

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

BOUPTY PHAVAVICHANE,

Respondent.

OAH No. 2008120375

DECISION

This matter was heard before a quorum of the California Gambling Control Commission (Commission) in Sacramento, California, on August 26, 2009. Jonathan Lew, Administrative Law Judge, Office of Administrative Hearings, State of California, presided.

Jennifer T. Henderson, Deputy Attorney General, represented Mathew J. Campoy, Interim 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).

Boutdy Phavavichane (respondent) appeared on her own behalf. Translation assistance was provided by Ale'elong n ly, a Lao Interpreter.

Evidence was received, the record was closed, and the matter was submitted for decision on August 26, 2009.

FACTUAL FINDINGS

1. Respondent filed with the Bureau an Application for a Renewal Work Permit, dated October 1, 2005, to work at the Empire Sportsman's Association in Modesto, California as a double hand poker dealer.
2. On March 1, 2006, the Bureau issued a Work Permit Employee Background Investigation Report. The Report recommended that respondent's application be denied on the ground that she had been convicted of a misdemeanor involving dishonesty or moral turpitude within the 10-year period immediately preceding the submission of the application.

3. On November 2, 2006, Commission staff mailed respondent a letter informing her that the Commission was recommending that her application be denied, and that she was entitled to a hearing if she so requested. The Commission also mailed the Empire Sportsman's Association a letter informing them that the Commission was recommending denial of respondent's application for a renewal work permit. On November 7, 2006, respondent made written request for a hearing. At its November 16, 2006 meeting, the Commission referred this matter for evidentiary hearing. Respondent was subsequently served with the Statement of Issues.

4. On November 4, 2002, in the Sacramento County Superior Court (Case No. 02TR158457), respondent was convicted of violating Vehicle Code section 31, providing false information to a peace officer, a misdemeanor. This is a crime involving dishonesty or moral turpitude. Respondent was ordered to pay a \$500 fine, which she has paid.

5. No evidence was received regarding the incident or the circumstances underlying respondent's conviction.

6. Respondent has not been granted relief from her conviction pursuant to Penal Code sections 1203.4, 1203.4a, or 1203.45.

7. Respondent submitted three separate applications for temporary work permits. These were signed by her on February 24, 2006, July 11, 2006, and on October 18, 2006. On each of these applications, respondent affirmatively declared under penalty of perjury that she had not been convicted of a misdemeanor involving dishonesty within the ten-year period preceding the temporary work permit applications. This was not accurate by reason of the November 4, 2002 conviction referenced above in Finding 4.

8. Respondent testified at the hearing. She speaks Lao and has only very limited English language skills. She came to the United States in 1981, and has worked for nine years. She remains employed with Empire Sportsman's Association in Modesto. Her supervisor assisted her with her applications for temporary work permits. Respondent explained that she understood the questions relating to her criminal history as asking whether she had ever been in custody. She has never been in jail and that is why she did not disclose her criminal conviction referenced in Finding 4.

9. Respondent does not appear to understand much about her conviction for violating Vehicle Code section 31, other than that she had to appear in criminal court and pay a fine. She first became aware that she had a misdemeanor conviction when she applied to the Commission for a permit.

10. Respondent submitted a letter of recommendation from Gary Baird, President of the Empire Sportsman's Association. He supports her application for a permit, noting that she has worked for him a number of years and "has been an excellent employee in both timeliness and trustworthiness." Respondent's daughter, Lisa Caban, also testified. She confirmed her mother's account of what transpired in superior court, and during the course of

her applying for permits. She noted that respondent is very honest and that she has had no other problems with the criminal justice system.

LEGAL CONCLUSIONS

1. Business and Professions Code section 19859, subdivision (d), mandates that, for 10 years following an applicant's conviction for a misdemeanor involving moral turpitude, the Commission shall deny a license application, unless the applicant has been granted relief pursuant to Penal Code sections 1203.4, 1203.4a, or 1203.45.

2. Providing false information to a peace officer is by definition a misdemeanor involving dishonesty. Providing false information also constitutes a crime involving moral turpitude as offenses involving moral turpitude include those in which dishonesty is an element. (*People v. Castro* (1985) 38 Cal.3d 301, 306; *People v. Chavez* (2000) 84 Cal.App.4th 25, 28.)

3. Because respondent was convicted less than 10 years ago and has not been granted relief under Penal Code sections 1203.4, 1203.4a, or 1203.45, pursuant to Business and Professions Code section 19859, subdivision (d), respondent's Application for a Renewal Work Permit must be denied. The Commission has no discretion to do otherwise.

4. Business and Professions Code section 19859, subdivision (b), provides that the Commission shall deny a license to any applicant who fails "to provide information, documentation, and assurances required by this chapter or requested by the director, or failure of the applicant to reveal any fact material to qualification, or the supplying of information that is untrue or misleading as to a material fact pertaining to the qualification criteria." The Commission finds that respondent failed to supply material information on her three applications relating to her misdemeanor conviction. (Finding 7.) However, the Commission also finds that respondent's failure to provide this information was neither willful nor knowing. She misunderstood what was being requested, in large degree due to translation difficulties.

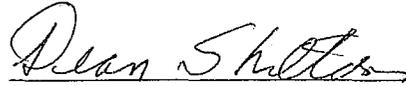
5. Business and Professions Code section 19857, subdivision (a), provides that no gambling license shall be issued unless the Commission is satisfied that the applicant is a "person of good character, honesty, and integrity." Respondent's application is further subject to denial under section 19857, subdivision (a), by reason of her Vehicle Code section 31 conviction, providing false information to a peace officer.

6. Prior to any future Application for a Renewal Work Permit, respondent's attention is directed to language in Business and Professions Code section 19859, subdivision (d), providing for positive consideration by the Commission of any relief granted pursuant to Penal Code sections 1203.4, 1203.4a, or 1203.45.

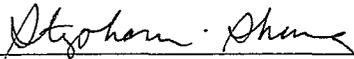
ORDER

The Application for a Renewal Work Permit by Boutdy Phavavichane is DENIED.

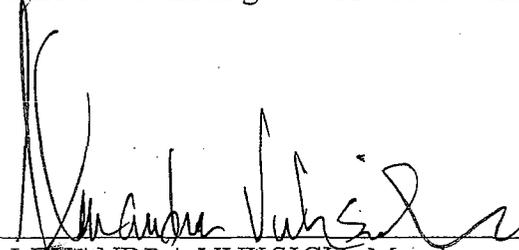
DATED: 12-10-2004



DEAN SHELTON, Chairperson
California Gambling Control Commission



STEPHANIE SHIMAZU, Member
California Gambling Control Commission



ALEXANDRA VUK-SICH, Member
California Gambling Control Commission