

Received

JUN 13 2014

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE GAMBLING COMMISSION

Gambling Commission
Comm. & Legal Division

In the Matter of:

MELONY'S VILLAGE CORP.
dba OLD VILLAGE PUB,

Licensee.

OAH Docket No. 2013-GMB-0061

Agency No. CR 2013-00478

**CORRECTED INITIAL ORDER
REVOKING GAMBLING LICENSE**

I. ISSUES PRESENTED

1.1 Whether the conduct of Licensee Melony's Village Corp. constituted a basis for the Washington State Gambling Commission to revoke its gambling license for Class D Punch Board/Pull Tab Activity, License No. 05-20794.

1.2 If so, whether the Licensee nevertheless has proven by clear and convincing evidence that it is qualified to hold its license.

II. ORDER SUMMARY

2.1 MVC's conduct did constitute a basis for the Washington State Gambling Commission to revoke its gambling license for Class D Punch Board/Pull Tab Activity, License No. 05-20794.

2.2 MVC failed to prove by clear and convincing evidence that it is qualified to hold its license.

2.3 MVC's gambling license for Class D Punch Board/Pull Tab Activity, License No. 05-20794, is REVOKED.

III. HEARING

3.1 **Hearing Date:** April 16, 2014

3.2 **Administrative Law Judge:** Joshua D. Sundt

3.3 **Licensee:** Melony's Village Corp., formerly doing business as Old Village Pub, through its president, Melony Halenbeck

3.4 **Agency:** Washington State Gambling Commission

3.4.1 **Representative:** Gregory J. Rosen, Assistant Attorney General

3.4.2 **Witnesses:** Special Agent Stephanie Sherwood, Washington State Gambling Commission; Cameron Baker, Research Analyst with the Washington State Gambling Commission; Special Agent Dan Frey, Washington State Gambling Commission; and Kimberly Demmert, City of Lynnwood Finance Director

3.5 **Exhibits:** Exhibits D1 through D32 were admitted into the record, except pages 3 and 4 of Exhibit D19, and pages 3 through 7 of Exhibit D20, which were stricken and not admitted.

3.6 **Motions:** At the time of hearing, the Commission moved to amend its *Second Amended Notice of Administrative Charges and Opportunity for an adjudicative Proceeding*, dated March 21, 2014, as follows:

- a) On page 2, first sentence, amending "February 7, 2012" to read "February 27, 2012."
- b) On page 7, striking the allegation that "Old Village Pub failed to retain unsold pull-tabs for two months following the last day of the month the game was pulled," in violation of WAC 230-14-265(4)(b)(i).

The motion was granted without objection from the Licensee. The Commission clarified that it was requesting amendment only as to the alleged violation of WAC 230-14-265(4)(b)(i) and did not intend to strike any language referring to the separate alleged violation of WAC 230-14-265(4)(b)(ii), also relating to a pull-tab retention period.

IV. FINDINGS OF FACT

Jurisdiction

4.1 On June 10, 2013, the Washington State Gambling Commission (Commission) issued a Notice of Administrative Charges and Opportunity for an

Adjudicative Proceeding (Notice of Charges) to Melony's Village Corp. (MVC) seeking to revoke its gambling license for Class D Punch Board/Pull Tab Activity, License No. 05-20794.

4.2 The Notice of Charges was served by mailing it to MVC on June 10, 2013 by both regular and certified mail.

4.3 On August 29, 2013, the Commission issued an Amended Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding (Amended Notice of Charges) to Melony's Village Corp. MVC, still seeking revocation of License No. 05-20794.

4.4 The Amended Notice of Charges was served by mailing it to MVC on August 29, 2013, by both regular and certified mail.

4.5 MVC filed its request for hearing on September 17, 2013.

4.6 On March 21, 2014, the Commission issued a Second Amended Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding (Second Amended Notice of Charges) to Melony's Village Corp. MVC, still seeking revocation of License No. 05-20794.

4.7 The Second Amended Notice of Charges was served by mailing it to MVC on March 21, 2014, by both regular and certified mail.

MVC's Gambling License

4.8 MVC held a Class D Punch Board/Pull Tab Activity License, No. 05-20794, issued by the Commission, from March 6, 2009 until December 31, 2013, when the license expired. Exhibit 1, pages 1 and 3. Generally, the license authorized MVC to sell pull-tabs and/or operate a punch board, subject to MVC's compliance with state gambling laws and the Commission's administrative regulations.

Failure to Submit Quarterly Activity Reports

4.9 MVC did not submit to the Commission the required Quarterly Activity Report (QAR) covering the first and second quarters of 2010, or the QAR covering the first and second quarters of 2012. The parties' testimony on this

point differed materially. After consideration of the available evidence, including the witnesses' demeanor and logical persuasiveness, I find the Commission's version of events more credible on this point. MVC's president, Melony Halenbeck, conceded that she was late in filing both the QARs at issue here, but maintained that she had ultimately filed them. However, Ms. Halenbeck did not provide any documentation to support her assertion. Instead, Ms. Halenbeck explained that she had lost the documentation in a May 2012 house fire that destroyed her records. This statement conflicted with Ms. Halenbeck's later testimony that she filed both required QARs at the same time, in 2012. Since the 2012 QAR is to be filed in reference to activity during the first two quarters of 2012—that is, January 1 through June 30, 2012—Ms. Halenbeck essentially admitted she did not file the two QARs until after the May 2012 house fire. In fact, because she conceded she filed both reports late, the earliest she would have filed the 2012 QAR would have been after the July 31, 2012 filing deadline, well after the house fire. Therefore, I find Ms. Halenbeck's explanation not credible, as to why she could not submit documentation to support her assertion. The Commission, by contrast, provided a witness who testified credibly that he searched the Commission's business records and did not locate the two QARs at issue. Furthermore, the Commission provided documentary evidence to show that it issued MVC a Notice of Violation and Settlement (NOVAS) for \$500 on September 26, 2012, regarding the failure to file the QAR for the first and second quarters of 2012. Exhibit 4. Moreover, as of April 2013, the Commission was still requesting that MVC file the two QARs at issue. Exhibit 2, page 22. If Ms. Halenbeck believed that she had already submitted the requested reports, she could have stated so to the Commission. There is no evidence showing that she ever did.

Failure to Timely Provide Updated Lease Information

4.10 On April 1, 2013, Special Agent Stephanie Sherwood sent Ms. Halenbeck an email requesting state and federal tax lien information and an updated copy of the business's premises lease agreement. Exhibit 2, page 22. When she did not hear back from Ms. Halenbeck, Agent Sherwood called her on April 5, 2013, to again request the information. Ms. Halenbeck finally sent the updated lease information to the Commission, via fax, on November 21, 2013, more than seven months after Agent Sherwood had requested it. The parties' testimony on this point differed in material respects. Ms. Halenbeck asserted that she had provided the updated lease to the Commission within 60 days of Agent

Sherwood's request. However, Ms. Halenbeck did not provide any documentation to support her testimony. While Ms. Halenbeck may have made efforts to fax the updated lease information earlier than November 21, 2013, there is no evidence to suggest that she did anything to document the transmittal or confirm that it was received by the Commission. In addition, Ms. Halenbeck's memory on this point was not good. She could neither remember the year she sent the updated lease information nor the method by which she sent it. Consequently, I find the Commission's testimony and other evidence on this point more credible than the Licensee's.

Failure to Provide Federal Tax Lien Information

4.11 In March and April 2013, Agent Sherwood requested information from Ms. Halenbeck on a federal tax lien filed against the business on November 8, 2011. Agent Sherwood made her request both verbally and in writing. See Exhibit 2, pages 22 through 26. As of the date of hearing, MVC had not provided the requested information regarding the federal tax lien.

Failure to Pay Gambling Taxes Due to City of Lynnwood

4.12 MVC has failed to pay the gambling taxes it owes to the City of Lynnwood for some or all of the period from the fourth quarter of 2012 through the first quarter of 2014. Although MVC disputes the exact amount owing, it does not dispute that it has failed to pay at least some gambling taxes which are due. While the City of Lynnwood Finance Director, Kimberly Demmert, testified that MVC owed \$15,441.25 in gambling taxes as of the date of hearing, Ms. Halenbeck countered by testifying that the amount owing was less than \$10,000. Because the exact outstanding balance is immaterial to this matter, I decline to make a finding as to the amount owing. By affidavit dated February 12, 2014, the City of Lynnwood petitioned the Commission to take action against MVC. Exhibit 17.

Failure to Timely Award Pull-Tab Prizes

4.13 During November 2013, MVC failed to award at least \$500 in pull-tab prizes to a player until days after he won them.

//
//

Failure to Properly Prepare Monthly Income Summaries

4.14 During much of the period of the Commission's investigation, which focused primarily on pull-tab game operations in 2013 and 2014, MVC consistently underreported its gross receipts from pull-tabs and prizes paid. MVC underreported gross receipts by \$6,519.50 and prizes paid by \$2,824.00. See Exhibit 21.

4.15 For multiple pull-tab games operated in 2013, MVC failed to record the "removed from play" date accurately on its monthly income summaries, using the "weigh out" date instead, which was often well after the game was removed from play. Special Agent Dan Frey spoke with Ms. Halenbeck in August 2013, to inform her that she needed to enter the "removed from play" date as the date the game was actually removed from play, not the later date the game was weighed. Despite this direction, MVC continued to record the removed from play date incorrectly.

4.16 11 of the pull-tab games that MVC had in play in November of 2013 were not accounted for on any monthly income summary, despite having been purchased in April 2013.

Failure to Retain Flare and Winning Tabs

4.17 MVC had at least 11 pull-tab games which were in play after Agent Frey's visit on August 12, 2013, and for which MVC did not retain the flare and winning pull-tabs over \$20.00 for the required three-month period. Exhibit 21, page 8; Exhibit 28.

Selling Pull-Tabs While Unlicensed

4.18 Despite the fact that MVC's gambling license expired on December 31, 2013, MVC continued to operate pull-tab games and sell pull-tabs until January 13, 2014.

//
//
//
//

V. CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, I make the following conclusions of law:

Jurisdiction

5.1 I have jurisdiction over the persons and subject matter herein pursuant to RCW 9.46.140, RCW 34.05.413, RCW 34.12.030(1), and WAC 230-17-025.

The Commission's Revocation Authority

5.2 The Commission may suspend or revoke any license or permit issued by it for any reason or reasons it deems to be in the public interest, including failure to comply with Washington state gambling laws. RCW 9.46.075(1); WAC 230-03-085(1).

5.3 More specifically, the regulation provides that the Commission may revoke a gambling license where the licensee has "demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level." WAC 230-03-085(3).

5.4 The Commission may revoke a gambling license if 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 or criminal record." WAC 230-03-085(8)(a) and (b).

5.5 The Commission may revoke a gambling license if the licensee "fails to prove, by clear and convincing evidence, that he . . . is qualified in accordance with the provisions of this chapter." RCW 9.46.075(8); *see also* RCW 9.46.153(1).

Specific Violations

5.6 Under WAC 230-14-284(1)(a), (b) and (2), punch board and pull-tab licensees must submit activity reports to the Commission covering the periods from January 1 through June 30 and July 1 through December 31, no later than 30 days after the end of each semi-annual reporting period. Because MVC never

submitted the required quarterly activity reports for the periods of January 1 through June 30, 2010 and January 1 through June 30, 2012, MVC violated the Commission's rule regarding submission of quarterly activity reports. WAC 230-03-085(7) provides in relevant part that the Commission may suspend or revoke a gambling license when the licensee fails to provide the Commission with any information required under the Commission's rules within the time required.

5.7 WAC 230-06-080 states that changes to information submitted with the license application—including written contracts and agreements which relate to gambling activities—must be reported to the Commission within 30 days of the change. Any associated new or updated documents must be submitted to the Commission within 30 days of the change. WAC 230-03-085(7) provides that, if the Commission requests from a licensee any information which is required by rule, that information or documentation must be submitted within the time required, or, if the rule establishes no time limit, within 30 days after receiving a written request from the Commission. In this case, MVC failed to supply its updated premises lease agreement within 30 days after the request by the Commission, and therefore violated WAC 230-06-080 and WAC 230-03-085(7).

5.8 WAC 230-06-090(2)(c) requires licensees to report to the Commission within 30 days all civil and administrative actions filed against the business organization, or any person holding a substantial interest in the business organization, including tax liens. Although the Commission did not submit documentary proof of a federal tax lien, Ms. Halenbeck did not dispute that MVC was subject to a federal tax lien, or dispute that MVC did not provide documentation of the federal tax lien to the Commission in a timely manner. MVC violated WAC 230-06-090(2)(c) by its failure to provide documentation of the federal tax lien within 30 days after request by the Commission.

5.9 WAC 230-03-085(4) provides that it is grounds for suspension or revocation of a gambling license when a licensee has failed to pay gambling taxes to a local taxing authority and that local taxing authority has petitioned the Commission to take action. MVC is subject to suspension or revocation under WAC 230-03-085(4) because MVC failed to pay local gambling taxes due and the City of Lynnwood petitioned the Commission to take action.

5.10 WAC 230-14-100(1) states in relevant part that, after receiving a winning pull-tab, operators must immediately delete all reference to the prize from the

flare, and then pay or deliver the prize to the winner. MVC's failure to immediately pay prizes of \$500.00 violated WAC 230-14-100(1) and was an unfair practice.

5.11 WAC 230-14-285(1) requires licensees to prepare a detailed monthly income summary for pull-tab series removed from play in the format required by the Commission either manually or electronically. Because it repeatedly failed to record games as "removed from play" in a timely fashion, MVC's failed to provide accurate monthly detailed income summaries to the Commission, thereby violating WAC 230-14-285(1).

5.12 WAC 230-14-265(1) and (4)(b)(ii) requires licensed operators to retain the flare and the winning tabs over \$20.00 for three months after the corresponding pull-tab series is removed from play. Because, as of November 12, 2013, MVC had failed to retain the flare and winning tabs over \$20.00 for at least 11 pull-tab games, it violated WAC 230-14-265(1) and (4)(b)(ii).

5.13 RCW 9.46.160 makes it illegal to conduct regulated gambling activities without a license. By continuing to operate pull-tab games after the expiration of its gambling license, MVC violated RCW 9.46.160.

License Revocation Is Proper

5.14 In this case, MVC has demonstrated repeated and willful disregard for complying with state statutes and Commission rules, which is a basis for revocation under WAC 230-03-085(3). I conclude that continued licensure of MVC would violate the public interest and pose a threat to the effective regulation of gambling in the state of Washington. Therefore, the Commission has established a sufficient basis for revocation of MVC's gambling license. Moreover, MVC has failed to prove by clear and convincing evidence that it is qualified to be licensed. Thus, MVC's gambling license should be revoked.

//
//
//
//
//
//

VI. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

Melony's Village Corp.'s gambling license for Class D Punch Board/Pull Tab Activity, License No. 05-20794, is **REVOKED**.

Signed and Issued at Tacoma, Washington, on the date of mailing:



Joshua D. Sundt
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS

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 the Washington State Gambling Commission 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 the Washington State Gambling

Commission 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 the Washington State Gambling Commission within ten days of the date the petition for review was filed with the Washington State Gambling Commission. WAC 230-17-090(5).

Copies of the petition or 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 the Washington State Gambling Commission receives 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).

CERTIFICATE OF MAILING IS ATTACHED

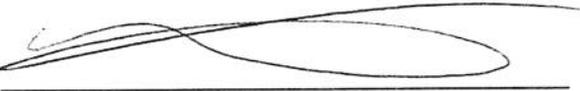
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 2013-GMB-0061

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Melony Halenbeck Old Village Pub 22908 – 41st Place West Mountlake Terrace, WA 98043	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt
Gregory J. Rosen Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia, WA 98504	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt
Maureen Pretell Washington State Gambling Commission Attn: Legal Department PO Box 42400 Lacey, WA 98504	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> First Class, postage prepaid, Certified mail, return receipt

Date: June 11, 2014

OFFICE OF ADMINISTRATIVE HEARINGS

By: 

Melanie Barnhill