.

1.5 Ms. Ping Lau was qualified and provided Cantonese language interpretation.

1.6 The Commission offered 14 exhibits, which were admitted.

1.7 Chopsticks offered six pages of exhibits to which the Commission objected on relevance grounds. The objection was sustained and the documents were not admitted.

2. STATEMENT OF THE ISSUES:

2.1 Whether there are grounds for the Commission to revoke the Licensee's punch board/pull tab license (PB/PT) for any reason it deems to be in the public interest under RCW 9.46.075(1)

2.2 Whether there are grounds to revoke the Licensee's PB/PT, where the licensee knowingly causes, aids, abets, or conspires with another to cause any person to violate any of the laws of this state or the Commission's rules, under RCW 9.46.075(2)

2.3 Whether there are grounds to revoke the licensee's PB/PT where the licensee been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful 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 under RCW 9.46.075(4)

2.4 Whether there are grounds to revoke the Licensee's PB/PT, where the licensee makes a misrepresentation of, or fails to disclose, a material fact to the commission under RCW 9.46.075(7)

2.5 Whether there are grounds to revoke the Licensee's PB/PT, where the licensee 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 under RCW 9.46.075(10)

2.6 Whether there are grounds to revoke Licensee's PB/PT, where Licensee commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under WAC 230-03-085(1).

2.7 Whether there are grounds to revoke Licensee's PB/PT, where the Licensee fails to provide the Commission 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 the Commission under WAC 230-03-085(7).

2.8 Whether there are grounds to revoke Licensee's PB/PT, which provides that the Commission may take disciplinary action against a licensee who 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 evidenced by prior activities, criminal record, reputation, habits or associations under WAC 230-03-085(8)

2.9 Whether there are grounds to revoke licensee's PB/PT where the Licensee fails to prove by clear and convincing evidence that he is qualified in accordance with the provisions of chapter 9.46 RCW under RCW 9.46.075(8)

2.10 Whether there are grounds to revoke the Licensee's PB/PT where the Licensee fails to 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 under RCW 9.46.153(1).

2.11 Whether there are grounds to revoke licensee's PB/PT where the licensee failed to report to the Commission in writing within 30 days all criminal actions filed against the licensee, any manager of the licensed gambling activity, the business organization, or any person holding a substantial interest in the business organization under WAC 230-06-085(1) and (2). Or whether Licensee failed to provide the Commission with a final written decision or settlement within 30 days after the case is resolved.

2.12 Whether there are grounds to revoke Licensee's PB/PT for failing to report any oral or written contracts and agreements which alter the Licensee's organization under WAC 230-06-080(1).

2.13 Whether there are grounds to revoke Licensee's PB/PT for failing to report in writing changes made to their organizations management, directors, officers, or any other position that makes management decisions directly affecting the operation of their licensed gambling activity under WAC 230-06-105(1).

3. FINDINGS OF FACT:

3.1 Wu Investments, Inc., doing business as Chopsticks, possessed a punch board / pull tab (PB/PT) license issued by the Commission, License number 05-20718. In 2008, Chopsticks sought a gambling license listing Jian Hua Wu (Wu) and Yan Ke Chen (Chen) as each owing 50% of Chopsticks. (Beach testimony) Chopstick's 2010 renewal application for a gambling license listed Wu and Chen as the substantial interest holders and officers of Chopsticks, and named Wu as the president. (Exhibit 11) In 2011 renewal paperwork, Chen was listed as the president. (Exhibit 12)

3.2 Substantial Interest holders are parties who by contract, agreement or relationship are able to exercise potential or actual influence over a business. (Esparza Testimony) At all times relevant to this order, Wu and Chen were substantial interest holders in Chopsticks.

3.3 Special Agent Stephanie Beach (Beach) has been with the Commission as an investigator for 2 years. Prior to that she worked as a corrections officer, adult and juvenile probation/parole officer, tribal gaming agent, and fraud investigator. (Beach Testimony) She has a four year degree with specialized training in fraud investigation, law enforcement records, and background investigation. *Id.* She is currently conducting criminal history investigations on substantial interest holders of businesses applying for or renewing licenses. *Id.*

3.4 On September 15, 2011, Chopsticks filed for renewal of its PB/PT license. (Exhibit 11). The criminal history investigation was assigned to Beach. Beach accessed the Washington Judicial Information System (JIS) to conduct a criminal records check on Wu. (Beach testimony) JIS is the repository for municipal, district, and superior court records for the state of Washington. *Id.* Beach found a Defendant Case History (DCH) on Wu reflecting June 10, 2011, charges against him for Sched I/II/III Penalty, Cont. Subs-Main Vehcl/Premise, Malicious Mischief I, and Defraud Public Utility 1st in Clark County Superior Court. (Exhibit 2)

3.5 Based on her findings, Beach requested court documents. She received a copy of the charging document (Information) alleging four violations of law: Count 1—Defrauding A Public Utility in the First Degree; Count 2—Manufacture of a Controlled Substance—Marijuana; Count 3—Malicious Mischief in the First Degree; and Count 4—Maintaining a Dwelling for Controlled Substances. (Exhibit 3) She also received a Probable Cause Sheet setting out some details surrounding the allegations and Wu's arrest (Exhibit 4).

3.6 The gist of the charges against Wu were that he was conducting a marijuana grow operation involving over 1600 plants; that he damaged the rental building in which the marijuana was grown by allowing mold to grow and installing false walls, and that he diverted, and did not pay for electricity to run the operation. *Id.*

3.7 Based on information received from the court, Beach monitored the case and subsequently learned that Wu plead guilty to three offenses. (Beach testimony) She again accessed JIS and pulled Wu's DCH showing guilty findings to three offenses. (Exhibit 6) Beach requested and received additional documents from the court, including an Amended Information (Exhibit 7) and a Statement of Defendant on Plea of Guilty (Exhibit 8). Wu plead guilty to Defrauding a Public Utility District, 1st degree; Manufacturing a Controlled Substance (marijuana); and Malicious Mischief, 2nd degree. *Id.* at 8 Wu did not make an affirmative factual statement in support of the guilty plea but did indicate that he believed a jury hearing the evidence could find him guilty. *Id.* Finally,

Beach received a Felony Judgment and Sentence (J&S) reflecting guilty findings for the above crimes, and imposing penalties and ordering restitution for Wu. (Exhibit 9)

3.8 The Amended Information alleges as follows:

COUNT 01 DEFRAUDING A PUBLIC UTILITY IN THE FIRST DEGREE – 9A.61.030(1)(a) That he, Jian Hua Wu, in the County of Clark, State of Washington did cause physical damage to the property of another in an amount exceeding five thousand dollars, and/or did defraud a public utility by diverting service in furtherance of other criminal activity; contrary to the Revised Code of Washington 9A.61.030(1)(a) or (b).

COUNT 02 MANUFACTURE OF A CONTROLLED SUBSTANCE – MARIJUANA – RCW 69.50.401(1), (2)(c). That he, Jian Hua Wu, in the County of Clark, State of Washington did knowingly manufacture a controlled substance, to wit: Marijuana contrary to the Revised Code of Washington. 69.50.401(1), (2)(c).

COUNT 03 MALICIOUS MISCHIEF IN THE SECOND DEGREE – 9A.48.080(1)(a) and (1)(b). That he, Jian Hua Wu, in the County of Clark, State of Washington did knowingly and maliciously create a substantial risk of interruption or impairment of service rendered to the public, by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of transportation, power, or communication; contrary to the Revised Code of Washington. 9A.48.080(1)(b)

(Exhibit 7)

3.9 Chopsticks did not report the criminal charges or conviction to the Commission. (Beach testimony)

3.10 Based on Beach's investigation, the Commission summarily suspended Chopstick's gambling license. On December 12, 2011, a stay of the summary suspension was denied. At that hearing, information was presented that caused Commission staff to further review Chopstick's file.

3.11 Special Agent Esparza (Esparza) has been with the Commission as an investigator for 9 years. He has a background in insurance fraud investigation, a degree in criminal justice, and is a certified fraud examiner. He is currently assigned to the Commission's financial investigations unit. (Esparza testimony)

3.12 When a business applies for a gambling license, the Commission investigates the applicants' background, and the business' financial situation. Based on that investigation, recommendations are made to the Commission

about whether to grant or deny an application. A similar investigation is triggered by an application for renewal. *Id.*

3.13 On September 15, 2011, a renewal application was received from Chopsticks. (Exhibit 11) Esparza compared the 2011 application to Chopstick's 2010 application, noting that unlike the 2010 application, the 2011 application identified Chen as president. (Exhibit 12) Section (2)(g) of the application asks whether there has been a change effecting ownership. *Id.* page 3 On the 2011 application, the box for "No" is checked. *Id.* This response is inconsistent with Chen being identified on the application as Chopstick's president. Section (2)(g) goes on to require submission of documents outlining any change. *Id.* The Commission has specific forms for reporting a change in status. The Commission has not received the requested documents from Chopsticks identifying a change in officers. (Esparza testimony) Chen acknowledged not reporting the change when it occurred. (Chen testimony)

3.14 Esparza also reviewed a document brought to his attention by Beach. (Exhibit 13) The document is titled Separation Property Agreement. *Id.* The document purports to affect a property transfer based on separation of the parties. However, the document is also called a "prenuptial agreement", and notes that it is being entered into "in consideration of the contemplated marriage of the above-named parties who are married." It is also called a "post-nuptial agreement."

3.15 The document does not contemplate dissolution of the marriage or discuss legal separation. It only purports to distribute property. Section 5 is the only section that specifically addresses Chopsticks. The section recites that Chen contributed 80% of the finances in acquiring the restaurant and building for Chopsticks Restaurant and Lounge. *Id.* page 4 The document goes on to say that Wu wishes to be relieved of his obligations and agrees to release his interest in the property. In return, Chen agrees to hold him harmless for all obligations attached to Chopsticks Restaurant and Lounge. *Id.* Interestingly, the agreement is not signed by Wu or Chen. Section 11 is entitled Certification of Yan Ke Chen but is not signed, and is little more than a recitation of her right to independent counsel and that she chose not to consult with other counsel. *Id.* page 6.

3.16 Section 5 notes that either party can transfer or convey property to the other party "by appropriate written instrument." *Id.*

3.17 I do not find Exhibit 13 to be legally sufficient to transfer ownership of the business or of business property. Nor does the document act as a relinquishment of either party's rights with respect to running the business.

3.18 Special Agent Roger Sauve has 10 years experience as an investigator with the Commission. He works in field operations regulating and enforcing gambling regulations. (Sauve testimony) He was assigned to the Chopsticks

investigation in June of 2011 and served the summary license suspension on Chopstick's. *Id.*

3.19 On February 6, 2012, he interviewed Cheryl Corder who identified herself as a bartender at Chopsticks. *Id.* Corder advised that she continued to interact with Wu at the restaurant to get cash for registers, to forward vendor payments, and for liquor order approval. *Id.* Corder indicated that Wu and Chen both make management decisions and that Corder viewed Wu as her boss. *Id.*

3.20 Sauve received documents and a cover letter dated February 6, 2012, from the Washington Liquor Control Board identifying Wu and Chen as the only owners of Chopsticks. (Exhibit 14)

4. CONCLUSIONS OF LAW:

Jurisdiction

4.1 The 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 WAC.

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.

4.5 RCW 9.46.075(8) provides that the Commission may revoke a gambling 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 9.46.053 provides that it is 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.

4.6 RCW 9.46.075(10) provides that the Commission can revoke a gambling license where the licensee 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.

4.7 RCW 9.46.075(7) provides that the Commission can revoke a gambling license when a licensee makes a misrepresentation of, or fails to disclose, a material fact to the Commission. WAC 230-03.085(7) provides that the Commission can revoke a gambling license, where the Licensee fails to provide the Commission 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 the Commission.

4.8 WAC 230-06-085(1) and (2) require that licensees report to the Commission in writing within 30 days all criminal actions filed against the licensee, any manager of the licensed gambling activity, the business organization, or any person holding a substantial interest in the business organization. Further, the Licensee is required to provide the Commission with a final written decision or settlement within 30 days after the case is resolved.

4.9 WAC 230-06-080(1) requires that all licensees report any oral or written contracts and agreements which alter the licensee's organization. WAC 230-106-105(1) requires that licensees report in writing changes made to their

organization's management, directors, officers, or any other position that makes management decisions directly affecting the operation of their licensed gambling activity. Commercial licenses must report within 30 days.

4.10 WAC 230-03-085(8), provides that the Commission may suspend a gambling license when the license holder poses a threat to the effective regulation of gaming or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gaming activities, as demonstrated through the person's prior activities, criminal record, reputation, habits, or associations.

Analysis

4.11 On June 16, 2011, Wu was charged with the crimes of Defrauding a Public Utility in the First Degree, Manufacture of a Controlled Substance - Marijuana, Malicious Mischief in the First Degree, and Maintaining a Dwelling for Controlled Substances. At that time, he was a substantial interest holder in Chopsticks.

4.12 On September 15, 2011, an Amended Information was filed, under which Wu plead guilty to the charges of Defrauding a Public Utility in the First Degree, Manufacture of a Controlled Substance – Marijuana, and Malicious Mischief in the Second Degree. On October 6, 2011, Wu was sentenced to 180 days of confinement with 12 months of community custody. He was ordered to pay restitution and fees. Wu's convictions create 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. RCW 9.46.075(10)

4.13 Neither Wu nor Chen notified the Commission of the charges, or eventual convictions in violation of WAC 230-06-085(1) and (2).

4.14 Wu was operating a commercial marijuana grow operation in violation of Washington law. As such, he was 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. RCW 9.46.075(10)

4.15 In March 2011, Wu and Chen entered into an agreement purporting to change the ownership and operation of Chopsticks. Assuming for the sake of argument that the agreement accomplished their goals, the change in officers was not reported to the Commission until September 2011, when Chopsticks applied for license renewal. The purported change of ownership was not reported to the Commission nor did it come to the Commission's attention until a stay hearing in December 2011. Licensees failed to timely provide the

Commission with information necessary for the effective regulation of gambling as required under commission rules. RCW 9.46.075(7); WAC 230-06-085(1) and (2); WAC 230-06-080(1)

4.16 Wu and Chen have not affirmatively established by clear and convincing evidence that Chopsticks 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.

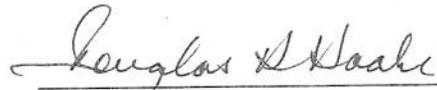
4.17 Accordingly, pursuant to the foregoing Findings of Fact and Conclusions of Law, the gambling license of Chopsticks shall be revoked.

5. INITIAL ORDER:

IT IS HEREBY ORDERED,

Pursuant to law and public interest, the Punch Board / Pull Tab license No. 05-20798, issued to Chopsticks by the Washington State Gambling Commission is hereby revoked.

Signed: February 23, 2012, at Olympia, Washington.



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.

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-0001

I certify that true copies of this document were served from Olympia, Washington on the following as indicated.

Address: Chopsticks Attn: Jian H. Wu 7601 E Mill Plain Blvd Vancouver, WA 98664	First Class Mail, Postage Prepaid
Address: Stephanie U Happold Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia, WA 98504	First Class Mail, Postage Prepaid
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Date: February 23, 2012


Margaret Simmons
Office of Administrative Hearings