

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Revocation of the)
License to Conduct Gambling Activities of:) NO. CR 2011-00147
)
Spitfire Pub and Eatery) **FINDINGS, CONCLUSIONS,**
Spokane Valley, Washington,) **DECISION, AND FINAL**
) **ORDER IN DEFAULT**
Licensee.)

THE MATTER of the revocation of the license to conduct gambling activities of Spitfire Pub and Eatery having come before the Commission on May 13, 2011, the State being represented by Jerry Ackerman, Senior Counsel, Office of the Attorney General, the Commission makes the following Findings of Fact, Conclusions of Law, and issues the following Decision and Order:

FINDINGS OF FACT

I.

The Washington State Gambling Commission issued Spitfire Pub and Eatery, organization number 00-21833, license number 05-20801, authorizing Class "A" Punchboard/Pull-Tab activity. The license expired on March 31, 2011, and was issued subject to the licensee's compliance with state gambling laws and regulations.

II.

On March 4, 2011, Director Rick Day issued administrative charges to Spitfire Pub and Eatery, by certified and regular mail. The administrative charges notified the licensee that failure to respond would result in the entry of a default order revoking its license. Spitfire Pub and Eatery did not respond to the charges.

By not responding, Spitfire Pub and Eatery waives its right to a hearing on such charges and pursuant to RCW 34.05.440, this final order may be entered in default.

III.

1) The licensee was licensed from April 2009 through March 2010 for Class "A" Punchboard/Pull-Tab Activity, which is authorized to have annual gross gambling receipts up to \$50,000. However, the licensee's gross gambling receipts were \$63,153. Therefore, the licensee needed to upgrade its license class to a "B" level, which allows for up to \$100,000 in gross gambling receipts.

2) On November 2, 2010, Commission staff sent a letter to Spitfire Pub and Eatery. The letter states that under WAC 230-06-135, because the licensee exceeded its license class and then failed to upgrade its class, Spitfire Pub and Eatery needed to pay a \$645 fee.

3) On December 20, 21, and 28, 2010, Commission staff attempted to contact Joshua Sherwood, owner, by telephone to inform him that he needed to pay the exceeding license class fee. On December 28, 2010, a Commission Special Agent (agent) went to the Spitfire Pub and Eatery and left copies with the bartender of the exceeding class fee paperwork that the licensee needed to submit.

4) On January 21, 2011, an agent talked to Mr. Sherwood by telephone. Mr. Sherwood told the agent:

- a) On September 1, 2010, he entered into an agreement to have a new person be the managing member and purchase the bar.
- b) Today was the first day since September 1, 2010, that he had been in the bar.
- c) He just found the exceeding license class paperwork left at the bar by an agent.

5) The agent told Mr. Sherwood to send in documents regarding a possible new ownership or substantial interest holder no later than January 28, 2011. On January 21, 2011, the agent sent Mr. Sherwood a letter requesting information and documents about the purchase and sale documents and other agreements by January 28, 2011. As of March 2, 2011, Mr. Sherwood has not submitted the information requested by the agent.

6) The licensee failed to pay the required fees of \$645 in connection with exceeding their Punch Board/Pull-Tab license class for their license year ending in March 31, 2010, in violation of WAC 230-06-130(1), and (2).

7) The licensee violated WAC 230-06-105 and WAC 230-06-080 when it failed to report a change of management and submit documents and information about changes made:

- a) In the organizational and management structure of the licensee.
- b) In contracts and agreements related to gambling activities.
- c) That alter the organizational structure of the licensee's organization or business activities in Washington.

8) The licensee failed to submit its punchboard/pull-tab activity report for the third and fourth quarters of 2010. The activity report was due January 30, 2011. However, the activity report was not received. On February 10, 2011, Commission staff sent the licensee a letter giving Spitfire Bar & Eatery until February 28, 2011, to submit its activity report to avoid administrative action against its gambling license. The licensee failed to submit its activity report for the third and fourth quarters of 2010, in violation of WAC 230-14-284.

9) Therefore, under RCW 9.46.075(1) and WAC 230-03-085(1) and (7), grounds exist to suspend or revoke Spitfire Bar and Eatery's license.

RCW 9.46.075 Denying, suspending, or revoking an application, license or permit

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: (The following subsections apply.)

(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.

WAC 230-03-085 Denying, suspending, or revoking a license or permit

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: (The following subsections apply.)

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075.

(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.

WAC 230-06-130 Exceeding license class

(The following subsections apply.)

(1) Licensees must not exceed the gross gambling receipts limits for their license class during any annual license period.

(2) Licensees must apply a projection of year-to-date receipts to the remaining period of their license and, if it indicates that it is reasonably likely that they may exceed their license, they must immediately: (a) Apply for a license that authorizes the anticipated level of gross gambling receipts; and (b) Submit the fee required for the new license, minus the amount originally submitted for the previous license, plus a change of classification fee.

WAC 230-06-135 Failing to apply for license class upgrade.

(The following subsections apply.)

(1) If licensees fail to apply for a license class upgrade and exceed the license class limit within a present or previous license year, we assess an additional fee. We charge an additional fee of up to fifty percent of the difference between the fee for the present license class and the new license class, or one thousand dollars, whichever is less.

(2) Licensees must pay any required license class upgrade fee, plus any additional fee required by subsection (1) of this section, within thirty days of our notification.

WAC 230-06-080 Report changes to application information and submit updated documents and information.

(The following subsections apply.)

(1) Licensees must notify us in writing if any information filed with the application changes in any way within thirty days of the change.

(2) Licensees must submit to us any new or updated documents and information, including the following: (a) Articles of incorporation or bylaws, or any other documents which set out the organizational structure and purposes; and (b) All oral or written contracts and agreements which relate to gambling activities or alter the organizational structure of the licensee's organization or business activities in Washington.

WAC 230-06-105 Report change of management.

(1) Licensees must 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. We provide the forms to report these changes.
(2) If you are a commercial business licensee, you must report within thirty days.

WAC 230-14-284 Activity for punchboard and pull-tab licensees

Punchboards and pull-tab licensees must submit an activity report to the Commission. Licensees must complete the report in the format we require and must:

(The following subsections apply.)

- (1) Cover the periods: (a) January 1 through June 30; and (b) July 1 through December 31; and
- (2) Be received at our administrative office or postmarked no later than thirty days following the end of the reporting period.

IV.

CONCLUSIONS OF LAW

The circumstances specified in the Findings of Facts in section III above constitute grounds for the revocation of Spitfire Pub and Eatery's license to conduct gambling activities under the authority of RCW 9.46.075 and WAC 230-03-085.

DECISION AND ORDER

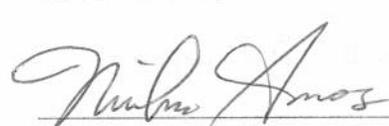
The Washington State Gambling Commission HEREBY ORDERS: Spitfire Pub and Eatery's license to conduct gambling activities is REVOKED.

DATED this 13 day of May, 2011.

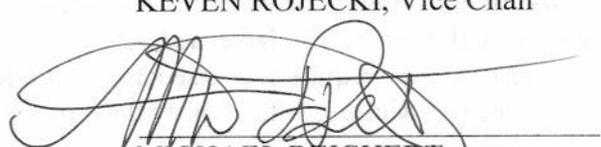
JOHN ELLIS, Chair



KEVEN ROJECKI, Vice Chair



MIKE AMOS



MICHAEL REICHERT

NOTICE: RCW 34.05.440(3) provides that within seven (7) days after service of a default order the party against whom it was entered may file a written motion requesting that the order be vacated and stating the grounds relied upon.

WAC 230-17-040(3) requires that motions be served on the parties listed below:

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