

APR 24 2018

GOVERNMENT COMPLIANCE
& ENFORCEMENT

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:

Docket No. 09-2017-GMB-00027

Pablo L. Bellon,

INITIAL ORDER

Appellant.

Agency: Washington State Gambling Commission
Program: Gambling Commission
Agency No. 2017-00722

1. ISSUES

- 1.1. Is the Appellant, Pablo L. Bellon, subject to current prosecution or pending charges, based on a felony involving physical harm to individuals or involving moral turpitude, pursuant to RCW 9.46.075(9)?
- 1.2. Whether the Appellant's inability to follow court orders in case number 16-1-01675-1 shows a 'willful disregard' for complying with ordinances, statutes, and court orders, contrary to WAC 230-03-085(3)?
- 1.3. Whether the Appellant's criminal charges are evidence that he cannot prove by 'clear and convincing evidence' that he is qualified for licensure, as required by RCW 9.46.153(1)?
- 1.4. If so, whether revocation of the Appellant's Class III certification is appropriate, in accordance with RCW 9.46.075(8)&(9), WAC 230-03-085(1)&(8)(a), and Section V.C.(1) of the Chehalis Tribal & State Gaming Compact?

2. ORDER SUMMARY

- 2.1. **Affirmed.** The Appellant, Pablo L. Bellon, is subject to current prosecution or pending charges, based on a felony involving physical harm to individuals, pursuant to RCW 9.46.075(9). Following the hearing, the Appellant was convicted of two felony assault charges in Thurston County Superior Court.
- 2.2. **Affirmed.** The Appellant's inability to follow court orders in case number 16-1-01675-1 shows a 'willful disregard' for complying with ordinances, statutes, and court orders, contrary to WAC 230-03-085(3).
- 2.3. **Affirmed.** The Appellant's criminal charges are evidence that he cannot prove by 'clear and convincing evidence' that he is qualified for licensure, as required by RCW 9.46.153(1).
- 2.4. **Affirmed.** Revocation of the Appellant's Class III certification is appropriate, in accordance with RCW 9.46.075(8)&(9), WAC 230-03-085(1)&(8)(a), and Section V.C.(1) of the Chehalis Tribal & State Gaming Compact.

3. HEARING

- 3.1. Hearing Date: Thursday, February 1, 2018
- 3.2. Administrative Law Judge: TJ Martin
- 3.3. Appellant: Pablo L. Bellon ('Appellant')
- 3.3.1. Representative: The Appellant represented himself.
- 3.3.2. Witnesses: The Appellant did not call any witnesses.
- 3.4. Agency: Gambling Commission Board Staff ('Gambling Commission')
- 3.4.1. Representative: Gregory J. Rosen, AAG
- 3.4.2. Witnesses: Julie Sullivan, Washington State Gambling Commission Special Agent
- 3.5. Exhibits: Gambling Commission's Exhibits 1 through 17 were admitted.
The Appellant did not submit any exhibits.
- 3.6. Other: The record was left open until February 16, 2018 for an update regarding the Appellant's pending criminal trial.

4. FINDINGS OF FACT

The undersigned administrative law judge finds the following facts by 'clear and convincing evidence':

Jurisdiction

4.1. On July 13, 2017, the Washington State Gambling Commission issued to Pablo Bellon a 'Notice of Administrative Charges'.

4.2. On August 2, 2017, Mr. Bellon appealed the 'Notice of Administrative Charges'.

Appellant's Criminal Activity in 2016 and 2017

4.3. The Appellant, Pablo Bellon, holds a class III certification through the Washington State Gambling Commission as well as a tribal license through the Chehalis Tribal Gaming Agency. He works as an I.T. Director at the Lucky Eagle Casino, in Rochester, Washington. *Testimony of Pablo Bellon (hereinafter 'Testimony of Bellon') and Exhibit ('Ex.')* 1.

4.4. On September 26, 2016, the Appellant was charged with 'Assault of a Child in the Second Degree, Strangulation, Domestic Violence', in Thurston County Superior Court. *Ex. 3.*

- 4.5. On September 28, 2016, the Appellant was charged with a second count of 'Assault of a Child in the Third Degree- Domestic Violence'. *Ex. 4.*
- 4.6. On November 30, 2016, the Thurston County Deputy Prosecutor amended the charges against the Appellant. However, the Appellant was still charged with two felony counts of assault towards a child. *Ex. 5.*
- 4.7. On December 1, 2016, Thurston County Superior Court amended the criminal charge against the Appellant to include two felony counts: Assault of a Child in the Second Degree (Domestic Violence) and Assault of a Child in the Third Degree (Domestic Violence). *Testimony of Julie Sullivan (hereinafter 'Testimony of Sullivan') and Ex. 1.*
- 4.8. On January 19, 2017, the Appellant agreed to a 'diversion' of the two criminal felony charges. If the Appellant complied with the terms of the diversion treatment program, which would include domestic violence treatment and to not consume alcohol, the criminal charges would be dismissed in two years. Failure to comply with the terms of the 'diversion' would result in revocation of the diversion and a bench trial, limited to the law enforcement's reports of the alleged criminal activity. *Exs. 6, 7, 8, 9 and 13.*
- 4.9. On January 29, 2017, just ten days after entering a diversion of the two domestic violence assault charges, the Appellant was charged with Driving Under the Influence (DUI). *Exs. 14 and 15.*
- 4.10. On March 16, 2017, the Appellant filed a 'Class III Employee Renewal Application' with the Washington State Gambling Commission. In his renewal application, the Appellant disclosed that, within the last 12 months, he had been charged with domestic abuse as well as D.U.I. *Ex. 2.*
- 4.11. On April 27, 2017, the Appellant plead 'guilty' and sentenced for D.U.I., based on the January 29, 2017 incident. *Exs. 16 & 17.*
- 4.12. On May 22, 2017, the Washington State Gambling Commission opened an investigation regarding the Appellant's request to renew his Class III certification amid his recent criminal charges. After review of the Appellant pleading guilty to DUI and his pending felony assault charges, the Gaming Commission recommended revocation of the Appellant's Class III gaming certification *Testimony of Sullivan and Ex. 1.*
- 4.13. On September 26, 2017, the Thurston County Prosecutor's Office filed a 'Motion and Affidavit to Revoke Diversion' by the Appellant based on his failure to report to counseling as well as to pay the required fees. *Exs. 10, 11, and 12.*

4.14. On April 9, 2018, Thurston County Superior Court Judge Erik D. Price found the Appellant guilty of 'Assault of a Child in the Second Degree (Domestic Violence)' and 'Assault of a Child in the Third Degree (Domestic Violence)'. The Appellant's sentencing on the two felony crimes is scheduled for May 7, 2018.

4.15. At the hearing, the Appellant did not dispute any of the facts presented by the Gambling Commission.

5. CONCLUSIONS OF LAW

Based upon the facts above, the undersigned administrative law judge makes the following conclusions:

Jurisdiction

5.1. The Office of Administrative Hearings (OAH) has jurisdiction over the persons and subject matter of this case under Revised Code of Washington (RCW) 9.46.140(2)&(4) and chapters 34.05 and 34.12 RCW.

Burden of Proof

5.2. RCW 9.46.153(1) requires applicants to prove their eligibility for a license:

It shall be the affirmative responsibility of each...licensee to establish by ***clear and convincing evidence*** the necessary qualifications for licensure of each person required to be qualified under this chapter,...[.]” ***Emphasis Added.***

5.3. “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).

Revocation of Class III Gaming License

5.4. 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:

(9) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses included under subsection (4) of this section: PROVIDED, That at the request of an applicant for an original license, the commission may defer decision upon the application during the pendency of such prosecution or appeal;

Failure to Follow Court Orders

5.5. Further, the Commission is also authorized by its administrative rules, specifically, WAC 230-03-085 to 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:

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

5.6. In the present matter, as a part of his Thurston County Superior Court Diversion entered into on January 19, 2017, the Appellant agreed to not commit any law violations or to consume alcohol. However, ten days later, on January 29, 2017, the Appellant was stopped for Driving Under the Influence (DUI). He subsequently plead guilty to the criminal charge (DUI) on April 27, 2017.

5.7. Based on the Appellant's failure to adhere to court orders, which included no law violations or consumption of alcohol, the Gambling Commission did not error by failing to renew the Appellant's gaming license in accordance with WAC 230-03-085.

Failure to Establish 'Clear and Convincing Evidence' of Qualified Licensure

5.8. RCW 9.46.153(1) 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[.]” ***Emphasis Added.***

5.9. “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).

5.10. In the present case, the Appellant did not dispute any of the facts presented by the Gambling Commission, including his two felony criminal charges as well as his subsequent DUI. Pablo Bellon has failed to prove, by ‘clear and convincing evidence’ that he is qualified for licensure under Chapter 9.46 RCW. As a result, the Gambling Commission’s decision to revoke Mr. Bellon’s gambling license is **affirmed**.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Washington State Gambling Commission's 'Notice of Administrative Charges', dated July 13, 2017, is **affirmed**.
- 6.2. **Affirmed.** The Appellant, Pablo L. Bellon, is subject to current prosecution or pending charges, based on a felony involving physical harm to individuals, pursuant to RCW 9.46.075(9). Following the hearing, the Appellant was convicted of two felony assault charges in Thurston County Superior Court.
- 6.3. **Affirmed.** The Appellant's inability to follow court orders in case number 16-1-01675-1 shows a 'willful disregard' for complying with ordinances, statutes, and court orders, contrary to WAC 230-03-085(3).
- 6.4. **Affirmed.** The Appellant's criminal charges are evidence that he cannot prove by 'clear and convincing evidence' that he is qualified for licensure, as required by RCW 9.46.153(1).
- 6.5. **Affirmed.** Revocation of the Appellant's Class III certification is appropriate, in accordance with RCW 9.46.075(8)&(9), WAC 230-03-085(1)&(8)(a), and Section V.C.(1) of the Chehalis Tribal & State Gaming Compact.

Issued from Tacoma, Washington on the date of mailing.



TJ Martin
Administrative Law Judge
Office of Administrative Hearings

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 SERVICE FOR OAH DOCKET NO. 09-2017-GMB-00027

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

<p>Pablo L. Bellon 3131 Dellrose St. SW Tumwater, WA 98512 <i>Appellant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <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 J. Rosen, AAG Office of the Attorney General MS 40100 PO Box 40100 Olympia, WA 98504 <i>Agency Representative</i></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Haylee Mills, Staff Attorney Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504-2400 <i>Agency Contact</i></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Monday, April 23, 2018

OFFICE OF ADMINISTRATIVE HEARINGS



Ricci Frisk
Legal Administrative Manager