

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Statement of Particulars:

Gerry Yang

License Number: GEWP-002167

Applicant.

BGC Case No. BGC-HQ2015-00016SL
CGCC Case No. CGCC-2015-0514-9

DECISION AND ORDER

Hearing Date: January 20, 2016
Time: 10:00 a.m.

This matter was heard by the California Gambling Control Commission (Commission) pursuant to Business and Professions Code sections 19870 and 19871 and Title 4, California Code of Regulations (CCR) section 12060, in Sacramento, California, on January 20, 2016.

Timothy M. Muscat (Muscat), Deputy Attorney General, State of California, represented complainant Wayne J. Quint, Jr., Chief of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

Applicant Gerry Yang (Yang) represented himself.

During the administrative hearing, Presiding Officer Jason Pope took official notice of the following: (1) Notice of Defense, sent by Yang to the Bureau and Commission on or about May 20, 2015; (2) Notice of Hearing and Prehearing Conference, with enclosures, sent by the Commission to Yang and Muscat on August 14, 2015; (3) Updated Notice of Hearing and Prehearing Conference, sent by the Commission to Yang and Muscat on September 11, 2015; (4) Statement of Particulars, sent by the Bureau to Yang on October 16, 2015; and (5) Conclusion of Prehearing Conference letter, sent by the Commission to Yang and Muscat on November 20, 2015.

During the administrative hearing, Presiding Officer Jason Pope accepted into evidence the following exhibits offered by the Bureau:

- (1) Copies of the Statement of Particulars; Statement to Applicant; Business and Professions Code sections 19870 and 19871; California Code of

1 Regulations, title 4, section 12060; Certificate of Service by Certified Mail;
2 and Completed Notice of Defense dated May 20, 2015, Bates Nos. 0001-
3 0018;

4 (2) Copies of the Notices from the Commission:

- 5 a. Commission letter dated April 29, 2015 re Notification of Scheduled
6 Commission Meeting;
- 7 b. Commission letter dated May 15, 2015 re Referral of Work Permit to
8 an Evidentiary Hearing;
- 9 c. Commission letter dated August 14, 2015 re Notice of Hearing and
10 Prehearing Conference; and
- 11 d. Commission letter dated September 11, 2015 re Updated Notice of
12 Hearing and Prehearing Conference, Bates Nos. 0019-0034;

13 (3) Copy of Application for Initial Regular Work Permit/Temporary Work
14 Permit dated June 15, 2014, Bates Nos. 0034-0041;

15 (4) Copy of the California Department of Justice, Bureau of Gambling Control
16 Work Permit Employee Background Investigative Report dated April 3,
17 2015, Bates Nos. 0042-0046; and

18 (5) Copies of certified documents in regards to Sacramento County Superior
19 Court Case #08M02577, Bates Nos. 0047-0061.

20 The matter was submitted on January 20, 2016.

21 FINDINGS OF FACT

22 1. On or about June 25, 2014, Yang submitted an Application for Initial Regular Work
23 Permit/Temporary Work Permit (Application) to the Bureau.

24 2. On or about April 29, 2015, the Commission sent a letter to Yang advising him that
25 the Commission scheduled his Application for consideration during the Commission's May 14,
26 2015 meeting.

27 3. At its May 14, 2015 meeting, the Commission voted to refer the consideration of
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1 Yang's Application to an evidentiary hearing.

2 4. On or about May 15, 2015, the Commission served a Referral of Work Permit to an
3 Evidentiary Hearing letter on Yang and the Bureau via certified mail.

4 5. On or about May 20, 2015, Yang submitted a Notice of Defense to the Commission
5 requesting an evidentiary hearing.

6 6. On or about August 14, 2015, the Commission served a Notice of Hearing and
7 Prehearing Conference on Yang and Muscat.

8 7. On or about September 11, 2015, the Commission served an Updated Notice of
9 Hearing and Prehearing Conference on Yang and Muscat.

10 8. On or about October 16, 2015, the Bureau filed a Statement of Particulars with the
11 Commission and served the Statement of Particulars on Yang via certified mail. In its Statement
12 of Particulars, the Bureau recommends the approval of Yang's Application.

13 9. On or about November 18, 2015, the noticed Prehearing Conference was held before
14 Presiding Officer Jason Pope, Attorney III of the Commission. Timothy M. Muscat, Deputy
15 Attorney General, attended on behalf of the Bureau. Applicant Gerry Yang did not attend the
16 Prehearing Conference.

17 10. On or about November 20, 2015, the Commission served a Conclusion of Prehearing
18 Conference letter on Yang and Muscat.

19 11. The Commission heard Case No. CGCC-2015-0514-9 on January 20, 2016. The
20 Bureau was represented throughout the hearing by Deputy Attorney General Timothy M. Muscat.
21 Applicant Gerry Yang represented himself throughout the hearing.

22 12. Question 4(B) on the Application asks if Yang has "been convicted of a misdemeanor
23 within the past 10 years," including for convictions dismissed pursuant to Penal Code section
24 1203.4. In response to Question 4(B), Yang marked the box labeled "No."

25 13. On or about September 22, 2008, Yang was convicted by the Sacramento County
26 Superior Court of violating Penal Code section 597j, possession of gamecocks for fighting, a
27 misdemeanor, Case Number 08M02577. Yang was sentenced to three years of probation, and
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1 ordered to pay a fine and complete 150 hours of community service.

2 14. Yang did not disclose his September 22, 2008 misdemeanor conviction on his
3 Application.

4 15. By failing to disclose pertinent facts on his Application regarding his criminal history,
5 Yang was not forthcoming in his Application.

6 16. During the hearing, Yang testified that he thought his criminal conviction would be
7 cleared from his record after three years.

8 17. There was no evidence that Yang's failure to disclose his criminal conviction was
9 purposeful or intended to deceive the Commission.

10 18. Possession of gamecocks for fighting is a serious crime that demonstrates a lack of
11 good character and integrity.

12 19. Yang testified that he heard roosters in the same coop fighting. He let them out of the
13 coop to enable the roosters to keep fighting, or to allow one rooster to run away. Yang planned to
14 kill and consume whichever rooster got hurt or ran away.

15 20. Yang testified that he deserved the criminal conviction for possession of gamecocks;
16 that he recognizes fighting roosters is animal cruelty; and that he feels bad for having roosters
17 engage in cockfighting.

18 21. Yang has demonstrated accountability and taken full responsibility for his actions and
19 role in the cockfighting. Yang also appeared sincere and remorseful during the hearing.

20 22. There was no evidence that blades were affixed to the roosters' talons; that there was
21 an ongoing cockfighting operation or commercial gain; that the cockfight was premeditated or
22 planned in advance; or that there was any gambling on the outcome of the cockfighting.

23 23. Seven and a half years have elapsed since Yang's September 22, 2008 conviction.
24 There was no evidence that Yang has had any prior or subsequent criminal convictions.

25 24. There was no evidence presented of any disciplinary action or other issues related to
26 Yang's work history in the gambling industry.

27 25. As a result of Yang's genuine expression of remorse and full acceptance of
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1 responsibility for his role in the cockfighting; the lack of any evidence that the cockfighting was
2 premeditated or part of a gambling operation, or involved razor blades attached to the roosters'
3 talons; the amount of time that has elapsed since his criminal conviction; and the lack of any other
4 criminal convictions or disciplinary issues while working in the gambling industry, Yang has
5 demonstrated that he is a person of good character, honesty, and integrity.

6 26. Despite the seriousness of his misdemeanor conviction for possession of gamecocks
7 for fighting, Yang's prior activities, criminal record, reputation, habits and associations do not
8 pose a threat to the public interest of this state, or to the effective regulation and control of
9 controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices,
10 methods, and activities in the conduct of controlled gambling or in the carrying on of the business
11 and financial arrangements incidental thereto.

12 27. All documentary and testimonial evidence submitted by the parties that is not
13 specifically addressed in this Decision and Order was considered but not used by the Commission
14 in making its determination on Yang's Application.

15 28. The matter was submitted for Commission consideration on January 20, 2016.

16 LEGAL CONCLUSIONS

17 29. Division 1.5 of the Business and Professions Code, the provisions of which govern the
18 denial of licenses on various grounds, does not apply to licensure decisions made by the
19 Commission under the Gambling Control Act. Business and Professions Code section 476(a).

20 30. Public trust and confidence can only be maintained by strict and comprehensive
21 regulation of all persons, locations, practices, associations, and activities related to the operation
22 of lawful gambling establishments and the manufacture and distribution of permissible gambling
23 equipment. Business and Professions Code section 19801(h).

24 31. At an evidentiary hearing pursuant to Business and Professions Code sections 19870
25 and 19871 and CCR section 12060(b), the burden of proof rests with the applicant to prove his or
26 her qualifications to receive any license under the Gambling Control Act. CCR section 12060(i).

27 32. The Commission has the responsibility of assuring that licenses, approvals, and
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1 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose
2 operations are conducted in a manner that is inimical to the public health, safety, or welfare.
3 Business and Professions Code section 19823(a)(1).

4 33. An “unqualified person” means a person who is found to be unqualified pursuant to
5 the criteria set forth in Section 19857. Business and Professions Code section 19823(b).

6 34. The Commission has the power to deny any application for a license, permit, or
7 approval for any cause deemed reasonable by the Commission. Business and Professions Code
8 section 19824(b).

9 35. The burden of proving his or her qualifications to receive any license from the
10 Commission is on the applicant. Business and Professions Code section 19856(a).

11 36. An application to receive a license constitutes a request for a determination of the
12 applicant’s general character, integrity, and ability to participate in, engage in, or be associated
13 with, controlled gambling. Business and Professions Code section 19856(b).

14 37. In reviewing an application for any license, the commission shall consider whether
15 issuance of the license is inimical to the public health, safety, or welfare, and whether issuance of
16 the license will undermine public trust that the gambling operations with respect to which the
17 license would be issued are free from criminal and dishonest elements and would be conducted
18 honestly. Business and Professions Code section 19856(c).

19 38. No gambling license shall be issued unless, based on all of the information and
20 documents submitted, the commission is satisfied that the applicant is a person of good character,
21 honesty, and integrity. Business and Professions Code section 19857(a).

22 39. No gambling license shall be issued unless, based on all of the information and
23 documents submitted, the commission is satisfied that the applicant is a person whose prior
24 activities and criminal record, if any, reputation, habits, and associations do not pose a threat to
25 the public interest of this state, or to the effective regulation and control of controlled gambling,
26 or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities
27 in the conduct of controlled gambling or in the carrying on of the business and financial
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1 arrangements incidental thereto. Business and Professions Code section 19857(b).

2 40. No gambling license shall be issued unless, based on all of the information and
3 documents submitted, the commission is satisfied that the applicant is a person that is in all other
4 respects qualified to be licensed as provided in this chapter. Business and Professions Code
5 section 19857(c).

6 41. An application for a work permit shall be denied by the Commission if the applicant is
7 found unqualified pursuant to the criteria set forth in subdivisions (a) or (b) of Business and
8 Professions Code section 19857. CCR section 12105(a)(2).

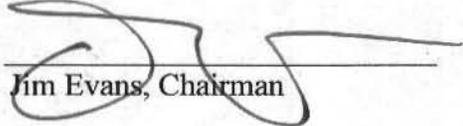
9 42. Yang has met his burden of demonstrating that he is qualified for the issuance of a
10 work permit.

11 ORDER

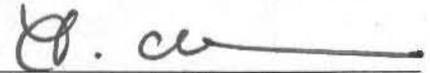
- 12 1. Gerry Yang's Application for Initial Regular Work Permit is APPROVED.
13 2. No costs are to be awarded.
14 3. Each side to pay its own attorneys' fees.

15 This Order is effective on Feb 9, 2016.

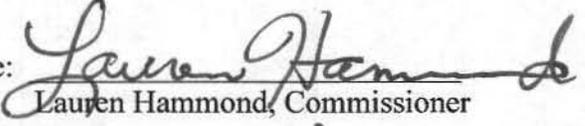
16 Dated: 2/9/16

17 Signature: 
18 Jim Evans, Chairman

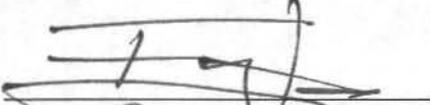
19 Dated: Feb. 9, 2016

20 Signature: 
21 Tiffany E. Conklin, Commissioner

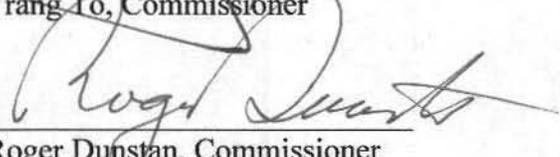
22 Dated: 2/9/16

23 Signature: 
24 Lauren Hammond, Commissioner

25 Dated: 2/9/16

26 Signature: 
27 Trang To, Commissioner

28 Dated: 2/9/16

Signature: 
Roger Dunstan, Commissioner