

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the matter of:

Tyee Hotel,

Licensee.

Docket No. 07-2019-GMB-00110 **WSGC/LICENSING**

INITIAL ORDER

Agency: Washington State Gambling Commission
Program: License Fees & Reports
Agency No. CR 2019-01242

1. ISSUES

- 1.1. Did Tyee Hotel, License No. 05-07193, fail to timely submit quarterly license reports and quarterly license fees within thirty days following the end of first quarter 2019, ending March 31, 2019, or during the additional thirty-day late filing and payment period, in violation of WAC 230-05-132(1)?
- 1.2. Is the Commission authorized to revoke Tyee Hotel's license pursuant to RCW 9.46.075(1), WAC 230-03-085(1) and (5), and WAC 230-05-132(4)?
- 1.3. If so, what costs, fees and/or penalties are owed?

2. ORDER SUMMARY

- 2.1. The Washington State Gambling Commission's action is AFFIRMED.
- 2.2. Tyee Hotel, holder of License No. 05-07193, failed to submit quarterly license reports and fees due on or before May 30, 2019, and is subject to sanctions, including revocation of its license, under WAC 230-05-132(1).
- 2.3. Tyee Hotel, holder of License No. 05-07193, is liable for any late filing fees, including any additional costs associated with the collection of the fees.

3. HEARING

- 3.1. Hearing Date: August 14, 2019
- 3.2. Administrative Law Judge: Jane Cantor Shefler
- 3.3. Licensee: Tyee Hotel
- 3.3.1. Representative: Suzanne Hallen, former owner

- 3.4. Agency: Washington State Gambling Commission
- 3.4.1. Representative: Kellen Wright, Assistant Attorney General
- 3.5. Exhibits: Exhibits 1 through 3 were admitted.
- 3.6. Other: This hearing was conducted as a brief adjudicative proceeding under RCW 34.05.485 and WAC 230-17-150(5).

4. FINDINGS OF FACT

I find the following facts are undisputed:

Jurisdiction

- 4.1. The Washington State Gambling Commission ("Commission") brought administrative charges, alleging Licensee Tyee Hotel ("Licensee" or "Tyee"), holder of gambling license 05-07193, failed to timely submit quarterly license fees and quarterly license reports within thirty days following the end of the first quarter of 2019 ("Q1/19"), or within the additional thirty-day late filing and payment period.
- 4.2. The Commission referred the matter to the Office of Administrative Hearings to assign an administrative law judge to conduct a Brief Adjudicative Proceeding as provided under Washington Administrative Code 230-17-150(5).
- 4.3. The Commission served notice of the August 14, 2019 brief adjudicative proceeding on July 23, 2019.

Failure to submit quarterly license reports and license fees

- 4.4. The Tyee Hotel is located in Coupeville, and was owned and operated for 27 years by Steven and Suzanne Hallen, through their corporation, Whidbey Island Ventures, Inc. The hotel business was sold effective December 18, 2018. *Testimony of Suzanne Hallen ("Hallen Testimony")*.
- 4.5. Licensee holds a gambling license for Commercial Punch Board/Pull-Tabs under license No. 05-07193. The Commission marked the Licensee as "out-of-business" effective December 17, 2018, when it issued a license to the new owners of the hotel. *Exhibit 3, page 3*. The Commission did not cancel Tyee's license when it issued a separate license to the new owners of the business. Tyee's license expires on September 30, 2019.

- 4.6. On January 16, 2019, Ms. Hallen filed the Licensee's quarterly report due for the period of October 1 – December 31, 2018. *Exhibit 3, Attachment 2, page 4.* She considered this to be a final report, as she and her husband no longer owned the hotel. Sometime during Q1/19, Ms. Hallen sent an email to Commission's area agent, informing him that the business had been sold. She believed that, with this communication, they would no longer be required to file quarterly reports. *Hallen Testimony.*
- 4.7. Throughout their 27 years of ownership, the Licensee timely submitted the required fees and reports. *Hallen Testimony.* However, due to the erroneous belief that reports were no longer required because the business had been sold, the Licensee failed to timely submit its quarterly license fees and quarterly license reports within thirty days following the end of Q1/19. The reports and fees were due no later than April 30, 2019.
- 4.8. Beginning March 31, 2019 through April 25, 2019, the Commission sent several emails to the Licensee reminding them to file the quarterly report and fees for Q1/19. The emails were sent to the Licensee's email address of record, wivi@whidbey.net, which Ms. Hallen verified as valid. *Exhibit 3, Attachments 3 – 5; Hallen Testimony.* The Commission also mailed a letter dated May 2, 2019, again reminding the Licensee that its quarterly report for Q1/19 was past due. The letter was mailed to the Licensee's mailing address of record. *Exhibit 3, Attachment 7.* Despite these several notifications, the Licensee did not submit the quarterly reports or fees for Q1/19 until July 31, 2019. *Hallen Testimony.*

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. I have jurisdiction over the persons and subject matter of this case under chapter 34.05 Revised Code of Washington ("RCW"), chapter 9.46 RCW and Washington Administrative Code ("WAC") 230-17-151(e).

Violations charged

- 5.2. Beginning July 1, 2018, all organizations licensed by the Commission must submit activity reports quarterly, regardless of whether they previously submitted reports annually, quarterly or semi-annually, and regardless of when their permit or license year ends. WAC 230-05-102.
- 5.3. Licensee Tye Hotel is an organization licensed by the Commission and subject to reporting requirements and fees. The Licensee must report quarterly under WAC 230-05-102.

- 5.4. For the period of January 1 through March 31, activity reports and quarterly license fees must be received by the Commission no later than April 30. WAC 230-05-102; WAC 230-05-124. Reports must be submitted for any licensed period, even if no gambling activity took place, including if the business has been sold or is otherwise inactive. WAC 230-05-124(6); WAC 230-05-125(2). Quarterly license fees must also be submitted on the same schedule, with the report, if due. WAC 230-05-124.
- 5.5. Licensees are afforded one thirty-day filing and payment period after their quarterly license reports and quarterly license fees are due. WAC 230-05-132(2). However, Licensees who do not file their quarterly reports and/or pay quarterly license fees within thirty days from the end of each quarter are in violation of WAC 230-05. WAC 230-05-132(1).
- 5.6. Under WAC 230-05-132(1), the Commission found Tyee Hotel violated the requirements of chapter 230-05 WAC by failing to timely submit quarterly license fees and quarterly license reports. There is no factual dispute in this matter. The Tyee Hotel was required to submit quarterly license reports and quarterly license fees if due. The deadline for submitting license reports and fees for Q1/19 was April 30, 2019. All of the evidence establishes that the Tyee Hotel failed to submit quarterly license reports and quarterly license fees when due on April 30, 2019, or during the thirty-day late filing and payment period. The Tyee Hotel violated the requirement to submit quarterly license reports and fees if due. The Commission's finding of responsibility for the violation must be affirmed.

Revocation of License

- 5.7. RCW 9.46.075(1) authorizes revocation of any license or permit issued by the Commission because of violation of gambling law or regulations.
- 5.8. WAC 230-03-085(5) provides for denial, suspension, or revocation, of licensure when the licensed organization has failed to pay a quarterly license fee or submitted a quarterly license report.
- 5.9. The Commission properly exercised its discretion to revoke Tyee Hotel's gambling license under RCW 9.46.075 and WAC 230-03-085.
- 5.10. At hearing, the Licensee did not contest the revocation of its gambling license, but argued for mitigation of the late filing fees. This tribunal, however, does not have authority of reduce or mitigate any fees or costs that may be due See, WAC 230-17-001.

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6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Washington State Gambling Commission's action is AFFIRMED.
- 6.2. Tyee Hotel, holder of License No. 05-07193, failed to submit quarterly license reports and fees due on or before May 30, 2019, and is subject to sanctions, including revocation of License No. 05-7193, under WAC 230-03-085.
- 6.3. Tyee Hotel, holder of License No. 05-07193, is liable for any late filing fees, including any additional costs associated with the collection of the fees.

Issued from Tacoma, Washington on the date of mailing.



Jane Cantor Shefler
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. WAC 230-17-152(1). 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-one (21) days from the date this initial order was mailed to the parties. WAC 230-17-152(2). A copy of the petition for review must be sent to all parties of record. WAC 230-17-152(4). 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 petition for review must contain any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider. WAC 230-17-152(3).

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 07-2019-GMB-00110

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

<p>Tyee Hotel c/o Suzanne Hallen 1849 Fircrest Ave Coupeville, WA 98239 <i>Appellant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail: <u>wivi@whidbey.net</u></p>
<p>Kellen Wright, 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 checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail: <u>kellen.wright@atg.wa.gov</u></p>
<p>Chad Standifer, AAG Office of the Attorney General MS: 40100 PO Box 40100 Olympia, WA 98504 <i>Agency Contact</i></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Ashlie Laydon Washington State Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504 <i>Agency Contact</i></p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Thursday, August 22, 2019

OFFICE OF ADMINISTRATIVE HEARINGS



Nathan Robinson
Legal Assistant 3