BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: PHETSAMONE PHAPHOL, Respondent.	CGCC No. 2006-10-01 OAH No. 2008030525

DECISION

This matter was heard before a quorum of the California Gambling Control Commission (Commission) in Sacramento, California, on July 7, 2008. Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings, State of California, presided.

Neil Houston, Deputy Attorney General, represented Mathew J. Campoy, Acting Chief, Bureau of Gambling Control of the California Department of Justice (Bureau). The Bureau was previously constituted and designated as the Division of Gambling Control (Division).

Phetsamone Phaphol (respondent) appeared on his own behalf.

Evidence was received, the record was closed, and the matter was submitted for decision on July 7, 2008.

FACTUAL FINDINGS

1. Respondent filed with the Division a State Gaming Agency Tribal Key Employee Application For Finding of Suitability (Application) dated February 16, 2005. After conducting an investigation and a pre-denial meeting, the Division, by letter dated March 7, 2006, notified respondent that it had recommended to the Commission that respondent's Application be denied based upon the conviction described in Finding 2, below. By letter dated September 21, 2006, Terresa Ciau, Deputy Director of the Commission's Licensing Division, notified respondent of the recommendation that his Application be denied and advised respondent of his right to request a hearing before the Commission. Respondent timely requested a hearing.

2. On October 12, 2000, in the Tulare County Superior Court, respondent, upon a plea of nolo contendere, was convicted of violating Penal Code section 422, threatening a crime with intent to terrorize, a misdemeanor. Respondent was placed on summary probation for three years, and was ordered to pay fines and fees. He was also ordered to serve 90 days in custody, and was given credit for 26 days served.

3. The incident underlying respondent's conviction occurred on September 25, 2000. Carrie Mounixay Phaphol, who was then respondent's girlfriend and is now his wife, told the police that respondent had accused her of cheating on him and threatened to kill her with a knife.

4. Respondent has not been granted relief from his conviction pursuant Penal Code section 1203.4, 1203.4a, or 1203.45.

5. Ms. Phaphol testified at the hearing and submitted a letter in support of respondent's Application. Respondent and Ms. Phaphol were married on January 4, 2003. According to Ms. Phaphol, respondent "has changed a lot" in the seven years since his conviction, and is now a "totally different person." He shows his love for his family and takes his responsibility to his children, particularly his 13-year-old son, seriously.

6. Respondent has been working for the Eagle Mountain Casino since 2001. He began as a card dealer. After two years, he was promoted to a floor person. After an additional two years, he was promoted to an on-call pit boss. On August 9, 2004, respondent was notified by the Tule River Tribe Gaming Commission that the renewal of his Tule River Tribe Gaming License was being denied as a result of his conviction. On August 30, 2004, the Tule River Tribe Gaming Commission issued Findings of Fact and Conclusions of Law, which found that respondent was "suitable and eligible to be issued a conditional Tule River Tribe Gaming License." The Tule River Tribe Gaming Commission, therefore, reversed its initial denial of his license.

7. Respondent submitted 17 letters of recommendation from co-workers and family members, which, in general, describe respondent as hard-working, dedicated, dependable, and well-liked.

LEGAL CONCLUSIONS

1. The State of California entered into a Tribal-State Gaming Compact (Compact) with the Tule River Indian Tribe. The Compact was ratified by Government Code section 12012.25, subdivision (a)(51). Section 6.5.6 of the Compact sets forth the State Certification Process for license applicants. That section, in relevant part, provides that an applicant for a key employee license shall:

> file an application with the State Gaming Agency, prior to issuance of a temporary or permanent tribal gaming license, for

> a determination of suitability for licensure under the California Gambling Control Act. Investigation and disposition of that application shall be governed entirely by state law, and the State Gaming Agency shall determine whether the applicant would be found suitable for licensure in a gambling establishment subject to the Agency's jurisdiction.

2. In light of this section of the Compact, the Commission reviews whether an applicant for a key employee license from the Tule River Indian Tribe is suitable for licensure under the provisions of the California Gambling Control Act, Business and Professions Code section 19800 et seq., governing license applications.

3. Government Code section 19859 of the California Gambling Control Act, in relevant part, provides:

> The commission shall deny a license to any applicant who is disqualified for any of the following reasons:
>
> [¶] ... [¶]
>
> (d) Conviction of the applicant for any misdemeanor involving dishonesty or moral turpitude within the 10-year period immediately preceding the submission of the application, unless the applicant has been granted relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code; provided, however, that the granting of relief pursuant to Section 1203.4, 1203.4a, or 1203.45 of the Penal Code shall not constitute a limitation on the discretion of the commission under Section 19856 or affect the applicant's burden under Section 19857.

4. Penal Code section 422 provides:

> Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

> For the purposes of this section, "immediate family" means any spouse, whether by marriage or not, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

5. Respondent's conviction for violating Penal Code section 422 involved a crime of moral turpitude. As the court in *People v. Thornton* (1992) 3 Cal.App.4th 419, 424 explained:

> [A] person violating section 422 must intend that the victim receive and understand the threat, and the threat must be such that would cause a reasonable person to fear for the safety of himself or his family. While the statute does not require that the violator intend to cause death or serious bodily injury to the victim, not all serious injuries are suffered to the body. The knowing infliction of mental terror is equally deserving of moral condemnation. [¶] In summary, we have no doubt that the making of the threats described in section 422 violates generally accepted standards of moral behavior, whether or not the person intended to actually carry out those threats. Accordingly, section 422 is a crime of moral turpitude....

6. Business and Professions Code section 19859, subdivision (d), mandates that, for 10 years following an applicant's conviction for a misdemeanor conviction involving moral turpitude, the Commission shall deny a license application, unless the applicant has been granted relief pursuant to Penal Code section 1203.4, 1203.4a, or 1203.45. Pursuant to section 6.5.6 of the Compact, the same prohibition that applies to the denial of a license under Business and Professions Code section 19859, subdivision (d), also applies to the Commission's determination of the suitability of an applicant for a key employee license from the Tule River Indian Tribe.

7. Because respondent was convicted less than 10 years ago and has not been granted relief under Penal Code section 1203.4, 1203.4a, or 1203.45, pursuant to Business and Professions Code section 19859, subdivision (d), and section 6.5.6 of the Compact, respondent's Application for a finding of suitability must be denied, notwithstanding the positive recommendations he has received from his wife, family members and co-workers, or the August 30, 2004 decision of the Tule River Tribe Gaming Commission.[1]

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[1] The Statement of Issues includes additional factual charges and legal causes for denial of suitability not addressed in this Decision. At the hearing, the Bureau stated that it was not proceeding on any of the additional factual charges. In addition, the Bureau did not argue that any legal causes for denial of suitability other than Business and Professions Code section 19859, subdivision (d), apply. Consequently, all additional factual charges and legal

ORDER

The Application of respondent Phetsamone Phaphol for a finding of suitability is DENIED.

DATED: AUG 12 2008

SHERYL SCHMIDT, Member
California Gambling Control Commission

STEPHANIE SHIMAZU, Member
California Gambling Control Commission

ALEXANDRA VUKSICH, Member
California Gambling Control Commission

causes for denial of suitability that were set forth in the Statement of Issues but were not argued by the Bureau at the hearing are deemed waived.