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

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

BC MACDONALDS
Chelan, Washington,

License No. 05-10033.

OAH No. 2012-GMB-0057
GC No. CR 2012-01140

INITIAL ORDER REVOKING
GAMBLING LICENSE

Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on February 19, 2013, at the Gambling Commission Office, 4565 7th Avenue, Lacey, Washington.

Stephanie U. Happold, Assistant Attorney General, appeared and represented the Washington State Gambling Commission ("Commission"). Cameron Baker, a research analyst, and Bryce Mack, a special agent with the Commission, appeared and testified as witnesses for the Commission.

BC MacDonalds ("MacDonalds"), the Licensee, appeared at the February 19, 2013, hearing. Brent MacDonald ("Mr. MacDonald"), the owner of MacDonalds, and Sandy Graves, an accountant, appeared telephonically and testified on behalf of MacDonalds.

On November 21, 2012, the Director of the Commission caused two copies of a Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding ("Notice of Administrative Charges") to be issued against MacDonalds, one by regular mail and the other by certified mail. The Director alleged that MacDonalds failed to submit its

punchboard/pull-tab activity reports ("reports") for the first and second quarters of 2012, and that in doing so, MacDonalds violated three prior settlement orders for the same violation.

Mr. MacDonald signed and dated the Request for Administrative Hearing with the Commission on November 30, 2012, and filed the Request with the Commission on December 4, 2012, thirteen (13) days after service of the Notice of Administrative Charges.

The Commission issued the Notice of Hearing on December 7, 2012, to the Commission Staff, the Attorney General's Office, the Office of Administrative Hearings, and to MacDonalds, the latter to its mailing address at PO Box 1612, Chelan, WA 98816. The Notice of Hearing set the hearing on the merits for February 19, 2013, beginning at 9 AM at the Commission's hearing room in Lacey, Washington.

On February 12, 2013, the undersigned Administrative Law Judge was made aware of a request from MacDonalds. MacDonalds asked that it be allowed to participate in the hearing telephonically from Chelan. The message said that the Attorney General did not object to the request for telephonic participation by MacDonalds. Consequently, the undersigned Administrative Law Judge agreed to allow MacDonalds to testify telephonically while the Commission and the undersigned Administrative Law Judge would be present in the hearing room in Lacey.

The Commission offered ten exhibits, numbered 1 through 10, all of which were admitted without objection. MacDonalds offered two exhibits, lettered Exhibits A and B, which were admitted without objection.

In his closing argument, Mr. MacDonald declared the whole procedure to be ridiculous, that he did "not want to be part of the Gambling Commission," and that he was taking his pull tabs down that day. He disconnected the telephone connection saying, "this conversation is over."

Consequently, the undersigned Administrative Law Judge was unable to ask Mr. MacDonald what he meant and, if he wished to withdraw his appeal or forfeit his gambling license, whether he understood the consequences of his decision. Mr. MacDonald's statements appeared to be impulsive and emotional, and are unreliable as a knowing and intelligent statement of intent that he wished to withdraw his appeal, or forfeit his gambling license, or whether he meant something else entirely. Therefore, the undersigned Administrative Law Judge proceeds to make the following Findings of Fact, Conclusions of Law, and Initial Order.

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

FINDINGS OF FACT

1. MacDonalds is a business in Chelan, Washington, which is licensed for punchboard/pull-tab operations. The Commission issued a punchboard/pull-tab license to MacDonalds. The license is a type 05, class A license. As a class A license holder, MacDonalds is authorized to engage in punchboard and pull-tab activity up to the value of \$50,000 gross per year. The license number is 05-10033. Without more, the license will expire on March 31, 2013.

2. The Commission requires that persons who possess punchboard/pull-tab licenses, such as MacDonalds, report certain information regarding their punchboard/pull-tab operations, broken down by calendar quarters, to the Commission. The report seeks information about gross gambling receipts, amounts paid for prizes, the cost of the games, the amount of the local gambling tax, the amount of cash over or short from the monthly income summary, an inventory, and the gross sales of food or drink. Licensees formerly had to file these reports four times per year with the Commission, no later than the last day of the month following the close of the reported quarter. The filing requirement changed during 2005. Licensees still are required to report quarterly information, but now must file only twice a year; i.e., one report covering the first and second quarters of the year, and the second report covering the third and fourth quarters of the year. The report for the first and second quarters of a year is due no later than 30 days after the end of the last month in the second quarter; i.e., it is due by July 30. The report for the third and fourth quarters of a year is due no later than 30 days after the end of the last month in the fourth quarter; i.e., it is due by January 30.

3. MacDonalds has a history with the Commission of failing to file its reports on time. Throughout these Findings of Fact, Conclusions of Law, and Initial Order, "reports" refers to the activity reports described in Finding of Fact No. 2.

4. The Commission attempts to resolve some issues, including a licensee's failure to file its reports timely, through its Notice of Violation and Settlement program ("NOVAS"). The Commission authorizes its agents to issue a NOVAS in the field at the

business of a license holder, noting the violation and assessing a fine not to exceed \$500, if the licensee agrees to file its quarterly report. If a licensee accepts a NOVAS, the matter does not proceed to the next level, which is the issuance of a notice of administrative charges.

5. The Commission issued two NOVAS to MacDonalds for failing to file its reports timely. The first is dated March 10, 2006. Exhibit 4, p. 11. The second is dated February 17, 2007. Exhibit 3, p. 6 and Exhibit 4, p. 10.

6. In addition to the two NOVAS, the Commission initiated three Notices of Administrative Charges and Opportunity ("Notice" or "Notices") for an Adjudicative Proceeding to MacDonalds, all for its failure to file its reports timely.

7. The Commission issued the first Notice on September 28, 2007. MacDonalds did not file its first and second quarter 2007 report until August 23, 2007. It was due on July 30, 2007. Exhibit 4, pp. 7-9. After negotiations, MacDonalds and the Commission entered into a Settlement Order, signed by an Administrative Law Judge on December 18, 2007. Exhibit 4, pp. 13-16. Both the Notice and Settlement Order refer to Commission case report no. CR 2007-01418. In the Settlement Order, the parties agreed that MacDonalds' license would be suspended for fifteen days, twelve days of which would actually be suspended and three days deferred. The Settlement Order included a provision that MacDonalds agreed to file all subsequent reports on time. The Settlement Order warned that failure to file timely could result in suspension or revocation of MacDonalds' license.

8. The Commission issued the second Notice on April 2, 2008. This notice refers to CR 2008-00473. MacDonalds did not file its third and fourth quarters 2007 report until March 10, 2008. It was due on January 30, 2008. Exhibit 5, pp. 3, 21-22. After negotiations, MacDonalds and the Commission entered into another Settlement Order. The Settlement Order corresponding to CR 2008-00473 does not appear in the Exhibits (its place in Exhibit 5 at pp. 14-17 appears to be a duplicate of the 2007 Settlement Order), but its existence is referenced in the Notice and in the Special Agents' case reports. See, Exhibits 1, page 3; 6, page 3 (providing a date for the Settlement Order of May 16, 2008); 6, page 5; 6, pp. 8-9; 10, page 1. Based on the weight of the evidence and the absence of any dispute between the parties as to the existence of a Settlement Order that concluded the issues in the April 2, 2008, Notice, the undersigned Administrative Law Judge finds that the parties entered into a Settlement Order on or about May 16, 2008, that resolved the issue of MacDonalds' failure to file a timely report for the third and fourth quarters of 2007.

9. The Commission issued the third Notice on March 2, 2009. This notice refers to CR 2009-00260. MacDonalds did not file its third and fourth quarter 2008 report until February 19, 2009. It was due on January 30, 2009. Exhibit 6, pp. 5-7. After negotiations, MacDonalds and the Commission entered into a Settlement Order, signed by an Administrative Law Judge on April 16, 2009. Exhibit 6, pp. 8-9. In the Settlement Order, the parties agreed that MacDonalds' license would be suspended for forty-two days under the 2009 Notice and three days, previously deferred, from the May

2008 Settlement Order. The Settlement Order included a provision that MacDonalds agreed to file all subsequent reports on time. The Settlement Order warned that failure to file timely could result in suspension or revocation of MacDonalds' license.

10. Bryce Mack is a Special Agent employed by the Commission since 2004. He has been familiar with MacDonalds since he began work with the Commission. He prepared several case reports for the Commission regarding MacDonalds and its failure to file its reports timely. These reports included the instances resulting in the NOVAS and some of the Settlement Orders. Exhibits 1; 2; 3; 4. Special Agent Mack has a history of in-person and telephonic contacts with Mr. MacDonald and his wife, Afni, regarding MacDonalds' failure to file its reports timely.

11. The Commission received other case reports regarding MacDonalds and its failure to file its reports timely from Special Agents Donna Khanhasa (Exhibits 5 and 8) and Stephanie Sherwood (Exhibit 6).

12. The Commission issued a letter to the MacDonalds on February 10, 2012. Tina Griffin, Assistant Director, Licensing Operations Division, signed the letter. The letter informed MacDonalds that the Commission had not received the third and fourth quarter 2011 report by the due date, January 30, 2012. The letter informed the MacDonalds that if it would submit its completed report by February 29, 2012, then the Commission would waive the penalty for violating WAC 230-14-284. If MacDonalds failed to submit the report by February 29, 2012, the Commission would initiate proceedings to impose a fine or to suspend or revoke its license. Exhibit 9.

13. MacDonalds filed its third and fourth quarter 2011 report with the Commission on March 9, 2012, thirty-nine days after the January 30 due date. Exhibits 7, page 3; 10, pp. 1-3.

14. Special Agent Mack prepared Commission Case Report number 2012-01140 that resulted in the issuance of the November 12, 2012, Notice and the February 19, 2013, hearing. Exhibit 1.

15. The testimony of the parties conflicted on a material point; specifically the date when MacDonalds transmitted the first and second quarter 2012 report to the Commission. 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 in favor of the Commission. The undersigned Administrative Law Judge finds the Commission's testimony and the Commission's exhibits to be more logically persuasive than MacDonalds'. Sandy Graves, an accountant with the same accounting firm that MacDonalds has used for over 30 years, wrote "faxed 7/23/12" at the top of the form and the date "7/23/12" after Mr. MacDonald's signature at the bottom of the form. However, Ms. Graves had no evidence other than her testimony that her firm had faxed the report on July 23, 2012; i.e., no fax confirmation of a successful transmission on July 23, 2012, and no email or telephone call to the Commission to verify that the Commission received the report that date. The only fax date stamp on the form (Exhibit 7, page 1) is "December 6, 2012 – Hogenhout and Associates." Mr. Baker, on the other

hand, checked the Commission's fax machines, receipt log, and computer to try to verify the Commission's receipt of the form on July 23, 2012; however, he found no confirmation. Ms. Graves' handwritten notations of "7/23/12" on the form do not prove that she faxed the form on July 23, 2012.

16. Special Agent Mack telephoned Mr. MacDonald on August 20, 2012, to ask if he had submitted MacDonalds' report. Mr. MacDonald replied that he had forgotten to do so. Special Agent Mack told Mr. MacDonald that this violation would likely result in a monetary penalty of \$300. Mr. MacDonald told him "goodbye" and hung up.

17. From August 20 on, Special Agent Mack had no conversations with Mr. MacDonald or anyone else representing MacDonalds concerning the report.

18. MacDonalds filed its first and second quarter 2012 report on December 6, 2012, 129 days after the July 30 due date.

19. MacDonalds filed its third and fourth quarter 2012 report on January 31, 2013, one day after its January 30 due date.

20. Cameron Baker is a Research Analyst II employed by the Commission. He has worked for the Commission for over twenty-one years. His job duties include noting the filing of and analyzing reports filed by punchboard and pull-tab licensees, such as and including MacDonalds.

21. The Legislature and the Commission use the data from Mr. Baker's reports in deciding on state policy with regard to punchboards and pull-tabs.

22. Mr. Baker is familiar with MacDonalds and Mr. MacDonald, having worked with them for years.

23. Mr. Baker examined MacDonalds' report filing record for the past twelve years, using the first quarter of 2000 as the starting period.

24. Since the reporting obligation changed in mid-2005 from quarterly to twice-per-year, the first period is from quarter 2 of 2000 (MacDonalds' first reporting quarter) through quarter 2 of 2005. Mr. Baker's research disclosed that MacDonalds filed its reports late for 12 out of 21 filing deadlines in that first period. The number of days late ranged from 3 to 109. In this same first period, MacDonalds filed timely for 9 out of 21 filing deadlines.

25. The second reporting period contains twice-per-year reporting deadlines, beginning with the third and fourth quarters of 2005 and concluding with the third and fourth quarters of 2012. Mr. Baker's research disclosed that MacDonalds filed its reports late for 13 out of 15 filing deadlines in that second period. The number of days late ranged from 1 to 129. In this same second period, MacDonalds filed timely for 2 out of 15 filing deadlines.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Administrative Law Judge now enters the following Conclusions of Law:

1. 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.

2. During the time material to this case, MacDonalds has possessed a punchboard/pull-tab license authorizing it to operate punchboards and pull-tabs, and is subject to the provisions of RCW 9.46.075 and WAC 230-03-085.

3. The Legislature declared that the "operation of punchboards, pull-tabs, card games and other social pastimes, **when conducted pursuant to the provisions of this chapter and any rules and regulations adopted pursuant thereto**, are hereby authorized." RCW 9.46.010. (Emphasis supplied).

4. RCW 9.46.0325 authorizes punchboard and pull-tab operations: "The legislature hereby authorizes any person, association or organization operating an established business primarily engaged in the selling of food or drink for consumption on the premises to conduct social card games and to utilize punchboards and pull-tabs as a commercial stimulant to such business **when licensed and utilized or operated pursuant to the provisions of this chapter and rules and regulations adopted pursuant thereto**." (Emphasis supplied).

5. RCW 9.46.075 contains the Commission's authority to deny a license application, and to suspend or revoke a license already issued. This statute has eleven subsections that describe the reasons for denying a license, or suspending or revoking a license. RCW 9.46.075(1) provides:

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: 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[.]”

6. RCW 9.46.075(8) provides that the Commission may suspend or revoke any license or permit issued by it where the applicant or licensee “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].”

7. RCW 9.46.153(1) declares that “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[.]”

8. Chapter 230-03 contains the Commission’s adopted administrative rules pertaining to permitting and licensing. WAC 230-03-085 explains in more detail the circumstances under which the Commission may deny, suspend, or revoke an application, license, or permit. WAC 230-17-085(1) provides:

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: Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075[.]

9. The Commission also proposes to revoke MacDonalds' license on the basis of WAC 230-03-085(3) provides:

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: Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level[.]

10. The Commission also proposes to revoke MacDonalds' license on the basis of WAC 230-03-085(7), which provides:

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: 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[.]

11. The Commission also proposes to revoke MacDonalds' license on the basis of WAC 230-14-284(1) and (2), which provides:

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

- (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;

12. I conclude that the Commission proved by a preponderance of the evidence that MacDonalds violated RCW 9.46.075(1) because of MacDonalds' failure to comply with RCW 9.46.0325, which allows punchboard and pull-tab operations only "when

conducted pursuant to the provisions of this chapter and any rules and regulations adopted pursuant thereto.” MacDonalds was well aware of its reporting obligation. It had agreed to two NOVAS and three Settlement Agreements, all pertaining to the same reporting obligation. Mr. MacDonald, and others with the MacDonalds organization, had had conversations with Special Agent Mack and other Commission agents over the years in which the agents stressed again and again MacDonalds’ need to file the reports on time.

13. The Commission proved by a preponderance of the evidence that MacDonalds“ violated WAC 230-03-085(1), (3), and (7). By failing to file its first and second quarter 2012 report on time, (sub 1) MacDonalds committed an act that is grounds for revoking a license under RCW 9.46.075(1); (sub 3) Macdonalds demonstrated willful disregard for comply with statutes, administrative rules and the prior NOVAS and Settlement Orders; and (sub 7), MacDonalds failed to provide the Commission with information required under Commission rules within the time required.

14. MacDonalds has an affirmative responsibility to establish, by clear and convincing evidence, its continuing qualifications for licensure. RCW 9.46.153(1). MacDonalds holds a license issued pursuant to chapter 9.46 RCW, and is subject to continuous scrutiny regarding its general character, integrity and ability (through its owners and their employees and agents) to engage in or participate in, or associate with, gambling or related activities impacting this state. RCW 9.46.153(7). MacDonalds does not dispute the Commission’s testimony and evidence except with the regard to

MacDonalds' efforts to file the first and second quarter 2012 report on time, a dispute resolved above. MacDonald's failed to provide any testimony or evidence to prove not only that it really did fax the report on July 23, 2012, but also that it took steps to verify successful transmission of the report, since MacDonalds was on notice from the Commission with the two prior NOVAS and the three prior Settlement Agreements. Further, MacDonalds provided no evidence to show any steps taken by it to remedy its history of failing to file the reports on time. Considering that it paid at least \$1,000 for its failure to file timely, and probably lost money for the time its license was suspended under the Settlement Orders, the picture that comes through is of a licensee that simply does not care whether it complies with the law or not.

15. The Legislature clearly conveyed its intentions with regard to punchboard and pull-tab operations earlier in RCW 9.46.010 and in RCW 9.46.0325 by allowing those activities, but only when conducted pursuant to the other statutory provision in Chapter 9.46 RCW and in the administrative rules adopted by the Commission. MacDonalds shows a pattern of untimely reporting and failing to report to the Commission and, in doing so, its disregard of its statutory and administratively imposed reporting obligations.

16. The Legislature has declared that "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." RCW 9.46.010. With that in mind, the issue is whether the undersigned Administrative Law Judge should revoke

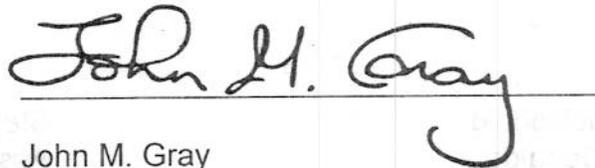
MacDonalds' punchboard and pull/tab license. WAC 230-17-137 contains the Commission's guidelines for imposing penalties in disciplinary actions. MacDonalds failure to comply with the statutory and administrative reporting requirements proves its unwillingness to comply with the statutes and administrative rules relating to gambling. The undersigned Administrative Law Judge has considered the factors in WAC 230-17-137 and finds these factors specifically to apply in MacDonalds case: subsections (a), (d)(i), (d)(ii), (e), and (i). The public welfare is at risk because the Legislature and the Commission rely on punchboard and pull-tab activity reports in order to make public policy regarding those activities. Unfiled reports diminish the ability to make sound public policy. MacDonalds was well aware of its obligation to file the reports timely due to the two NOVAS and the three Settlement Orders. MacDonalds' failure to file these reports timely is gross negligence on its part, given its history of late-filed reports and administrative actions instituted by the Commission on this topic. MacDonalds' cooperation with the Commission varied, depending on whether the contact with MacDonalds was with Mr. MacDonald or someone else. There is no evidence of MacDonalds' attempts, either "in house" or through its accountants, to cure the problem of late-filed reports, so to that extent, the undersigned Administrative Law Judge has also taken into account subsection (k). Considering all of the evidence and the factors in WAC 230-17-137, I conclude that, on the merits of the case, MacDonalds' punchboard and pull-tab license no. 05-10033, shall be revoked, effective on the entry of this Initial Order.

From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS ORDERED That MacDonald's punchboard and pull-tab license, no. 05-10033, is REVOKED.

DATED at Tacoma, Washington, this 20 day of March, 2013.



John M. Gray
Administrative Law Judge
Office of Administrative Hearings

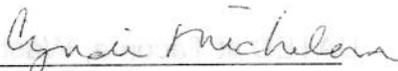
NOTICE TO THE PARTIES

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). "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 and Alternative Default Order** to the following parties, postage prepaid this 20 day of March 2013 at Tacoma, Washington.


Cyndi Michelena
Legal Secretary

Brent MacDonald
BC MacDonalds
PO Box 1612
Chelan, WA 98816

Stephanie U. Happold
Assistant Attorney General
Office of the Attorney General
PO Box 40100
Olympia, WA 98504-0100

Washington State Gambling
Commission
Communications and Legal Department
PO Box 42400
Olympia, WA 98504-2400