

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Thu A. Dong,

Respondent.

Docket No. 06-2020-GMB-00155

**INITIAL ORDER ON SUMMARY
JUDGMENT MOTION**

Agency: Gambling Commission
Program: Washington State Gambling
Commission
Agency No. 2020-00084

Language Access Notice

English

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Vietnamese

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1. ISSUES:

Does a genuine dispute of material fact exist as to:

- 1.1. Whether Appellant Thu A. Dong violated RCW 9.46.1961 by causing another, Tuyen Nguyen, to engage in cheating by engaging in the act of altering Tuyen Nguyen's Sonoma points?
- 1.2. Whether Appellant Thu A. Dong can prove by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1)?
- 1.3. Whether the Commission is authorized to revoke the Appellant Thu A. Dong's Public Card Room Employee License, pursuant to RCW 9.46.075(1),(2), and (8), RCW 9.46.153(1) and WAC 230-03-085(1),(3), and (9)?

2. ORDER SUMMARY:

- 2.1. No genuine dispute of material fact exists as to whether Appellant Thu A. Dong violated RCW 9.46.1961 by causing another, Tuyen Nguyen, to engage in cheating by engaging in the act of altering Tuyen Nguyen's Sonoma points. The Gambling Commission's Motion for Summary Judgment is **GRANTED**.

- 2.2. No genuine dispute of material fact exists as to whether Appellant Thu A. Dong can prove by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1). The Gambling Commission's Motion for Summary Judgment is **GRANTED**.
- 2.3. The Gambling Commission is authorized to revoke the Appellant Thu A. Dong's Public Card Room Employee License, pursuant to RCW 9.46.075(1),(2), and (8), RCW 9.46.153(1) and WAC 230-03-085(1),(3), and (9). The Gambling Commission's revocation of Thu A. Dong's Public Card Room Employee Licenses, is **AFFIRMED**.

3. GAMBLING COMMISSION'S MOTION FOR SUMMARY JUDGMENT:

- 3.1. Hearing Date: No oral arguments
- 3.2. Administrative Law Judge: Travis Dupree
- 3.3. Appellant: Thu A. Dong
- 3.3.1. Representative: Phillip Peterson, Attorney
- 3.4. Agency: Gambling Commission
- 3.4.1. Representative: Doug Van de Brake, Assistant Attorney General
- 3.5. Documents Considered: I considered the following documents:

Doc. No.	Document Name	Document Date	No. Pages
1	Gambling Commission's Notice of Administrative Charges	03/10/20	10
2	Appellant's Request for Administrative Hearing	06/12/20	4
3	Office of Administrative Hearings (OAH) Prehearing Conference Order	07/06/20	9
4	Gambling Commission's Motion for Summary Judgment	09/25/20	11
5	Declaration of Special Agent Danny Lisa in Support of Gambling Commission's Motion for Summary Judgment, with attached Exhibits 1-3	09/23/20	66
6	Appellant's Response to Motion for Summary Judgment with attached Exhibits 1-3	10/15/20	17
7	Gambling Commission's Reply in Support of Motion for Summary Judgment	10/23/20	9

4. FACTS FOR PURPOSE OF SUMMARY JUDGMENT:

On a motion for summary judgment, the decision maker only considers those facts for which the parties establish “no genuine issue as to any material fact”.¹ “Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law.”² Only evidence in the record and inferences from that evidence establish facts. If evidence in the record points to more than one possible finding of fact, then summary judgment may not rest on the moving party’s version of that fact.³ Admissions, stipulations, procedural history, and uncontested declarations and affidavits establish facts for summary judgment. So, the record here supports the following facts for the purposes of summary judgment:

Jurisdiction

- 4.1. On March 10, 2020, the Washington State Gambling Commission issued the Notice of Administrative Charges regarding Thu A. Dong. The Gambling Commission’s Notice of Administrative Charges asserted Thu A. Dong was not qualified for licensure and failed to prove qualification for licensure.
- 4.2. On March 23, 2020, Mr. Dong contested the Gambling Commission’s Notice of Administrative Charges and requested an administrative hearing.

Summary Judgment

- 4.3. On September 25, 2020, the Gambling Commission filed a Motion for Summary Judgment, along with the Declaration of Special Agent Danny Lisa in Support of Commission’s Motion for Summary Judgment, with attached Exhibits 1-3.
- 4.4. On October 15, 2020, the Appellants filed a Response to Commission’s Motion for Summary Judgment.
- 4.5. On October 23, 2020, the Gambling Commission filed a Reply in Support of Motion for Summary Judgment.

Facts as a Matter of Law

- 4.6. The Appellant, Thu A. Dong, is a licensed Public Card Room Employee and Floor Supervisor at the Goldie’s Casino, in Shoreline, Washington. *Declaration of Danny Lisa*.

¹ WAC 10-08-135. 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.

² *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).

³ *Verizon NW*, 164 Wn.2d 916.

- 4.7. The Sonoma player tracking system monitors and tracks the total money a player bets per game or average bet. *Lisa Declaration: Commission's Exhibit 2*
- 4.8. Goldie's Casino runs a bi-weekly promotion called "Baccarat Bonanza" for its player club members. The players are required to show identification to a floor supervisor or shift manager. Then, the players are logged into the Sonoma player tracking system. The players earn points for their time they play on Baccarat. For one in every five hands, the players must play or their rating will be paused. *Lisa Declaration: Commission's Exhibit 1 and Exhibit 2.*
- 4.9. The prize for a player finishing fifth place was 1,000 free play chips and one million bonus points that could be redeemed for \$1,000.00. The prize for sixth place was just 1,000 free play chips. *Lisa Declaration: Commission's Exhibit 2.*
- 4.10. Tuyen Nguyen was a player club member that participated in the Baccarat promotion. *Lisa Declaration: Commission's Exhibit 2.*
- 4.11. On January 4, 2020, between 4:44 am and 5:20 am, Mr. Dong awarded Mr. Nguyen 50,454 points to his Sonoma account. Mr. Nguyen was not gambling and had left the casino during this time. *Lisa Declaration: Commission's Exhibit 2.*
- 4.12. The additional points awarded to Mr. Nguyen moved him from sixth place to fifth place for the promotion. As a result, Mr. Nguyen won 1,000 free play chips and one million bonus points. *Lisa Declaration: Commission's Exhibit 2.*

Goldie's Casino Investigation

- 4.13. Goldie's Casino management reviewed the standings for the Baccarat promotion and found an irregularity for Mr. Nguyen's average bet rating. Mr. Nguyen's average bet rating was \$2,500.00. The prior average bet rating for Mr. Nguyen was \$500.00. *Lisa Declaration: Commission's Exhibit 2.*
- 4.14. On January 9, 2020, Michael McCarthy, Director of Casino Operations, and James Kauten, General Manager, interviewed Mr. Dong regarding the points awarded to Mr. Nguyen. After being confronted with video footage of him at the podium when the ratings were created, Mr. Dong indicated that he added the points because he felt sorry for Mr. Nguyen for losing so much. At that time, Mr. Dong's employment was terminated. *Lisa Declaration: Commission's Exhibit 2.*

Gambling Commission Investigation

- 4.15. On January 8, 2020, the Gambling Commission received a complaint from the Director of Casino Operations at Goldie's Casino regarding an internal investigation into Mr. Dong's actions. *Lisa Declaration and Commission's Exhibit 1.*

- 4.16. In July 2019, Gambling Commission Agent Danny Lisa conducted an investigation regarding Mr. Dong's actions of awarding points to Mr. Nguyen. Agent Lisa also reviewed January 4, 2020 video footage of Mr. Dong and Mr. Nguyen. *Lisa Declaration and Commission's Exhibit 1.*
- 4.17. During the interview on January 17, 2020, with Agent Lisa, Mr. Dong indicated that he could not remember awarding the points to Mr. Nguyen, he said it was possible. Mr. Dong later indicated that Mr. Kauten said he could increase player's average bets if they had been losing too much. *Lisa Declaration and Commission's Exhibit 1.*
- 4.18. After Agent Lisa's interview with Mr. Dong, she went to Goldie's' Casino to speak with Mr. Kauten. Mr. Kauten indicated that he never gave permission to Mr. Dong to increase players' average bets. *Lisa Declaration and Commission's Exhibit 1.*
- 4.19. Agent Lisa determined that Mr. Dong violated RCW 9A.56.040, when he purposely and wrongfully created false ratings in the Sonoma player tracking computer. *Lisa Declaration and Commission's Exhibit 1.*
- 4.20. In his response to the Gambling Commission's summary judgment motion and declarations, Mr. Dong argues that he either had authorization from management or his actions did not constitute cheating. This denial is not credible because there were inconsistencies in statements from Mr. Dong's interviews with his former employer, the Gambling Commission, and his response. Particularly, Mr. Dong admitted to feeling sorry for Mr. Nguyen for losing so much as corroborated by signed documentation dated January 9, 2020, signed by Mr. McCarthy and Mr. Kauten. Additionally, the statements from Mr. Kauten, indicate that he did not authorize Mr. Dong to award the points. The documentary evidence and Mr. Kauten statements were more consistent than that of Mr. Dong. *Lisa Declaration and Commission's Exhibit 1 and 2.*

5. CONCLUSIONS OF LAW:

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

Standards for Summary Judgment

- 5.2. RCW 34.05.437 'Pleadings, briefs, motions, service' allows for the filing of dispositive motions in administrative proceedings, including motions for summary judgment.

- 5.3. 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.

Gambling Commission Rules & Regulations

- 5.4. RCW 9.46.040 authorizes the Gambling Commission to enforce the rules and regulations relating to gambling activities in the State.

- 5.5. RCW 9.46.196 defines cheating as:

- (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.

- 5.6. RCW 9.46.1961 provides that:

- (1) A person is guilty of cheating in the first degree if he or she engages in cheating and:
 - a. Knowingly causes, aids, abets, or conspires with another to engage in cheating; or
 - b. Holds a license or similar permit issued by the state of Washington to conduct, manage, or act as an employee in an authorized gambling activity.
- (2) Cheating in the first degree is a class C felony subject to the penalty set forth in RCW 9A.20.021. In addition to any other penalties imposed by law for a conviction of a violation of this section the court may impose an additional penalty of up to twenty thousand dollars on adult offenders.

- 5.7. In the present case, Mr. Dong knowingly caused a player to engage in cheating when he manipulated Mr. Nguyen's account by adding unearned points in violation of RCW 9.46.1961.
- 5.8. Mr. Dong makes two arguments against summary judgment, First, Mr. Dong argues that he had permission from the general manager to alter Mr. Nguyen's account. This argument is unpersuasive because Mr. Dong is deflecting the blame for his actions on his former employer. Ultimately, Mr. Dong as Public Card Room Employee and Floor Supervisor is responsible for his actions. Secondly, Mr. Dong argues that his actions do not constitute cheating because the Casino did not incur any losses. This argument is unpersuasive since Mr. Dong's actions caused the Casino to incorrectly award points to Mr. Nguyen while another player to be knocked down to a sixth place, thus depriving the true winner of the one million bonus points.
- 5.9. All facts necessary to resolution of this matter are in the Findings of Fact above. Therefore, the Appellant Thu A. Dong has raised no genuine dispute of material fact as to whether he violated RCW 9.46.1961. Therefore, the Gambling Commission Staff's Motion for Summary Judgment is **GRANTED**.

Clear and Convincing Evidence of Licensure

- 5.10. 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;

- 5.11. In the present case, the Gambling Commission has established Appellant Thu A. Dong violated RCW 9.46.1961. As a result, Appellant Thu A. Dong has failed to prove, by 'clear and convincing evidence', he is qualified for licensure, as required by RCW 9.46.153(1). Therefore, the Gambling Commission's Motion for Summary Judgment is **GRANTED**.

Revoking the Appellant's Gaming License

- 5.12. RCW 9.46.075 provides, in relevant part, the Gambling Commission may deny a license application, revoke or suspend a license if the applicant or licensee does or has done the following:

(1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW...;

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

5.13. WAC 230-03-085 also authorizes the Gambling Commission to deny, suspend or revoke any application, license or permit, for any of the following reasons, in relevant part:

- (1) Committing any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or
- (3) Demonstrating willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or
- (9) 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:

(a) Prior activities;...

5.14. In the present case, the Gambling Commission has established Appellant Thu A. Dong violated RCW 9.46.1961. The Appellant also failed to establish, by 'clear and convincing evidence', that he is qualified for licensure under RCW 9.46.153(1). Therefore, the Gambling Commission's Motion for Summary Judgment is **GRANTED**.

5.15. Based the Gambling Commission's Motion for Summary Judgment being granted, in accordance with RCW 9.46.075(1),(2), and (8), RCW 9.46.153(1) and WAC 230-03-085(1),(3), and (9), the revocation of Thu A. Dong's Public Card Room Employee Licenses is **AFFIRMED**.

Denial of Summary Judgment for failure to provide discovery

5.16. WAC 10-08-130(3) Adjudicative proceedings—Prehearing conference provides:

Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered. If no objection to such notice is filed within ten days after

the date such notice is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

- 5.17. Along with his response to the Gambling Commission's Motion for Summary Judgment, Mr. Dong indicated that the Gambling Commission failed to produce video or computer data. Mr. Dong further argues that because they have not produced the requested information, that the Motion for Summary Judgment should be denied. It is not clear exactly what information was requested as Mr. Dong has not provided a copy of any discovery request. Additionally, Mr. Dong has not provided a persuasive explanation for making this request nearly two months after the August 28, 2020 discovery deadline. I do not find good cause to deny the Motion for Summary Judgment from the Gambling Commission.

6. INITIAL ORDER:

IT IS HEREBY ORDERED THAT:

- 6.1. No genuine dispute of material fact exists as to whether Appellant Thu A. Dong violated RCW 9.46.1961 by causing another, Tuyen Nguyen, to engage in cheating by engaging in the act of altering Tuyen Nguyen's Sonoma points. The Gambling Commission's Motion for Summary Judgment is **GRANTED**.
- 6.2. No genuine dispute of material fact exists as to whether Appellant Thu A. Dong can prove by 'clear and convincing evidence' he is qualified for licensure, as required by RCW 9.46.153(1). The Gambling Commission's Motion for Summary Judgment is **GRANTED**.
- 6.3. The Gambling Commission is authorized to revoke the Appellant Thu A. Dong's Public Card Room Employee License, pursuant to RCW 9.46.075(1),(2), and (8), RCW 9.46.153(1) and WAC 230-03-085(1),(3), and (9). The Gambling Commission's revocation of Thu A. Dong's Public Card Room Employee Licenses, is **AFFIRMED**.

SIGNED at Tacoma, Washington on the date of mailing.



Travis Dupree
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE 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. 06-2020-GMB-00155

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

<p>Thu A. Dong 11826 SE 189th Place Renton, WA 98058 Respondent</p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt 9489 0090 0027 6093 5906 91 <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail donniedong4@gmail.com</p>
<p>Doug Van de Brake, AAG Office of the Attorney General MS: 40100 PO Box 40100 Olympia, WA 98504 Agency Representative</p>	<p><input 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 checked="" type="checkbox"/> E-mail doug.vandebrake@atg.wa.gov jordan.nimon@atg.wa.gov</p>
<p>Philip Petersen Petersen Law PLLC 4508 Auburn Way N Ste A100 Auburn, WA 98002 Respondent Representative</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"/> Facsimile <input checked="" type="checkbox"/> E-mail philip@petersen-law.com</p>
<p>Ashlie Laydon Washington State Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504 Agency Contact</p>	<p><input 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 checked="" type="checkbox"/> E-mail ashlie.laydon@wsgc.wa.gov legal@wsgc.wa.gov</p>

Date: Wednesday, November 18, 2020

OFFICE OF ADMINISTRATIVE HEARINGS



Carla Sullivan
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