

~~RECEIVED
AUG 26 2013
GAMBLING COMMISSION
COMM & LEGAL DIVISION~~

Received
AUG 29 2013
Gambling Commission
STATE OF WASHINGTON
Comm. & Legal Division
GAMBLING COMMISSION

RECEIVED
AUG 14 2013
GAMBLING COMMISSION
COMM & LEGAL DIVISION

In the Matter of the Suspension or)
Revocation of the License to Conduct)
Gambling Activities of:)
)
Ducks Unlimited, Washington State)
Longview, Washington,)
)
Licensee.)
_____)

No. CR 2012-01780

SETTLEMENT ORDER

The Washington State Gambling Commission ("Commission") and Ducks Unlimited, Washington State ("Ducks Unlimited" or "Licensee") have entered into this Settlement Order to resolve administrative charges. Gregory J. Rosen, Assistant Attorney General, and Arlene Dennistoun, Staff Attorney, represent the Commission. Dave Wiley and Hunter Abell, Attorneys at Law, Williams Kastner, represents the Licensee.

I.

The Commission issued Ducks Unlimited, organization number 00-10345, the following license: Number 02-01973, authorizing Class "F" Raffle activity.

The license expires on February 25, 2014, and was issued subject to the Licensee's compliance with state gambling laws and rules.

II.

In the above-captioned case, the Commission issued a Notice of Administrative Charges and Opportunity for an Adjudicative Hearing on, February 22, 2013, seeking the suspension or revocation of Ducks Unlimited's license to conduct gambling activities. On March 11, 2013, Commission staff received the Licensee's request for a hearing. The following summary of facts and violations were alleged in the Notice of Administrative Charges:

SUMMARY:

Ducks Unlimited violated Commission rules, and a July 2012 Commission Settlement Order by failing to timely provide a list of its raffles 30 days prior to the start of each quarter, and by failing to:

- Keep required raffle records.
- Provide an audit trail to verify raffle funds were used for the organization's stated purpose.
- Keep gambling funds separate from other funds.
- Establish controls and accounting procedures to determine gross gambling receipts.

- Provide validated deposit receipts.
- Provide invoices for raffle prizes and raffle ticket purchases.
- Complete raffle records within 30 days of drawings.

VIOLATIONS:

1) RCW 9.46.075 Denial, suspension, or revocation of license

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.

(8) Fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter.

2) RCW 9.46.153 Applicants and licensees — Responsibilities and duties — Waiver of liability — Investigation statement as privileged

(1) 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.

3) WAC 230-03-085 Denying, suspending, or revoking an application, license

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.

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level.

(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.

(8) 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

demonstrated by: (a) Prior activities; or (b) Criminal record; or (c) Reputation; or (d) Habits; or (e) Associations.

On July 16, 2012, the Licensee agreed to a Settlement Order to resolve prior administrative charges (CR 2011-00453, issued on April 4, 2012). The Settlement Order provided a 15-day suspension, of which five days were deferred, on the condition the Licensee not violate the Settlement Order, or Washington's gambling statutes or regulations for one year. The Settlement Order provided that besides the consequences of new violations, the deferred sentence must also be served.

The Licensee served the remaining ten (10) days of the 15-day suspension from the July 2012 Settlement Order, and also agreed to reimburse the Commission for the costs of conducting a follow up inspection within thirty (30) days after receiving notice of the costs. On or about December 3, 2012, an agent found the following violations of the July 2012 Settlement Order:

1. The Settlement Order required the Licensee to provide Commission staff with a list of its gambling activities 30 days prior to the start of each quarter, and the Licensee failed to do so. The Licensee submitted its list for the fourth quarter of 2012 on October 14, 2012, which was 44 days late (the list was due on September 1, 2012).
2. The Settlement Order required the Licensee to prepare and retain all required raffle records for each event held, but the Licensee failed to keep required records for a raffle held on September 14, 2012. The Licensee also failed to keep required ticket distribution and merchandise inventory control logs. Because the records were incomplete, the agent could not determine gross receipts and prizes paid for the raffle.
3. The Settlement Order required the Licensee to follow all raffle rules, and the Licensee failed to do so. The Licensee failed to maintain records providing an audit trail to verify raffle funds were used for the organization's stated purpose (WAC 230-07-130), failed to establish controls and accounting procedures to ensure they protect all assets of the organization from misuse or embezzlement, failed to use gambling proceeds solely to advance the purpose of their organization (230-07-060), failed to provide validated deposit receipts, and failed to separate gambling funds from other funds (WAC 230-07-090).

The Licensee violated Commission rules, and terms of the July 2012 Settlement Order, and grounds exist to suspend Ducks Unlimited's license for five (5) days under terms of the July 2012 Settlement Order.

The Licensee has demonstrated willful disregard for complying with the same administrative rules addressed in the July 2012 Settlement Order, and failed to comply with other Commission rules. The Licensee 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 demonstrated by prior activities.

Grounds, therefore, exist to suspend or revoke the license issued to Ducks Unlimited under RCW 9.46.075 (1) and (8) and WAC 230-03-085 (1), (3), (7) and (8).

4) WAC 230-07-060 Independent management structure required.

(1) Charitable or nonprofit organizations and their officers or board of directors have an affirmative responsibility to conduct gambling activities according to the legislative intent in chapter 9.46 RCW.

(2) Organizations must develop and maintain an independent management control system that ensures they:

- (b) Supervise and operate gambling activities according to gambling laws and our rules; and
- (c) Protect all assets of the organization from misuse or embezzlement; and
- (d) Use gambling proceeds solely to advance the purposes of their organization.

The Licensee violated WAC 230-07-060, and the July 2012 Settlement Order, by failing to establish controls and accounting procedures to ensure they protect all assets of the organization from misuse or embezzlement, and to ensure gambling proceeds were used solely to advance the purpose of their organization. Grounds, therefore, exist to suspend or revoke the license issued to Ducks Unlimited under RCW 9.46.075 (1) and (8) and WAC 230-03-085 (1), (3), (7) and (8).

5) WAC 230-07-090 Keeping and depositing all gambling funds separate from other funds.

Charitable or nonprofit licensees must protect all funds generated from gambling activities and keep these funds separate from their general funds.

(1) Licensees must:

- (a) Keep a separate gambling receipts account(s) in a recognized Washington state bank, mutual savings bank, or credit union; and
- (b) Deposit only gambling receipts into that account. Licensees may deposit receipts from nongambling activities operated in conjunction with bingo games into the gambling receipts account if the licensee keeps detailed receipting records of the nongambling receipts; and
- (c) Deposit all gambling receipts first into the account before spending or transferring them into other accounts, except for prize pay outs; and
- (e) Make all deposits of net gambling receipts from each activity separately from all other deposits, and keep the validated deposit receipt as a part of their records. Deposit receipts are a part of the applicable daily or monthly records and licensees must make them available for our inspection; and

- (f) Deposit all net gambling receipts which they are holding, pending pay out:
- (ii) From raffles (Class E and above) and amusement games (Class D and above), at least once each week; and

The Licensee violated WAC 230-07-090, and the July 2012 Settlement Order, by failing to have a separate gambling receipts bank account(s) in the state to deposit raffle receipts, to retain validated deposit slips, and to deposit all net gambling receipts at least once each week. Grounds, therefore, exist to suspend or revoke the license issued to Ducks Unlimited under RCW 9.46.075 (1) and (8) and WAC 230-03-085 (1), (3), (7) and (8).

6) WAC 230-07-130 Additional recordkeeping for charitable or nonprofit licensees.

(1) Charitable or nonprofit licensees, except agricultural fairs, must maintain records which clearly show how the licensee used or disbursed the funds from each licensed activity. These records must provide an audit trail satisfactory for us to verify that the funds were used for the licensees' stated purpose(s). These records must include, at least, canceled checks for the disbursements.

(2) Charitable or nonprofit licensees must keep these records for three years from the end of the license year for which the record was created.

The licensee violated WAC 230-07-130, and the July 2012 Settlement Order, by failing to provide a satisfactory audit trail to verify funds were used for the organization's stated purpose. Invoices were not provided for raffle prizes and raffle ticket purchases, and raffle records were not completed within thirty days, and were not retained for three years. Grounds, therefore, exist to suspend or revoke the license issued to Ducks Unlimited under RCW 9.46.075 (1) and (8) and WAC 230-03-085 (1), (3), (7) and (8).

7) WAC 230-11-100 Recordkeeping requirements for Class E and F licensees and raffles using alternative drawing formats.

Licensees conducting Class E or Class F raffles or conducting raffles using alternative drawing formats must prepare a detailed record for each raffle they conduct. Licensees must:

- (1) Record all data required in the standard format we provide; and
- (2) Maintain the following:
 - (a) Validated deposit receipts for each deposit of raffle proceeds; and
 - (b) All winning tickets; and
 - (c) Name, address, and telephone number of all winners of a prize with a fair market value of more than fifty dollars; and
 - (e) All unsold tickets for individual raffles for which gross gambling receipts exceed five thousand dollars; and

(f) Invoices and other documentation recording the purchase or receipt of prizes; and

(g) Invoices and other documentation recording the purchase of tickets and other expenses of the raffle; and

(3) Complete all records no later than thirty days following the drawing.

The Licensee violated WAC 230-11-100, and the July 2012 Settlement Order, by failing to:

- Record raffle information in the standard format Commission staff provides.
- Keep validated deposit receipts for raffles.
- Keep all of the information required by the rule, including winning tickets, names, addresses and telephone numbers of all prize winners.
- Keep all unsold tickets, invoices and other documentation for the purchase or receipt of prizes or of tickets and other raffle expenses.

Additionally, the Licensee recorded winning raffle tickets that were outside of the range of numbered tickets sold. Grounds, therefore, exist to suspend or revoke the license issued to Ducks Unlimited under RCW 9.46.075 (1) and (8) and WAC 230-03-085 (1), (3), (7) and (8).

III.

The Licensee acknowledges that it received the Notice of Administrative Charges issued in this case, and understands the facts and violations it alleges. The Licensee enters into this Settlement Order to avoid further expense, inconvenience, uncertainty, and delay.

While not admitting to the facts and violations specified in the Notice of Administrative Charges, the Licensee agrees that if the Commission established the facts in the case at issue, there would be sufficient evidence of the violations as stated. Additionally, the Licensee and Commission agree that any provision of this Settlement Order is not appropriate for resolving issues in any other proceeding, except to the extent expressly set forth in this Settlement Order. In agreeing to such, the Licensee has knowingly waived its right to a hearing, based on the terms and conditions of this Settlement Order.

The Licensee has since established a bank account in Washington State as required by WAC 230-07-090, and further agrees to the following terms and sanctions:

- 1) The Licensee's designated Administrative Compliance Manager will perform the duties identified below, and must not rotate his or her duties with other individuals in the organization:
 - a. The Administrative Compliance Manager responsible for reviewing and inspecting raffle records must not participate in the Licensee's raffle activity.
 - b. The Administrative Compliance Manager will ensure deposits from raffle proceeds are timely deposited as required by WAC 230-07-090.

- c. The Administrative Compliance Manager must randomly inspect raffle records, invoices for prizes purchased, deposit records, and bank statements, and will conduct spontaneous inspections of such records to help ensure compliance with the Commission's record keeping requirements.
- d. The Administrative Compliance Manager must establish a regular schedule for auditing raffle records, invoices for prizes purchased, deposit records, and bank statements, which must be conducted at least quarterly. The audit of such records will be for raffles with gross receipts of \$5,000 or more.
- e. The Administrative Compliance Manager must complete a quarterly report, including records audited and associated findings, and will issue the report at the end of every quarter to Licensee Board members, and to Special Agents of the Commission.

2) The Licensee will distribute a copy of this Settlement Order for the next three (3) years, to every present and future Board Member from the State of Washington, all staff officers with oversight and responsibility obligations for the Licensee, the Raffle or Administrative Compliance Manager, and all "Record-Keeping Volunteers" conducting raffle events. For purposes of this Settlement Order, "Record-Keeping Volunteers" mean volunteers directly responsible for record-keeping compliance related to the Licensee's raffle records.

3) In order to help ensure compliance with raffle record keeping requirements of the Commission, the Licensee agrees to obtain signatures from Record-Keeping Volunteers conducting raffle activity, acknowledging he or she has reviewed and generally understands the Commission's raffle record keeping requirements contained in the Commission's training and record keeping packets, which are accessible online, or upon request to Gambling Commission staff, and which are also contained in the Licensee's Raffle Manual. These record keeping requirements include the Raffle Record Keeping Packet, Raffle Training Packet, Sample Raffle Ticket Training Spreadsheet, attached as Exhibits A, B, and C, respectively to this Settlement Order. The Licensee must retain its Record-Keeping Volunteers' signatures acknowledging review and understanding of raffle record keeping requirements for at least two (2) years, and provide copies of such to the Commission's Special Agent(s) upon request within three (3) business days of such request.

4) The Licensee's gambling license is suspended for a period of **twenty (20) days**, provided that:

- a) **Five (5) days** of the suspension shall not be currently served, but shall be deferred for one year, subject to the following: The Licensee agrees not to violate the terms of this Settlement Order, or any of Washington's gambling statutes or regulations during the deferral period.
- b) If the Licensee materially violates this Settlement Order or gambling statutes or regulations, and if the violation is the type that warrants the filing of administrative or criminal charges, then the Director may impose the five-day deferred suspension of the

current gambling license and any subsequently acquired gambling licenses issued to this Licensee.

- c) The parties agree that the Director of the Commission, pursuant to this agreement, has discretion to determine whether the Licensee has violated any term of this agreement. In the event the Director determines that a material violation of this agreement has occurred, he may suspend the license(s) issued to the Licensee for up to five (5) days, by mailing or delivering a Notice of Order of Administrative Charges to the Licensee. In addition to the consequences of the new violation, the deferred sentence shall also be served. The Licensee shall be afforded the opportunity to have an Adjudicative Proceeding, which includes a hearing on the alleged violations.

5) **The Licensee has chosen to serve thirteen (13) days of the suspension.** In addition to the 13-day suspension, the Licensee will serve two (2) days of the previously deferred suspension based on the Licensee's Settlement Order violation.

- a) The suspension period begins at 8:00 a.m. on October 27, 2013, and ends at 8:00 a.m. on November 11, 2013.
- b) During this period of suspension, the Licensee must not conduct raffle, or any other gambling activity in Washington State.
- c) The Licensee may resume its gambling activities at 8:00 a.m. on November 11, 2013.

6) Under RCW 9.46.077, the Licensee has chosen to vacate the **remaining two (2) days** of the suspension by paying a fine in the amount of **one thousand and fifty-eight dollars (\$1,058)**, which represents 50 percent of the Licensee's gross gambling receipts as reported to the Commission. The Licensee also agrees to reimburse the Commission for its investigative and administrative costs of **eight thousand, five hundred and thirty-four dollars (\$8,534)**. The total penalty of **nine thousand, five hundred and ninety-two dollars (\$9,592)** is due by **August 14, 2013**.

7) For the next year, the Licensee must provide a list to Commission Special Agents, of its raffles held in Washington State, thirty days prior to the start of each quarter. The list should include, but not be limited to:

- i. A list of all licensed raffle events, including the date, place and time of the event;
- ii. A contact person for each event; and
- iii. A contact phone number.

8) **The final list of Washington State raffles provided to Commission Special Agents is due on September 1, 2014. The list must be sent to:**

Washington State Gambling Commission
3501 Colby Avenue, Suite 102
Everett, WA 98201.

9) The Licensee must reimburse the Commission for the costs incurred in conducting a follow up inspection of the Licensee within thirty (30) days after receiving notice of the costs of such inspection. The inspection shall be made six (6) months after the entry of this Order; this will allow the Licensee additional time to ensure that it is complying with state gambling laws and rules. The costs of such inspection will not exceed eight (8) hours, and will be billed at the Commission's current hourly rate assigned to Special Agents.

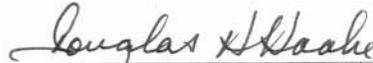
10) **The signed Settlement Order must be received by Commission staff by August 14, 2013,** and mailed to Commission Headquarters at the following address:

Washington State Gambling Commission
Attention: Communications and Legal Division
P.O. Box 42400
Olympia, WA 98504-2400

or delivered (in person or via private courier) to the following address:

Attention: Communications and Legal Division – Fines
4565 7th Avenue SE; Third Floor
Lacey, WA 98503

DATED this 21 day of August, 2013.

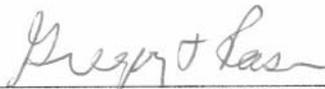

Administrative Law Judge

APPROVED FOR ENTRY:

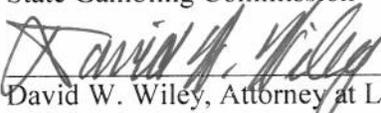
APPROVED AS TO FORM:

By signing this Settlement Order, the Licensee acknowledges and understands the terms and conditions contained in it.

 Date 8-9-13
Leland Hutchins, Highest Ranking Member,
Ducks Unlimited, Washington State


Gregory J. Rosen, WSBA #15870
Assistant Attorney General,
Representing the Washington
State Gambling Commission


Arlene K. Dennistoun, WSBA #26792
Staff Attorney, 28760
Washington State Gambling Commission


David W. Wiley, Attorney at Law, WSBA# 8614
Williams Kastner, Representing the
Licensee