

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Samnang Touch,

Appellant

Docket No. 01-2020-GMB-00146

**INITIAL ORDER ON SUMMARY
JUDGMENT MOTION**

Agency: Gambling Commission
Program: Washington State Gambling
Commission
Agency No. 2019-01968

1. ISSUES:

- 1.1. Whether Appellant, Samnang Touch ("Appellant"), is subject to current prosecution or pending charges, based on a felony involving physical harm to individuals or involving moral turpitude, pursuant to Revised Code of Washington ("RCW") 9.46.075(9)?
- 1.2. Whether Appellant, can prove by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1)?
- 1.3. Whether the Gambling Commission is authorized to revoke Appellant's Public Card Room Employee License ("CRE License") based on RCW 9.46.075(1),(8) & (9), and Washington Administrative Code ("WAC") 230-03-085(1) & (9)(a)?
- 1.4. If Appellant's CRE License is revoked, whether an evidentiary, fact-finding hearing is warranted?

ORDER SUMMARY:

- 1.5. No genuine dispute of material fact exists as to whether Appellant is 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). The Gambling Commission's Motion for Summary Judgment is **GRANTED**.
- 1.6. Appellant, has not proven by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1).
- 1.7. The Gambling Commission is authorized to revoke Appellant's CRE License based on RCW 9.46.075(1),(8) & (9), and WAC 230-03-085(1) & (9)(a). The Gambling Commission's revocation of Appellant's CRE License, is **AFFIRMED**.
- 1.8. Since the revocation of Appellant's CRE License is **AFFIRMED**, no fact-finding hearing is warranted. Therefore, the evidentiary hearing, scheduled for June 2 2020 and June 3, 2020, is **CANCELLED**.

2. GAMBLING COMMISSION'S MOTION FOR SUMMARY JUDGMENT:

- 2.1. Hearing Date: The Gambling Commission's Motion for Summary Judgment decided without oral argument.
- 2.2. Admin. Law Judge: Dan Gerard
- 2.3. Appellant: Samnang Touch
- 2.4. Agency: Gambling Commission
 - 2.4.1. Representative: Doug Van de Brake, Assistant Attorney General
- 3.5. Documents Considered: The following documents were considered for purposes of the Gambling Commission's Motion for Summary Judgment:

Doc. No.	Document Name	Document Date	No. Pages
1	Gambling Commission's Notice of Administrative Charges	12/09/19	7
2	Appellant's Request for Administrative Hearing	01/08/20	3
3	Office of Administrative Hearings (OAH) Prehearing Conference Order	01/30/20	7
4	Gambling Commission's Motion for Summary Judgment	02/25/20	6
5	Declaration of Special Agent Tyson Wilson in Support of Gambling Commission's Motion for Summary Judgment, with attached Exhibits 1-4	02/25/20	20

3. FACTS FOR PURPOSE OF SUMMARY JUDGMENT:

Jurisdiction

- 3.1. On December 9, 2019, the Washington State Gambling Commission issued the Notice of Administrative Charges revoking the CRE License of Appellant, Samnang Touch. The Gambling Commission's revocation asserted Appellant's License, Number 68-33645, was revoked for being to current prosecution or pending charges, based on a felony involving physical harm to individuals or involving moral turpitude, in violation of RCW 9.46.075(9).
- 3.2. On January 8, 2020, the Appellant contested the Gambling Commission's revocation of his CRE License and requested an administrative hearing.

Gambling Commission Motion for Summary Judgment

- 3.3. On February 25, 2020, the Gambling Commission filed a Motion for Summary Judgment, along with the Declaration of Special Agent Tyson Wilson in Support of Commission's Motion for Summary Judgment, with attached Exhibits 1-4.
- 3.4. The Appellant did not file a response to the Commission's Motion for Summary Judgment.
- 3.5. As of the date of this Initial Order, the Appellant has failed to file any response, or provide any documentation, challenging the Commission's motion.

Appellant's Card Room Employee License Revocation & Investigation

- 3.6. On November 5, 2019, the Clark County Superior Court charged Appellant with the following: indecent liberties, kidnapping in the first degree with sexual motivation, voyeurism in the first degree, rape in the third degree and rape in the second degree. *Dec. of Wilson: Ex. 2, Ex. 3.*
- 3.7. On November 7, 2019, Appellant was arraigned on the charges. *Dec. of Sullivan: Ex. 3.*
- 3.8. On November 15, 2019, Gambling Commission Special Agent Tyler Wilson conducted an investigation regarding Appellant's case. *Dec. of Wilson, Ex. 2.*
- 3.9. Based on his investigation, Special Agent Wilson recommended the revocation of Appellant's CRE License for being charged with six crimes, which pose an immediate threat to public health, safety or welfare. *Dec. of Wilson: Ex. 2.*
- 3.10. On December 9, 2019, Gambling Commission Director, David Trujillo, issued the Notice of Administrative Charges revoking Appellant's CRE License. *Dec. of Wilson: Ex. 1.*

4. CONCLUSIONS OF LAW:

Jurisdiction

- 4.1. 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), Washington Administrative Code (WAC) 230-17-025 and Chapters 34.05 and 34.12 RCW.

Summary Judgment Motions, Applicable Statutes, Regulations and Case Law

- 4.2. WAC 10-08-135 'Summary judgment' provides:

A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

- 4.3. “Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law.” *Verizon NW, Inc. v. Employment Sec. Dep’t*, 164 Wn.2d 909, 916 (2008), citing *Alpine Lakes Prot. Soc’y v. Dep’t of Natural Res.*, 102 Wn. App. 1, 14 (1999).
- 4.4. Admissions, stipulations, procedural history, and uncontested declarations and affidavits establish facts for summary judgment.
- 4.5. In Superior Court matters, CR 56 governs summary judgment. Where the relevant procedural rules do not conflict with CR 56, it and the cases interpreting it serve as persuasive authority in the management of summary judgment under WAC 10-08-135.
- 4.6. Civil Rule 56(e) provides: “If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.”

Gambling Commission Policy, Rules & Regulations

- 4.7. RCW 9.46.010 establishes, in relevant part:

The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.

- 4.8. RCW 9.46.040 also authorizes the Gambling Commission to enforce the rules and regulations relating to gambling activities in the State.
- 4.9. The Gambling Commission may deny a license application, revoke or suspend a license for:
 - Violating, failing or refusing to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW...;
 - Failing to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of this chapter 9.46 RCW or,
 - Being 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.

RCW 9.46.075(1),(8), & (9).

- 4.10. The Gambling Commission is authorized to deny, suspend or revoke any application, license or permit, for any of the following reasons, in relevant part:

- Committing any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or
- Is the subject of an outstanding gross misdemeanor or felony arrest warrant
- 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.

WAC 230-03-085(1),(7), & (9)(a).

4.11. RCW 9.46.153(1) establishes:

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;

- 4.12. In the present case, on November 5, 2019, the Appellant was charged with six separate felony violations for kidnapping, rape and voyeurism.
- 4.13. The nature of the charges pose a threat to public health and safety.
- 4.14. Appellant did not file any response to the Commission's Motion for Summary Judgment, contesting he was subject to current prosecution or pending charges, based on a felony involving physical harm to individuals or involving moral turpitude.
- 4.15. Therefore, the Appellant has raised no genuine dispute of material fact as to whether or not his current prosecution or pending charges, based on a felony involving physical harm to individuals or involving moral turpitude, do not constitute a sufficient basis for the revocation of his Public Card Room Employee License in accordance with RCW 9.46.075 and WAC 230-03-085. Therefore, the Commission's Motion for Summary Judgment is **GRANTED**.
- 4.16. The Gambling Commission is authorized to revoke Appellant's CRE License on RCW 9.46.075(1), (8) & (9), and WAC 230-03-085(1) & (9)(a). The Gambling Commission's revocation of Appellant's CRE License, is **AFFIRMED**.
- 4.17. Since the revocation of Appellant's CRE License is **AFFIRMED**, no fact-finding hearing is warranted. Therefore, the evidentiary hearing, scheduled for June 2 2020 and June 3, 2020, is **CANCELLED**.

5. INITIAL ORDER:

- 5.1. No genuine dispute of material fact exists as to whether Appellant is 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). The Gambling Commission's Motion for Summary Judgment is **GRANTED**.
- 5.2. Appellant, has not proven by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1).
- 5.3. The Gambling Commission is authorized to revoke Appellant's CRE License on RCW 9.46.075(1) (8) & (9), and WAC 230-03-085(1) & (9)(a). The Gambling Commission's revocation of Appellant's CRE License, is **AFFIRMED**.
- 5.4. Since the revocation of Appellant's CRE License is **AFFIRMED**, no fact-finding hearing is warranted. Therefore, the evidentiary hearing, scheduled for June 2 2020 and June 3, 2020, is **CANCELLED**.

SIGNED at Tacoma, Washington on the date of mailing.



Dan Gerard
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE IS ATTACHED

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.

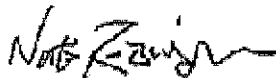
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 01-2020-GMB-00146

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

Samnang Touch c/o Steven W. Thayer Steven W. Thayer P.S. 112 West 11th Street Suite 200 Vancouver, WA 98660 <i>Appellant</i>	<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
Steven W. Thayer Steven W. Thayer P.S. 112 West 11th Street Suite 200 Vancouver, WA 98660 <i>Appellant Representative</i>	<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:
Doug Van de Brake, AAG Office of the Attorney General MS: 40100 PO Box 40100 Olympia, WA 98504 <i>Agency Representative</i>	<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:
Ashlie Laydon Washington State Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504 <i>Agency Contact</i>	<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

Date: Monday, April 13, 2020

OFFICE OF ADMINISTRATIVE HEARINGS



Nathan Robinson
 Legal Assistant 3