

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

CGCC Case No. CGCC-2019-0613-6Cii

In the Matter of the Application for Approval
of Third-Party Proposition Player License for:

JUNLY PHON

Applicant.

DECISION AND ORDER

Hearing Date: December 4, 2019
Time: 10:00 a.m.

1. This matter was scheduled for hearing before 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 December 4, 2019 at 10:00 a.m.

2. The Bureau of Gambling Control (Bureau) was represented by Deputy Attorney General Colin Wood with the Indian and Gaming Law Section, Department of Justice, Attorney General's Office.

3. Junly Phon (Applicant) was present on her own behalf.

4. During the administrative hearing, Presiding Officer Kate Patterson placed into the record the Notice and Agenda of Commission Hearing, Conclusion of Prehearing Conference letter, Notice of Hearing with attachments, and Applicant's signed Notice of Defense.

5. During the administrative hearing, Presiding Officer Kate Patterson accepted into evidence the following exhibits:

1) Statement of Reasons; Statement to Respondent; copies of Bus. & Prof. Code, §§ 19870 & 19871; copy of Cal. Code. Regs., tit. 4, § 12060; Certificate of Service by Certified Mail Service dated October 9, 2019; and a Notice of Defense, dated June 30, 2019, Bates No. 001 – 026;

2) Procedural documents, notices and letters:

a. June 17, 2019, Referral of Third-Party Proposition Players Services

1 License to an Evidentiary Hearing for Junly Phon (CGCC-2019-0613-
2 6Cii), Bates No. 027 – 028;

3 b. August 16, 2019, Notice of Hearing, with attachments and proof of service,
4 Bates No. 029 – 032;

5 c. October 16, 2019, Conclusion of Pre-Hearing Conference, Bates No. 033 –
6 038;

7 3) Application and Supplemental Information for third-party proposition player
8 services license received May 22, 2017 by Junly Phon, Bates No. 039 – 049;

9 4) Bureau of Gambling Control Third-Party Player Initial Background Investigation
10 Report Level III for Junly Phone, Blackstone Gaming, LLC dated February 2019,
11 Bates No. 050 – 057;

12 5) CGCC letter to Junly Phon re Commission meeting on June 13, 2019; CGCC
13 Licensing Division Memorandum for meeting with no attachments, Bates No. 058
14 – 063;

15 6) Registration History for Junly Phon, Bates No. 064;

16 7) Certificate of Official Records for Registration Number: TPPL-012862; dated June
17 18, 2019, Bates No. 065;

18 8) Correspondence and e-mails between BGC, Blackstone Gaming and Junly Phon,
19 Bates No. 066 – 080;

20 6. The matter was submitted and the record closed on December 4, 2019.

21 **FINDINGS OF FACT**

22 7. Applicant has been employed with Blackstone Gaming, LLC, (Blackstone) a third
23 party provider of proposition player services, since November 2013.

24 8. On or about December 20, 2013, Applicant was issued a Third-Party Proposition
25 Player Services Registration, registration number TPPL-012862 as an employee of Blackstone
26 which was continually renewed and is set to expire on December 31, 2019.

27 9. On or about May 22, 2017, the Bureau received an Application for Third Party
28

1 Proposition Player Services License for Supervisor, Player or Other Employee from Applicant
2 along with a Supplemental Information Application, (collectively Application). This form was
3 signed initially incorrectly on May 10, 2017, and then resigned correctly and initialed on May 18,
4 2017.

5 10. On this Application, Applicant answered many questions with “N/A” including in
6 areas where “N/A” was necessary or appropriate for the question and in areas where it was not.
7 Specifically, on page 6 of the supplemental when discussing applicant’s employment at three
8 different jobs, under the column “Reason for Leaving,” applicant wrote “N/A” even though for
9 the positions at “Love Culture” and “Lee Sandwich” she clearly had an end date for employment.
10 Applicant also marked May 2017, as the end point for her employment with Blackstone, even
11 though “current” or leaving it open would have been more accurate.

12 11. On or about June 21, 2017, the Bureau sent applicant a letter asking for the reasons
13 applicant left employment at two prior positions listed on her Application. Applicant responded
14 on or around July 5, 2017 with a statement that she left her employment with Love Culture in
15 June 2011 because she was terminated for not showing up to work and she left her employment
16 with Lee Sandwich in July 2013 because the money and available working hours wasn’t enough.

17 12. On or about September 10, 2018, the Bureau inquired as to why applicant had not
18 disclosed her termination from Love Culture. The Bureau sent several additional emails through
19 October 3, 2018; concluding on that date with a final notice for information. On or about October
20 9, 2018, applicant responded with a statement which stated she did not disclose her termination
21 because she “thought I could keep it private or personal.”

22 13. On or about February 22, 2019, the Bureau provided its Third-Party Player
23 Background Investigation Report to the Commission where it believed that Applicant was not
24 qualified for licensure and her application was subject to mandatory denial. The Bureau
25 recommended that the Commission deny Applicant’s application.

26 14. On June 13, 2019, the Commission considered Applicant’s application and elected
27 to refer it to an evidentiary hearing pursuant to Title 4, CCR section 12054, subdivision (a),
28

1 subsection (2). Commission staff mailed an evidentiary hearing referral letter via certified mail to
2 Applicant's address of record which included a blank Notice of Defense form with instructions to
3 return it to the Commission within 15 days of receipt or else the Commission may issue a default
4 decision.

5 15. Commission staff received a Notice of Defense form from Applicant on July 8,
6 2019, requesting an evidentiary hearing, signed June 30, 2019.

7 16. Commission staff mailed a Notice of the Hearing sent certified mail on August 16,
8 2019 to Applicant's address of record which provided the hearing was scheduled to occur on
9 Wednesday, December 4, 2019 at 10:00 a.m.

10 17. On or about October 9, 2019, the Bureau prepared, filed, and served a statement of
11 reasons upon Applicant where it recommended that Applicant's application be denied.

12 18. On October 15, 2019, Presiding Officer Kate Patterson conducted a pre-hearing
13 conference with Deputy Attorney General Colin Wood and Applicant appearing via telephone. A
14 letter confirming this conference was mailed out to the parties that same day.

15 19. On Wednesday, December 4, 2019, the hearing was conducted with Deputy
16 Attorney General Colin Wood and Applicant both appearing. The record thereafter closed and the
17 matter was submitted.

18 Applicant's Testimony

19 20. Applicant testified at the hearing on her own behalf and subject to cross
20 examination. Applicant testified that she did not intend to deceive the Bureau when not initially
21 disclosing the reason she left her employment with Love Culture on her Application. Rather she
22 testified that she believed she could keep it personal and private. She stated she wrote "N/A" as
23 she believed it meant "no answer," as opposed to "not applicable," and only learned the common
24 usage later after discussing it with her boyfriend in preparation for the hearing. She believes
25 writing "N/A" as her reason for leaving Love Culture was not untruthful. Rather she believed that
26 if the Bureau wanted more information they would ask. .

27 21. In regards to the specifics for leaving her employment at Love Culture, the
28

1 applicant testified that she called in on a holiday and lied to her supervisor about why she could
2 not report for work that day. The supervisor didn't respond but did say that she was terminated.
3 She testified that she was ashamed and it was a really dumb decision. This was her first job at the
4 age of 19 and she never had a real job until working for Blackstone.

5 22. Applicant testified that she did not have any help in filling out the application. She
6 said she was not sure what to put down. She now knows that she should have put everything
7 down. She stated that she was confused about a lot of things at the time she filled out the
8 application, but is good at her job at Blackstone.

9 23. Applicant gave credible testimony about the circumstances of her employment at
10 Blackstone and her termination from Love Culture. However, her testimony about how she filled
11 out her Application is difficult to understand in light of the application form specifically
12 explaining what "N/A" means and specifically requesting the "Reason for Leaving" employment.
13 Additionally the questions clearly reflect a desire by the Bureau and Commission to know about
14 her prior employment and know the reasons for her leaving her employment. No follow up is
15 warranted or should be required from Applicants.

16 24. Ultimately, while Applicant's explanation does not absolve her or other applicants
17 from the obligation to fill out applications completely, thoroughly, and accurately; the fact that
18 Applicant did list her employment with Love Culture and also told the Bureau quickly after they
19 inquired that she was terminated reflects her ignorance about the application process rather than
20 malfeasance in interacting with the Bureau and Commission. This conclusion is supported by the
21 facts that Applicant utilized "N/A" needlessly at times throughout the Application, improperly
22 signed the application on page 2, and was required to cross out, re-sign, and initial the errors.

23 25. While Applicant's conduct in filling out the application creates the potential for a
24 moral hazard in the application process, there was no evidence presented that she intended to
25 deceive or permanently conceal information from the Bureau and Commission, which, combined
26 with her ignorance in filling the Application, weighs in favor of concluding this was an
27 unintentional mistake which will not be repeated.
28

1 26. Also weighing in Applicant’s favor, she has been employed with Blackstone for
2 nearly 6 years with no problems in her employment. There was also no evidence submitted
3 involving criminal conduct or convictions.

4 ///

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **LEGAL CONCLUSIONS**

2 27. Division 1.5 of the Business and Professions Code, the provisions of which govern
3 the denial of licenses on various grounds, does not apply to licensure decisions made by the
4 Commission under the Gambling Control Act. (Bus. & Prof. Code § 476, subd. (a).)

5 28. An application to receive a license constitutes a request for a determination of the
6 applicant’s general character, integrity, and ability to participate in, engage in, or be associated
7 with, controlled gambling. (Bus. & Prof. Code § 19856, subd. (b).)

8 29. At an evidentiary hearing pursuant to Business and Professions Code sections
9 19870 and 19871 and Title 4, CCR section 12060 the burden of proof rests with the applicant to
10 demonstrate why a license or other approval should be issued. (Cal. Code Regs., tit. 4, § 12060,
11 subd. (i); Bus. & Prof. Code § 19856, subd. (a).)

12 30. Public trust and confidence can only be maintained by strict and comprehensive
13 regulation of all persons, locations, practices, associations, and activities related to the operation
14 of lawful gambling establishments and the manufacture and distribution of permissible gambling
15 equipment. (Bus. & Prof. Code § 19801, subd. (h).)

16 31. The Commission has the responsibility of assuring that licenses, approvals, and
17 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose
18 operations are conducted in a manner that is inimical to the public health, safety, or welfare. (Bus.
19 & Prof. Code § 19823, subd. (a)(1).)

20 32. An “unqualified person” means a person who is found to be unqualified pursuant
21 to the criteria set forth in Business and Professions Code section 19857, and “disqualified person”
22 means a person who is found to be disqualified pursuant to the criteria set forth in Business and
23 Professions Code section 19859. (Bus. & Prof. Code § 19823, subd. (b).)

24 33. The Commission has the power to deny any application for a license, permit, or
25 approval for any cause deemed reasonable by the Commission. (Bus. & Prof. Code § 19824,
26 subd. (b).)

27 34. No gambling license shall be issued unless, based on all of the information and
28

1 documents submitted, the commission is satisfied that the applicant is a person of good character,
2 honesty and integrity. (Bus. & Prof. Code § 19857, subd. (a).)

3 35. No gambling license shall be issued unless, based on all of the information and
4 documents submitted, the commission is satisfied that the applicant is a person whose prior
5 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the
6 public interest of this state, or to the effective regulation and control of controlled gambling, or
7 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
8 the conduct of controlled gambling or in the carrying on of the business and financial
9 arrangements incidental thereto. (Bus. & Prof. Code § 19857, subd. (b).)

10 36. The commission shall deny a license to any applicant who is disqualified for
11 failure of the applicant to provide information, documentation, and assurances required by this
12 chapter or requested by the chief, or failure of the applicant to reveal any fact material to
13 qualification, or the supplying of information that is untrue or misleading as to a material fact
14 pertaining to the qualification criteria. (Bus. & Prof. Code § 19859, subd. (b).)

15 37. A requester shall be ineligible for licensing [as a third party proposition player] if
16 the requester has failed to meet the requirements of Business and Professions Code sections
17 19856 or 19857. (Cal. Code Regs., tit. 4, § 12218.11, subd. (e).)

18 38. Applicant has met her burden of proving that she is a person of good character,
19 honesty, and integrity. Therefore Applicant is qualified to receive a third party proposition player
20 license pursuant to Business and Professions Code section 19857(a). As a result, Applicant is not
21 ineligible to receive a third party proposition player license pursuant to CCR section 12218.11(e).

22 39. Applicant has met her burden of proving that she is a person whose prior activities,
23 criminal record, if any, reputation, habits, and associations do not pose a threat to the public
24 interest of this state, or to the effective regulation and control of controlled gambling, or create or
25 enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the
26 conduct of controlled gambling or in the carrying on of the business and financial arrangements
27 incidental thereto. Therefore, Applicant is qualified to receive a third party proposition player
28

1 license pursuant to Business and Professions Code section 19857(b). As a result, Applicant is not
2 ineligible to receive a third party proposition player license pursuant to CCR section 12218.11(e).

3 40. Applicant has met her burden of proving that she is not disqualified from licensure
4 pursuant to Business and Professions Code section 19859 nor ineligible for licensing as a third
5 party proposition player pursuant to CCR section 12218.11.

6 ///

7 ///

8 ///

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF APPLICANT’S APPEAL RIGHTS

Applicant has the following appeal rights available under state law:

Title 4, CCR section 12064, subsection (a) and (b) provide, in part:

(a) After the Commission issues a decision following a GCA hearing conducted pursuant to Section 12060, an applicant denied a license, permit, registration, or finding of suitability, or whose license, permit, registration, or finding of suitability has had conditions, restrictions, or limitations imposed upon it, may request reconsideration by the Commission within 30 calendar days of service of the decision, or before the effective date specified in the decision, whichever is later.

(b) A request for reconsideration shall be made in writing to the Commission, copied to the Bureau, and shall state the reasons for the request, which must be based upon either:

- (1) Newly discovered evidence or legal authorities that could not reasonably have been presented before the Commission’s issuance of the decision or at the hearing on the matter; or,
- (2) Other good cause which the Commission may decide, in its sole discretion, merits reconsideration.

Business and Professions Code section 19870, subdivision (e) provides:

A decision of the commission denying a license or approval, or imposing any condition or restriction on the grant of a license or approval may be reviewed by petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5 of the Code of Civil Procedure shall not apply to any judicial proceeding described in the foregoing sentence, and the court may grant the petition only if the court finds that the action of the commission was arbitrary and capricious, or that the action exceeded the commission's jurisdiction.

Title 4, CCR section 12066, subsection (c) provides:

A decision of the Commission denying an application or imposing conditions on a license shall be subject to judicial review as provided in Business and Professions Code section 19870, subdivision (e). Neither the right to petition for judicial review nor the time for filing the petition shall be affected by failure to seek reconsideration.

///
///
///

ORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. JUNLY PHON's application for Third-Party Proposition Player License is APPROVED.

2. No costs are to be awarded.

3. Each side to pay its own attorneys' fees.

This Order is effective on 1/9/20.

Dated: _____

Signature: _____

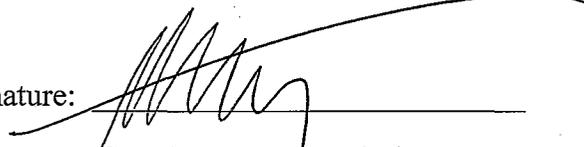
Jim Evans, Chairman

Dated: 1/9/2020

Signature: 

Paula LaBrie, Commissioner

Dated: 1/9/2020

Signature: 

Gareth Lacy, Commissioner

Dated: 1/9/2020

Signature: 

Trang To, Commissioner