

MAY 03 2017

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

GOVERNMENT COMPLIANCE
& ENFORCEMENT

In The Matter Of:

Docket No. 10-2016-GMB-00012

OANH HUYNH,
Seattle, Washington
License No. 68-25429

Licensee

INITIAL ORDER

Agency: Gambling Commission
Program: Licensing
Agency No. CR 2016-01154

1. ISSUES

- 1.1. Issue 1: Did Ms. Huynh violate RCW 9.46.075(2) by knowingly causing, aiding, abetting, or conspiring with Chandara Loeur to violate any of the laws of this state or the rules of the Commission;
- 1.2. Issue 2: Did Ms. Huynh violate RCW 9.46.075(10) by 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;
- 1.3. Issue 3: Did Ms. Huynh violate WAC 230-03-085(3) by demonstrating willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level;
- 1.4. Issue 4: Did Ms. Huynh violate WAAC 230-03-085(8)(a) by posing a threat to the effective regulation of gambling, or creating or increasing the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by prior activities;
- 1.5. Issue 5: Has Ms. Huynh violated RCW 9.46.153(1) by failing to establish by clear and convincing evidence the necessary qualifications for licensure under Ch. 9.46 RCW;
- 1.6. Whether the Commission's September 13, 2016, decision to revoke Ms. Huynh's card room employee license, number 68-25429, should be affirmed.

2. ORDER SUMMARY

- 2.1. Order No. 1: Yes.

- 2.2. Order No. 2: Yes.
- 2.3. Order No. 3: Yes.
- 2.4. Order No. 4: Yes.
- 2.5. Order No. 5: Yes.
- 2.6. Order No. 6: Affirmed.

3. HEARING

- 3.1. Hearing Date: March 8, 2017.
- 3.2. Administrative Law Judge: John M. Gray.
- 3.3. Appellant: Oanh Huynh ("Ms. Huynh").
 - 3.3.1. Representative: Oanh Huynh, representing herself.
 - 3.3.2. Witnesses:
 - 3.3.2.1. Oanh Huynh, Licensee.
 - 3.3.2.2. Robert Stevens, Roman Casino, Employee.
 - 3.3.2.3. Gus Routas, General Manager, Roman Casino.
- 3.4. Agency: Washington State Gambling Commission ("Commission").
 - 3.4.1. Representative: Greg Rosen, Assistant Attorney General.
 - 3.4.2. Witnesses:
 - 3.4.2.1. Jeff Lohse, Special Agent, Commission.
 - 3.4.2.2. Gregory Means, Macau Casino Tukwila General Manager.
- 3.5. Exhibits: The Commission's Exhibits 1 through 22 were admitted. Ms. Huynh did not offer any exhibits.
- 3.6. PHCO: This hearing was governed by the Corrected Prehearing Conference Order dated December 13, 2016.
- 3.7. Other: All witnesses were sworn before testifying.

4. FINDINGS OF FACT

The ALJ finds the following facts by a preponderance of the evidence:

Jurisdiction

- 4.1. The Commission issued the Notice of Administrative Charges on September 13, 2016. The Commission also summarily suspended Ms. Huynh's license on September 13, 2016. Special Agent Jeff Lohse personally Ms. Huynh on September 15, 2016 at 451 SW 10th St., Ste. 218, Renton, WA 98057, with copies of the Summary Suspension Order and ten accompanying exhibits, the Notice of Administrative Charges, and a Request for Stay and Administrative Hearings and Interpreter Form. The Commission received Ms. Huynh's Request for Stay and Administrative Hearing and Interpreter Form on September 30, 2016.
- 4.2. The Prehearing Conference Order stated the parties' agreement that the hearing would be held on Wednesday, March 8, 2017, beginning at 9:00 AM, at the Commission's hearing room in Lacey, Washington.

Oanh Huynh:

- 4.3. Oanh Huynh held card room employee license no. 68-25429 issued by the Commission. The license would have expired on February 15, 2017, but the Commission revoked that same license on September 13, 2016.
- 4.4. Ms. Huynh worked at the Roman Casino in Seattle. However, the events described in this Initial Order occurred at the Macau Casino, located at 5700 Southcenter Blvd., Tukwila, Washington.
- 4.5. Mr. Routas considers Ms. Huynh to be a good card room employee. He did not observe Ms. Huynh cheating at cards at the Roman Casino. He also did not observe Ms. Huynh at all at the Macau Casino.
- 4.6. Chandara Loeur was a mini-baccarat dealer at the Macau Casino. Ms. Loeur is no longer employed by the Macau Casino. The Commission previously revoked her gambling license.
- 4.7. Ms. Huynh was formerly married to Ms. Loeur's brother.
- 4.8. Ms. Huynh often played mini-baccarat at the same table at which Ms. Loeur was the dealer at the Macau Casino.

Mini-baccarat:

- 4.9. Mini-baccarat consists of two hands dealt by a player from a multiple deck shoe. Mini-baccarat is typically played with eight decks of cards. One hand is called the “player” hand and the other is called the “banker” hand. There are three betting positions for each betting spot at the baccarat table. The betting positions are as follows: player, banker, and tie. Each of these positions represents the possible outcome of the hands. Players may wager on any one of these positions or a combination of player/tie or banker/tie before the hands are dealt. The highest possible total to any hand is 9. The lowest is 0. The hand (player, banker) closest to 9 wins. Macau Casino has a game called Dragon Bonus. Dragon Bonus is regular mini-baccarat with an additional bonus wager called Dragon Bonus. Exhibit 1, page 3; Exhibit 2, page 1.
- 4.10. At Macau Casino, the dealer is required to deal mini-baccarat called a “face” game. Cards are thus dealt from the shoe face down on the table. After the cards are dealt face down, the dealer will allow a player at the table to “face” the banker or player hand. The dealer gives the cards face down to the player at the table. The player then reviews the cards and turns them face up. Typically, whatever player bet the largest amount on a specific hand (e.g., the player hand) gets to review the cards for that hand. Exhibit 1, page 3; Exhibit 2, page 1.
- 4.11. The dealer places a card face down in the “banker” spot on the table. After that, the dealer places a card face down in the “player” spot on the table.
- 4.12. A late bet is a bet by a player after cards have already come out of the shoe, but not necessarily exposed or turned face up. Before dealers deal cards in mini-baccarat, they ask players to place their bets. Dealers typically will also wave a hand across the table announcing that no more bets can be placed. Sometimes players place bets after the cards have been dealt from the dealing shoe, but not yet turned face up yet. Exhibit 1, page 3.
- 4.13. Gregory P. Means is the General Manager of the Macau Casino in Tukwila. He is responsible for the day-to-day management of the casino.
- 4.14. On June 17, 2016, Mr. Means telephoned Special Agent Lohse to tell him that he (Mr. Means) suspected one of his dealers of cheating at mini-baccarat. The dealer he suspected was Chandara Loeur, who was at that time employed by the Macau Casino in Tukwila.
- 4.15. The Macau Casino has a system of digital surveillance cameras. These surveillance cameras are numerous in number and enable the surveillance of everyone on the casino floor. The cameras are “mega-pixel,” meaning they are essentially high-definition closed circuit TV.

- 4.16. Mr. Means reviewed the recordings from the surveillance cameras before Special Agent Lohse met with Mr. Means on June 20, 2016.
- 4.17. When Special Agent Lohse met with Mr. Means on June 20, Special Agent Lohse reviewed sample videos to verify the information given to him by Mr. Means.
- 4.18. The pertinent videos reveal a view of the table seen from overhead and slightly behind the players. The baccarat table in view has nine positions for players. Those positions are numbered from right to left from the camera's perspective and are identified as 1-2-3-5-6-7-8-9-10. The number 4 is not used; perhaps it is considered bad luck. Exhibits 13 and 22.
- 4.19. The banker spot is to the players' right of center, or the dealer's left of center. The player spot is to the player's left of center, or the dealer's right of center. Exhibits 13 and 22.
- 4.20. The video exhibits show Ms. Loeur as the dealer. Some of the videos show Ms. Huynh as a player at Ms. Loeur's table; in other videos, Mr. Huynh is not present. The videos show a difference in dealing by Ms. Loeur when Ms. Huynh is present as opposed to when she is not present.
- 4.21. When Ms. Huynh was at Ms. Loeur's table, Ms. Huynh sat at the 8-9-or 10 player position.
- 4.22. When Ms. Huynh was at Ms. Loeur's table, Ms. Huynh flashed the player card to Ms. Huynh as Ms. Loeur dragged the player card from the shoe and across the banker spot to the player spot. Ms. Loeur accomplished this by raising the long edge of the player card slightly as she moved the card beyond the banker spot to the player spot. Usually there was no one else seated adjacent to Ms. Huynh. A player at the 1-6 position would be unable to see the underside of the raised edge of the player card. The purpose of flashing the card was to enable Ms. Huynh to see the number on the card; the suit of the card is irrelevant in this game.

Special Agent Jess Lohse's Investigation:

- 4.23. Jess Lohse is employed as a Special Agent by the Washington State Gambling Commission. He has worked for the Commission for thirteen years dealing with such matters as audits and criminal investigations. His duties include visiting casinos in his geographic area. Special Agent Lohse has over 720 hours of gambling enforcement training, and has additional training time at the Washington State Criminal Justice Training Commission. Among his other duties, Special Agent Lohse reviews proposed games submitted to the Commission by inventors for possible approval for use in Washington. Special Agent Lohse reviews the

proposed game and prepares a report that he submits to an Assistant Director for the latter's review. The purpose of this review is to ensure that proposed games comply with Washington State law. Special Agent Lohse does not review proposed games for tribal casinos. Special Agent Lohse has knowledge of many different card games.

- 4.24. For example, mini-baccarat formerly was not allowed in Washington State. The Commission received a petition to approve mini-baccarat for use in Washington State in July 2008. The Commission allowed mini-baccarat to be played at Washington casinos effective January 1, 2009. Special Agent Lohse was involved in that approval process.
- 4.25. Special Agent Lohse investigated the alleged cheating by Ms. Loeur and Ms. Huynh and prepared the case report no. 2016-01154.
- 4.26. Exhibit 6 is a list of video surveillance videos of Ms. Loeur's mini-baccarat table from June 2, 2016, to June 14, 2016. These videos show Ms. Huynh playing at Ms. Loeur's table. These videos show Ms. Loeur dealing cards and Ms. Huynh present and playing mini-baccarat at Ms. Loeur's table. The entries in Exhibit 6, page 1 and the first entry, show (for example) the date of the incident (June 2, 2016); the time on the video; the number of the casino's mini-baccarat table; Ms. Huynh's standard bet; whether the bet was a win or a loss; the amount of any bonus bet; whether the bonus bet was a win or a loss, and the total amount won by Ms. Huynh. The total amount Ms. Huynh won when Ms. Loeur flashed cards to Ms. Huynh was \$59,425. Exhibit 6, pp. 1-2.
- 4.27. Exhibits 17, 18, 19, 20, 21, and 22 are still photographs, taken from the casino's surveillance cameras, of Ms. Loeur's mini-baccarat table showing her dragging the player card at about a 45 degree angle to the table to the player spot. Ms. Huynh is visible on the left-hand side of the photos at the no. 9 or no. 9 and 10 player positions.
- 4.28. Exhibit 7 is a list of surveillance videos of Ms. Loeur's mini-baccarat table from June 2, 2016, to June 17, 2016. These videos do not show Ms. Huynh at Ms. Loeur's table; instead, the purpose of these videos is to show how Ms. Loeur dealt the cards to all players other than Ms. Huynh. When Ms. Huynh was not playing at Ms. Loeur's mini-baccarat table, Ms. Loeur did not flash any cards.
- 4.29. Exhibits 13, 14, 15, and 16 are still photographs, taken from the casino's surveillance cameras, of Ms. Loeur's mini-baccarat table showing her dragging the player card face down to the table to the play spot. Ms. Huynh is not present in this photograph.

4.30. Ms. Loeur flashed cards to Ms. Huynh and Ms. Huynh only. When Ms. Huynh did not play, Ms. Loeur did not flash any cards to any other players.

4.31. Ms. Ms. Loeur flashed cards to Ms. Huynh on at least 74 separate dealings of the cards as ascertained by Special Agent Lohse. Special Agent Lohse reviewed 17.5 hours of surveillance video to arrive at his conclusions. Special Agent Lohse also concluded that Ms. Loeur dealt 797 hands properly, face down, to players other than Ms. Huynh.

Interviews with Ms. Huynh:

4.32. Mr. Means conducted an interview with Ms. Huynh at a location other than the Macau Casino on June 24, 2016. Ms. Huynh did not want to discuss the alleged cheating at the Macau Casino involving her and Ms. Loeur, acknowledging that she knew they were caught. Exhibit 10.

4.33. Ms. Huynh and Ms. Loeur also appeared for an interview at the Commission field office in Renton on July 19, 2016. Special Agent Lohse and another Special Agent from the Commission were present during the interview with Ms. Huynh and Ms. Loeur. Special Agent Lohse explained the purpose of the investigation. Ms. Huynh had little to say.

5. CONCLUSIONS OF LAW

Based upon the facts above, the ALJ makes the following conclusions:

Jurisdiction

5.1. 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. The Commission served Ms. Huynh by United States mail, both regular, and certified, on September 13, 2016. The Commission received Ms. Huynh's request for an administrative hearing on September 30, 2016. Twenty-three days is the time allowed if service is made by regular United States mail. WAC 230-17-010(2)(a). Twenty days is the time allowed if service is made by certified mail. WAC 230-17-010(2)(b). The ALJ concludes that Ms. Huynh timely filed her appeal.

Statutes, Rules, and Analysis:

5.2. The Commission bases its revocation of Ms. Huynh's gambling license on the provisions of RCW 9.46.075(1), (2), (8) and (10); RCW 9.46.153(1); and

WAC 230-03-085(1), (3), and (8); Conclusions of Law No. 5.3 through 5.6.3 contain the applicable language of these statutes and administrative rules.

5.3. RCW 9.46.075 is the Commission's legislative grant of authority to deny, suspend, or revoke gambling licenses or permits. "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:

5.3.1. (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;

5.3.2. (2) Knowingly causes, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of the commission;

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

5.3.4. (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;

5.4. RCW 9.46.153(1) is a statute containing a separate statement of RCW 9.46.075(8) and that requires applicants to prove their eligibility for a license:

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[.]”

- 5.5. "Clear and convincing evidence," as that term is used in RCW 9.46.153(1), is a higher burden of proof than "preponderance of the evidence." See, *Hardee v. Department of Social and Health Services*, 172 Wn.2d 1, 6-18, 256 P.3d 339 (2011).
- 5.6. The Commission also relies on its administrative rules. WAC 230-03-085 states in plain language when the Commission will deny, suspend, or revoke an application, license or permit. "We [referring to the Commission] 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:
- 5.6.1. (1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or
 - 5.6.2. (3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or
 - 5.6.3. (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[.]"
- 5.7. Ms. Huynh argued that she did nothing wrong and played within the rules. The video and still photograph evidence, however, show otherwise. Ms. Loeur flashed the player card only to Ms. Huynh and never to anyone else. Ms. Huynh testified that Ms. Loeur lied to the investigators about her role in cheating while dealing cards, but there is nothing to corroborate her assertion.
- 5.8. Mr. Stevens testified that these incidents can be explained as a function of late betting. However, that assertion does not explain why Ms. Loeur flashed the player cards to Ms. Huynh alone.
- 5.9. The ALJ concludes that the Commission has proved by a preponderance of the evidence that Ms. Huynh worked in conjunction with Ms. Loeur to cheat at mini-

baccarat. Ms. Loeur flashed the player card to Ms. Huynh, allowing her to see the number of the card, giving her an edge over other players in gambling. This flashing of the player card cost the casino close to \$60,000 in winnings that Ms. Huynh otherwise might not have won.

5.10. The difference between Ms. Loeur and Ms. Huynh is that the video evidence plainly shows Ms. Loeur lifting the long edge of cards while Ms. Huynh was present and sliding the cards face down when Ms. Huynh was not present. The videos do not display Ms. Huynh actively engaged in anything other than playing mini-baccarat. However, the sheer number of times – 74 – that Ms. Loeur lifted the card while Ms. Huynh was at the table demonstrates that Ms. Huynh was actively engaged with Ms. Loeur in cheating at mini-baccarat. Ms. Loeur never lifted a card to show to anyone except Ms. Huynh. The latter included 797 separate dealings of the cards by Ms. Loeur, and observed on the videos by Special Agent Lohse, when Ms. Loeur dealt the cards properly. The evidence also shows that Ms. Huynh profited from this cheating by winning over \$59,000 at mini-baccarat with Ms. Loeur dealing the cards. The ALJ concludes that Ms. Huynh was engaged as a partner with Ms. Loeur in cheating at mini-baccarat on the occasions documented in the exhibits.

5.11. The ALJ concludes that the Commission has proved by a preponderance of the evidence that Ms. Huynh violated RCW 9.46.075(1), (2), (8), and (10) and WAC 230-03-085(1), (3), and (8). The Commission proved that Ms. Huynh violated the provisions of Ch. 9.46 RCW, including cheating. RCW 9.46.196 defines cheating to mean:

- (1) Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator;
- (2) Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator;
- (3) Engage in any act, practice, or course of operation while participating in a gambling activity with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; or
- (4) Cause, aid, abet, or conspire with another person to cause any other person to violate subsections (1) through (3) of this section.

5.12. Based on this definition, the ALJ concludes that Ms. Huynh cheated at cards. The criminal provisions for cheating are found at RCW 9.46.1961 and 9.46.1962. Ms. Huynh aided, abetted, and conspired with Ms. Loeur to violate the laws of Washington State. Ms. Huynh pursued economic gain while licensed as a card room employee, at a different casino, in a manner that leads the ALJ to believe that her activities were inimical to the proper operation of an authorized gambling activity in Washington State. In doing so, Ms. Huynh has shown willful

disregard for complying with Washington State statutes and administrative rules and poses a threat to the effective regulation of gambling.

5.13. Ms. Huynh put forward some evidence to show that she has the necessary qualifications for licensure under Chapter 9.46 RCW. Apparently, the Mr. Routas never saw Ms. Huynh cheat at the Roman Casino. Ms. Huynh has no previous record of being in trouble with the Commission or any other law enforcement agency. The activities that led to her license revocation seem to have occurred only at the Macau Casino in Tukwila. However, Ms. Huynh failed to satisfactorily explain why Ms. Loeur flashed the player card 74 times to Ms. Huynh. In doing so, Ms. Huynh has failed to meet her burden of proof, by clear and convincing evidence, under RCW 9.46.075(8) and 9.46.153(1).

5.14. Ms. Huynh argued that Mr. Mean's statements in Exhibit 10 were inaccurate, perhaps due to a misunderstanding on his part. The ALJ is not convinced of the truth of her argument. Mr. Means made his entries at a point in time close to the interview with Ms. Huynh.

5.15. Despite Ms. Huynh's testimony, the ALJ concludes this is not a case about placing late bets. The issue is that Ms. Loeur flashed player cards to Ms. Huynh for her economic benefit.

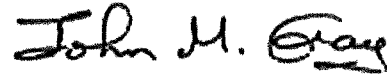
5.16. The ALJ concludes that the Commission proved that valid grounds exist for revocation of Ms. Huynh's gambling license.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. The Commission's decision to revoke Ms. Huynh's gambling license, no. 68-25429, is **AFFIRMED**.

Issued from Tacoma, Washington, on the date of mailing.



John M. Gray
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

PETITION FOR REVIEW

Any party to this proceeding may file a Petition for Review of this initial order. The written petition for review must be mailed to the Washington State Gambling Commission at:

Washington State Gambling Commission
PO Box 42400
Olympia, WA 98504

The petition for review must be **received** by the Commission within **twenty (20) days** from the date this initial order was mailed to the parties. A copy of the petition for review must be sent to all parties of record. The petition for review must specify the portions of the initial order with which the party disagrees, and must refer to the evidence in the record which supports the party's position. The other party's reply must be **received** at the address above, and served on all parties of record, within **thirty (30) days** from the date the petition for review was mailed.

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. 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.

CERTIFICATE OF MAILING IS ATTACHED

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 10-2016-GMB-00012

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

<p>Oanh Huynh P.O. Box 69021 Seattle, WA 98168 Licensee</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Gregory Rosen Assistant Attorney General PO Box 40100 Olympia, WA 98504 Agency Representative</p>	<p><input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Friday, May 05, 2017

OFFICE OF ADMINISTRATIVE HEARINGS



Melanie Barnhill
Legal Assistant