

STATE OF WASHINGTON  
GAMBLING COMMISSION

In the Matter of the Summary Suspension of the	)	NO. CR 2013-01865
Licenses to Operate Gambling Activities of:	)	
	)	<b>FINDINGS OF FACT,</b>
Shay's Restaurant	)	<b>CONCLUSIONS OF LAW,</b>
Shoreline, Washington,	)	<b>AND ORDER OF SUMMARY</b>
	)	<b>SUSPENSION OF</b>
Licensee.	)	<b>LICENSES</b>

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RCW 9.46.070(17) authorizes the Washington State Gambling Commission (Commission) to summarily suspend<sup>1</sup> a license, subject to final action by the Commission. The Director has reviewed this Order of Summary Suspension and has issued it for service.

This order takes effect when served on the licensee, its representative, or its agent. A Commission Special Agent shall seize Shay's Restaurant's licenses and it must immediately stop operating gambling activities.

**FINDINGS OF FACT**

I.

David Trujillo is Director of the Washington State Gambling Commission and issues this order. Jurisdiction of this proceeding is based on chapter 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, Title 230 WAC.

II.

The Washington State Gambling Commission issued Shay's Restaurant, located at 15744 Aurora Ave N., Shoreline, organization number 00-13173, the following licenses:

Number 53-02107, authorizing Class "A" Commercial Amusement Game activity; and  
Number 05-07286, authorizing Class "B" Punchboard Pull-Tab activity.

The licenses expire on December 31, 2014, and were issued subject to the licensee's compliance with state gambling laws and regulations.

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<sup>1</sup>WAC 230-17-165 defines summary suspension as immediately taking a license or permit from a person or organization which prevents them from operating or conducting gambling activities.

### III.

After a thorough review of the report by a Commission Special Agent about the facts in this matter, the Director accepts the report as true and has determined the summary suspension is necessary.

### IV.

#### **SUMMARY:**

For at least the period of July 2012 through June 2013, Terry Pecha, owner of Shay's Restaurant, intentionally and deliberately submitted inaccurate gambling records to the Gambling Commission on the Quarterly Activity Reports (QAR) and to the City of Shoreline on the For-Profit Gambling Tax Return Form, under-reporting gross gambling receipts by more than \$150,000.

#### **FACTS:**

- 1) On September 30, 2013, a Washington State Gambling Commission Special Agent (agent) went to Shay's Restaurant (Shay's) to conduct a pull-tab compliance inspection. During the inspection, the agent reviewed the licensee's monthly income summaries from April to June 2013.<sup>2</sup> The agent added together each month's gross gambling receipts and prizes paid. Next, the agent compared the amounts reported on the monthly income summaries to the licensee's 2<sup>nd</sup> quarter 2013 Quarterly Activity Report (QAR), which is a report licensee's must submit to the Commission. The agent determined that the gross gambling receipts on the QAR were under-reported by at least \$50,320.50. The agent also determined that the prizes paid on the QAR were under-reported by at least \$38,392. In addition, the records indicated that the cash over/short on the monthly records was also significantly inaccurate. Mr. Pecha, owner of Shay's, under-reported the cash over/short for the second quarter of 2013, by at least \$1,932.75.
- 2) The agent requested monthly income summaries for January to March 2013, to review in further detail. While reviewing the records the agent determined there were multiple discrepancies and requested to see Mr. Pecha's monthly records for 2011 and 2012. Mr. Pecha told the agent that he did not have any additional records; WAC 230-06-070 requires licensees to maintain three year's worth of gambling records. The agent asked why he did not have additional records. Mr. Pecha said that the records were taken to the garbage dump after the restaurant had been broken into and the records had been destroyed. The agent asked if he had a police report that would help verify that they had been the victims of a break in. Mr. Pecha said he never reported it to the police. The agent asked if he reported the crime to his insurance company; he said he had not.

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<sup>2</sup> Monthly Income Summary- After a pull-tab game is removed from play, pull-tab operators must record all sales associated with the pull-tab game on this record. Pull-tab operators must complete this record in the format the Commission requires.

- 3) The agent added up each monthly income summary and compared the total gross receipts to the QAR submitted to the Commission and the gambling tax returns submitted to the local taxing authority, which was the City of Shoreline. The agent determined the QAR and gambling tax returns were inaccurate.
- 4) The agent showed Mr. Pecha the monthly income summaries and the QAR he submitted for the 1<sup>st</sup> and 2<sup>nd</sup> quarters of 2013.<sup>3</sup> The agent asked him why there was such a large discrepancy between what was listed on the monthly records and what was reported on his QAR. Mr. Pecha said he didn't know what happened. The agent asked him why the gross receipts for the 2<sup>nd</sup> quarter of 2013 were under-reported by over \$50,000. Mr. Pecha became flustered and told the agent he is really bad with a calculator. He said, "I added them up, but I guess I'm not very good at it. Maybe you can provide some training on how to complete the forms."
- 5) On October 2, 2013, the agent received an e-mail from Mr. Pecha stating that he had looked through his back office and had located some of the missing records. On October 3, 2013, the agent met with Mr. Pecha at Shay's Restaurant to pick up the additional monthly income summaries for July, August, October, November, and December of 2012. The agent compared the monthly records for the 3<sup>rd</sup> and 4<sup>th</sup> quarter of 2012 to what was reported on their QAR.
- 6) On October 3, 2013, the agent contacted the City of Shoreline to see if Shay's Restaurant was behind on their gambling taxes. The agent spoke with Rick Kirkwood, Budget Analyst for the City of Shoreline. Mr. Kirkwood told the agent that Mr. Pecha signed a promissory note and entered into an agreement with the City in December 2012. Mr. Kirkwood told the agent the initial promissory note was in the amount of \$53,023. According to Mr. Kirkwood, as of October 3, 2013, Mr. Pecha still owed the city \$46,075. Mr. Kirkwood sent the agent a copy of the gambling tax returns submitted by Mr. Pecha for the 4<sup>th</sup> quarter of 2013 and the 1<sup>st</sup> and 2<sup>nd</sup> quarter of 2013. Mr. Kirkwood told the agent the City of Shoreline sent Mr. Pecha a certified letter on January 7, 2013, which summarized his delinquent tax situation:
  - The letter mentions that Shay's has been delinquent on their taxes to the City of Shoreline since the 4<sup>th</sup> quarter of 2003. According to the letter, the City sent a letter to Mr. Pecha in February of 2007 explaining how a tax lien for delinquent gambling tax debt in the amount \$35,482 was being established.
  - The letter also mentions an earlier letter sent to Mr. Pecha in January of 2011, requesting that a payment plan be established in lieu of further collections action for delinquent gambling debt for the 3<sup>rd</sup> quarter 2006 through the 2<sup>nd</sup> quarter 2010, in the amount of \$6,508.

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<sup>3</sup> The Quarterly Activity Report covers a reporting period of two quarters.

- An informal payment plan was agreed upon for Shay's Restaurant to make regular payments of \$350 each.
  - According to the letter, as of February 2011, the City only received seven payments of \$350 each, totaling \$2,450.
  - Finally, the letter discusses how the City provided Mr. Pecha with a copy of the City's revised policy and procedure pertaining to the collection of gambling tax debt. Due to the irregular timing of the payments received since February 2011, and the substantial amount of delinquent gambling tax debt, the City requested Shay's execute a promissory note.
- 7) On November 8, 2013, a Special Agent Supervisor (SAS) and the agent interviewed Mr. Pecha at Shay's Restaurant. The agent asked Mr. Pecha to explain how he came up with the numbers for the gambling QAR. Mr. Pecha said he added up the pages on the monthly records and used those numbers to complete the QAR. The SAS told Mr. Pecha it was hard to believe he actually added up the monthly records considering the significant discrepancies.
  - 8) Mr. Pecha admitted owing back taxes in the amount of approximately \$46,000, and he confirmed that he is making monthly payments to the City. He also said he owes the Internal Revenue Service (IRS) approximately \$95,000 in back taxes.
  - 9) Mr. Pecha admitted to submitting inaccurate records. He admitted that he was feeling pressure to get his back taxes paid to the City so he made up the numbers on the QAR to reflect a much lower gross income than the restaurant actually made. He said he began to alter the numbers after the smoking ban went into effect in Washington State (December 8, 2005). He said between the road construction that was directly outside of his business and the smoking ban, it significantly lowered the sale of pull-tabs at his restaurant. He felt pressure to keep the business open. He apologized on multiple occasions, saying he was sorry for what he did.
  - 10) Mr. Pecha provided a written confession. He admitted that he was not accurately reporting gross gambling receipts because he was trying to submit lower monthly gross totals. He admitted that he knew records needed to be kept for at least three years. Mr. Pecha described how someone broke into his restaurant and during the clean up, the records were consequently thrown away. He admitted that he made up the numbers he reported on the QAR and on the tax documents, he sent to the City of Shoreline.
  - 11) On November 14, 2013, the agent called Mr. Kirkwood to follow up with him about the status of the case. The agent told Mr. Kirkwood she was able to prove Mr. Pecha had inaccurately reported his QAR and City of Shoreline tax returns between July 2012 and June 2013. The agent told him she was able to prove that Mr. Pecha under-reported receipts by \$155,551.25.

The agent asked Mr. Kirkwood if the City of Shoreline wanted to be listed as a victim in the case so they could attempt to recover 5% of the under-reported taxes. Mr. Kirkwood confirmed that the City would like to receive money for the under-reported taxes.

12) This case was sent to the King County Prosecutor's Office.

## CONCLUSIONS OF LAW

### I.

1) **RCW 9.46.070** provides that the Commission shall have the following powers and duties: The Commission may authorize the Director to temporarily suspend licenses subject to final action by the Commission.

2) **WAC 230-17-165(2)** provides that the Commission delegates its authority to the Director to summarily suspend any license if the Director determines that a licensee has performed one or more of the actions identified in RCW 9.46.075 as posing a threat to public health, safety, or welfare.

3) **WAC 230-17-165(3)** The Commission deems the following actions of a licensee constitute an immediate danger to the public safety and welfare:  
(The following subsections apply.)

(a) Failing or refusing to comply with the provisions, requirements, conditions, limitations, or duties imposed by chapter 9.46 RCW or any rules adopted by the Commission;

(h) Making a misrepresentation of, or failure to disclose, a material fact to the commission;

(i) Having pursued or 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.

From at least July 2012 to June 2013, Terry Pecha, owner of Shay's Restaurant, intentionally and deliberately submitted inaccurate QARs and gambling tax returns for Shay's Restaurant by under-reporting at least \$155,551.25 in gross gambling receipts. Mr. Pecha's actions constitute an immediate danger to public safety and welfare based on WAC 230-17-165(2), (3) (a), (h) and (i), and are a basis for Shay's Restaurant to immediately stop conducting gambling activities.

4) **RCW 9.46.075 Denial, suspension, or revocation of certification, application, 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.

(7) Makes a misrepresentation of, or fails to disclose, a material fact to the commission;

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

(10) 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;

**5) WAC 230-03-085 Denying, suspending, or revoking an application, license or permit**

We may deny, suspend, or revoke any application, license or permit, when the applicant, certified employee, or anyone holding a substantial interest in the applicant's or certified employee'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; or

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

(4) Has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned us to take action; or

(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

**6) RCW 9.46.170 False or misleading entries or statements, refusal to produce records.**

Whoever, in any application for a license or in any book or record required to be maintained by the commission or in any report required to be submitted to the commission, shall make any false

or misleading statement, or make any false or misleading entry or wilfully fail to maintain or make any entry required to be maintained or made, or who wilfully refuses to produce for inspection by the commission, or its designee, any book, record, or document required to be maintained or made by federal or state law, shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021.

**7) RCW 9.46.190 Violations relating to fraud or deceit.**

Any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation:

(The following subsections apply.)

- (1) Employ any device, scheme, or artifice to defraud; or
- (2) Make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made not misleading, in the light of the circumstances under which said statement is made; or
- (3) Engage in any act, practice or course of operation as would operate as a fraud or deceit upon any person;

Shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021.

**8) WAC 230-06-070 Keep monthly records.**

Every person or organization licensed to operate any gambling activity must maintain permanent monthly records of all financial transactions directly or indirectly related to gambling activities. The licensee must include all financial transactions in enough detail to prove compliance with recordkeeping requirements for the specific gambling activity.

(The following subsection applies.)

- (5) Licensees must maintain each of these records for at least three years from the end of the fiscal year.

For at least July 2012 to June 2013, Terry Pecha, owner of Shay's Restaurant, intentionally and deliberately submitted inaccurate QARs and gambling tax returns for Shay's Restaurant by under-reporting at least \$155,551.25 in gross gambling receipts, in violation of RCW 9.46.170 and RCW 9.46.190. The licensee also failed to maintain monthly gambling records for three years, in violation of WAC 230-06-070. As a result, there are grounds to revoke Shay's Restaurant's licenses based on RCW 9.46.075(1), (7), (8), and (10), and WAC 230-03-085(1), (3), (4), and (8).

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II.

The licensee's actions are an immediate danger to public safety and welfare, and it has failed to comply with chapter 9.46 RCW, Commission rules. The immediate suspension of Shay's Restaurant gambling activity is required to protect public safety and welfare.

**ORDER**

Based on the FINDINGS OF FACT AND CONCLUSIONS OF LAW and the Director's authority under RCW 34.05.422, RCW 9.46.070(17), and WAC 230-17-165, the Director orders that Shay's Restaurant's licenses are summarily suspended, pending a formal hearing by an Administrative Law Judge.

**STATEMENT OF RIGHTS**

(1) **You may ask for a stay of this Order.** To do so, you must complete and return to the Commission the enclosed Application for Stay Hearing form within fifteen (15) days from the date you receive this Order. If the Commission receives a timely request, we will hold a hearing within seven (7) days as required by WAC 230-17-170(3). The stay hearing will determine if your suspension should continue, or whether the suspension may be modified.

At the stay hearing, you will have to prove by clear and convincing evidence that:

- (a) You will likely win at hearing; and
- (b) If your suspension continues, you will suffer serious injury. Under this section, loss of income from licensed activities is not considered serious injury; and
- (c) Removing the immediate suspension will not hurt others in this case; and
- (d) The threat to the public safety or welfare does not justify continuing the suspension, or that modifying the suspension will adequately protect the public.

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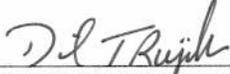
(2) **You also have a right to a hearing on the revocation of your license.** To do so, you must complete and return to the Commission the enclosed Application for Hearing form within twenty (20) days from the date you receive this order. If you do NOT request a hearing, we will enter an Order of Default revoking your licenses under RCW 34.05.440.

If you have any questions regarding the rights stated above, please contact Paralegal Jennifer Stretch, at (360) 486-3465 or 1-800-345-2529, extension 3465.

IV.

I have read this Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding, know the contents of it, believe it to be true, and have executed this Notice in my capacity as Director of the Washington State Gambling Commission.

Dated December 30, 2013

  
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DAVID TRUJILLO, DIRECTOR