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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

CGCC Case No. CGCC-2018-0726-10Aiv

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

DEFAULT DECISION AND ORDER

DIANA PLONG

Applicant.

Hearing Date: Thursday, January 24, 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 Thursday, January 24, 2019 at 10:00 a.m.

2. Diana Plong (Applicant) failed to appear and was not represented at the hearing.

FINDINGS OF FACT

3. On or about May 22, 2017, the Bureau of Gambling Control (Bureau) received an Application for Approval of Third-Party Proposition Player Services License from Applicant.

4. Applicant has a valid Third-Party Player Registration, Registration No. TPPL-018871 which is valid until September 20, 2020.

5. On or about May 24, 2018, the Bureau issued its Third-Party Player Background Investigation Report in which it concluded that Applicant was unqualified for licensure pursuant to Business and Profession Code section 19857 and disqualified for licensure pursuant to Business and Profession Code section 19859. The Bureau recommended that the Commission deny Applicant's application

6. On or about July 26, 2018, the Commission considered Applicant's application and voted to refer the matter to an evidentiary hearing pursuant to Title 4, CCR section 12060, subdivision (b).

7. Applicant received notice of Commission consideration of Applicant's application

1 when Commission staff mailed an evidentiary hearing referral letter via certified mail to
2 Applicant's address of record on July 30, 2018 which included a blank Notice of Defense form
3 with instructions to return it to the Commission within 15 days of receipt or else the Commission
4 may issue a default decision. A copy of the letter was mailed to Applicant's Designated Agent.
5 Commission staff received a signed Notice of Defense form from Applicant requesting an
6 evidentiary hearing.

7 8. Applicant thereafter received notice of the hearing through a hearing notice sent
8 certified mail on September 27, 2018 to Applicant's address of record and stated that the hearing
9 was set to occur on Tuesday, March 12, 2019 at 10:00 a.m. A copy of the letter was mailed to
10 Applicant's Designated Agent. Commission staff received no response from applicant, but did
11 receive a confirmation receipt from Applicant's designated agent.

12 9. Subsequently, on or around October 3, 2018, in an email exchange forwarded to
13 the Commission by Ronald Diedrich, Deputy Attorney General with the Indian and Gaming Law
14 Section in the Department of Justice, Attorney General's Office, Applicant withdrew her Notice
15 of Defense and waived her right to an evidentiary hearing. (Exhibit A)

16 10. As a result, Applicant finally received notice of the hearing through a hearing
17 notice sent certified mail on October 5, 2018 to Applicant's address of record which included
18 Exhibit A and stated that the hearing was set to occur on Thursday, January 24, 2019 at 10:00
19 a.m. Commission staff received the confirmation receipt signed by a "Chantha Um."

20 **DETERMINATION OF ISSUES**

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

24 12. In addition, the burden of proving Applicant's qualifications to receive any license
25 from the Commission is on the applicant. (Bus. & Prof. Code § 19856, subd. (a).)

26 13. At an evidentiary hearing pursuant to Business and Professions Code sections
27 19870 and 19871 and Title 4, CCR section 12060 the burden of proof rests with the applicant to
28

1 demonstrate why a license should be issued. (Cal. Code Regs., tit. 4, § 12060, subd. (i).)

2 14. Title 4, CCR section 12052, subdivision (c), provides in pertinent part:

3 (c) An applicant for any license, permit, finding of suitability,
4 renewal, or other approval shall be given notice of the meeting at
5 pursuant to Section 12006.

6 * * *

7 (2) If the application is to be scheduled at an evidentiary
8 hearing, pursuant to subsections (a) or (b) of Section 12060, the
9 notice of hearing shall inform the applicant of the following:

10 * * *

11 (F) The waiver of an evidentiary hearing, or failure of
12 the applicant to submit a Notice of Defense, or failure of an applicant
13 to appear at an evidentiary hearing, may result in:

14 1. A default decision being issued by the
15 Commission based upon the Bureau report, any supplemental reports
16 by the Bureau and any other documents or testimony already
17 provided or which might be provided to the Commission

18 15. An applicant for an owner, supervisor or player registration is ineligible for a
19 registration if they have had an application denied under Title 4, CCR Chapter 2.1 or the
20 Gambling Control Act. (Cal. Code Regs., tit. 4, § 12204, subd. (d).)

21 16. Title 4, CCR section 12205, subdivision (a) states in pertinent part:

22 Any regular registration issued in accordance with this chapter shall be
23 subject to cancellation pursuant this this section. A registration shall
24 be cancelled if the Commission determines after a noticed hearing that
25 the registration is ineligible for registration...

26 17. The Commission takes official notice of the Bureau report, any supplemental
27 reports by the Bureau and any other documents or testimony already provided to it in this matter
28 as required by Business and Professions Code section 19870, subdivision (a) and Title 4, CCR
section 12052, subdivision (c)(2)(F)(1).

18 18. The Commission has jurisdiction to adjudicate this case by default.

19 19. The Commission may deny Applicant's application based upon the Bureau report,
20 any supplemental reports by the Bureau and any other documents or testimony already provided
21 to it, pursuant to CCR section 12052, subdivision (c)(2)(F)(1), and Business and Professions

1 Code sections 19857 and 19859.

2 20. The Commission may further also deny Applicant's application based upon
3 Applicant's failure to prove to the Commission Applicant is qualified to receive a license or other
4 approval as required by Business and Profession Code section 19856, subdivision (a) and Title 4,
5 CCR section 12060(i).

6 21. Therefore, as the Applicant initially returned a Notice of Defense form but
7 subsequently waived her right to a hearing via email, did not attend the default hearing, and did
8 not submit any information or evidence in favor of granting Applicant's Application, Applicant
9 did not meet Applicant's burden of demonstrating why a license should be issued pursuant to
10 Business and Professions Code section 19856(a) and Title 4, CCR section 12060(i). The
11 Commission further finds that pursuant to California Code of Regulations, Title 4, section 12052,
12 subdivision (c)(2)(F)(1), Applicant's Application is subject to denial.

13 22. In addition, as Applicant's application is subject to denial, Applicant would no
14 longer be eligible for a registration under Title 4, CCR section 12204, subdivision (d) and
15 Applicant's current registration is subject to cancellation pursuant to Title 4, CCR section 12205,
16 subdivision (a).

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NOTICE OF APPLICANT’S APPEAL RIGHTS

Applicant has the following appeal rights available under state law:

Title 4, CCR section 12064, subdivision (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, subdivision (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.

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ORDER

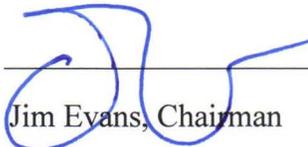
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3 1. DIANA PLONG'S Application for Approval of Initial Third-Party Proposition
4 Player Services License is DENIED.

5 2. DIANA PLONG'S Third-Party Player Registration, No. TPPL-018871is
6 cancelled.

7 3. DIANA PLONG may not apply to the Commission or the Bureau for any type of
8 license, registration or work permit for one (1) year after the effective date of this Order.

9
10 This Order is effective on January 24, 2019

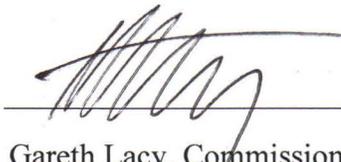
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12 Dated: 1/24/19

Signature: 
Jim Evans, Chairman

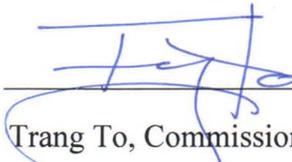
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Signature: 
Paula LaBrie, Commissioner

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Signature: 
Gareth Lacy, Commissioner

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Signature: 
Trang To, Commissioner

Mathauser, Pamela

From: Diana Plong <[REDACTED]>
Sent: Wednesday, October 03, 2018 12:15 PM
To: Ronald Diedrich
Cc: Kathi Hegelein; Linda Thorpe; Lisa Wardall; Mathauser, Pamela;
[REDACTED]
Subject: Re: FW: FW: Diana P. Plong - Withdrawal of Request for Evidentiary Hearing

Thank you for the update. I Thank you for your kindness Mr.Ronald

On Wed, Oct 3, 2018 at 10:57 AM Ronald Diedrich <[REDACTED]> wrote:

Good morning Ms. Mathauser,

As can be seen from the below email chain, Diana P. Plong is now voluntarily withdrawing her request for an evidentiary hearing. She does so with the understanding that her application for a third-party proposition player services license will be denied, as well as her understanding that her current registration will be cancelled, by the California Gambling Control Commission by way of a Default Decision and Order.

We request that the Prehearing Conference, scheduled for January 22, 2019, and the Hearing, scheduled for March 12, 2019, be taken off calendar. We also request that this matter by scheduled for a default proceeding , pursuant to California Code of Regulation's, title 4, section 12052, subdivision (c)(2)(F)(1).

If you have any questions or you need anything further, please do not hesitate to contact me.

Ronald Diedrich, Deputy Attorney General

Office of the Attorney General

Indian and Gaming Law Section

916.210.7834

Attorneys for Complainant

cc: Diana P. Plong

From: Diana Plong [REDACTED] >
Sent: Wednesday, October 03, 2018 10:37 AM
To: Ronald Diedrich [REDACTED] >
Subject: Re: FW: Diana P. Plong

Great, thank you so much

On Wed, Oct 3, 2018 at 10:35 AM Ronald Diedrich <[REDACTED]> wrote:

Thanks you, Ms. Plong.

I will contact the Commission and let them know.

Ronald Diedrich, Deputy Attorney General

Office of the Attorney General

Indian and Gaming Law Section

916.210.7834

Attorneys for Complainant

From: Diana Plong [REDACTED]
Sent: Wednesday, October 03, 2018 10:32 AM
To: Ronald Diedrich [REDACTED]
Subject: Re: FW: Diana P. Plong

I understand.

On Wed, Oct 3, 2018 at 10:29 AM Ronald Diedrich <[REDACTED]> wrote:

Ms. Plong,

Thank you for the below email stating that you now wish to withdraw your request for a hearing.

Do you also understand that by withdrawing your request for a hearing your application for a third-party proposition player services license will be denied, as well as your current registration cancelled, by the California Gambling Control Commission by way of a Default Decision and Order?

I cannot answer your question or advise you about your "permit." However, I can say that until the effective date of the Commission's Default Decision and Order denying your application and cancelling your registration, you may continue to work as a prop-player pursuant to your current registration. The Commission will identify the effective date in the Default Decision and Order.

Please remember that you have the right to be represented in this matter by a representative of your choice at your expense.

I look forward to your reply.

Ronald Diedrich, Deputy Attorney General

Office of the Attorney General

Indian and Gaming Law Section

916.2107834

Attorneys for Complainant

From: Diana Plong [REDACTED]
Sent: Wednesday, October 03, 2018 9:39 AM
To: Ronald Diedrich [REDACTED]
Subject: Re: Diana P. Plong

Good Morning, Ronald.

Sorry for the misunderstanding. I would like to withdraw my request for a hearing. I was also wondering if I will be able to continue work under my permit after I withdraw?

I appreciate your time for helping me.

Diana P. Plong

On Wed, Oct 3, 2018 at 8:22 AM Ronald Diedrich <[REDACTED]> wrote:

Good morning Ms. Plong,

Thank you for your below email. However, I believe there is some confusion. I did not offer to take up your case. As noted in all the documents that have been served on you, I am a deputy attorney general in the Indian and Gaming Law Section of the Office of the Attorney General. As stated in the Statement of Reasons that was served on you, I and the Indian and Gaming Law Section represent Stephanie Shimazu (Complainant) in her official capacity as the Director of the Bureau of Gambling Control (Bureau) in this matter. As you should be aware, the Bureau is the government agency that is recommending that your application for a license be denied by the California Gambling Control Commission (Commission), which is a separate government agency from the Bureau. I and the Indian and Gaming Law Section do not represent you and cannot take up your case.

You called me yesterday morning. During that conversation you advised me that for various reasons you no longer wanted the hearing you requested by submitting a Notice of Defense and that you understood that by withdrawing your request for a hearing your application would be denied by the Commission by way of a Default Decision and Order. I asked you to send me an email confirming that and I said I would then forward your email to the Commission and ask that the scheduled evidentiary hearing accordingly be cancelled. I also said I would copy you on any communication I had with the Commission regarding your case. The below email you sent me does not state that you wish to withdraw your request for an evidentiary hearing or that you understand the consequences of doing so.

In our conversation yesterday, I never said that I would represent you or take up your case. If you got that impression from my offering to forward your email to the Commission, I apologize and I hope this email clarifies the matter for you. Please understand that you have the right to be represented by a representative of your choice at your expense in this matter. Also, please understand that you have a right to the evidentiary hearing you requested and are under no obligation whatsoever to withdraw your request for that hearing.

So, just to be clear, do you now want to voluntarily withdraw your request for a hearing (your Notice of Defense) and that you do so knowing that your application for a third-party proposition player services license will be denied, as well as your current registration cancelled, by the California Gambling Control Commission by way of a Default Decision and Order? If that is your intent, please respond to this email by simply and plainly stating that, so that there is no confusion regarding what you understand and what you want to do.

Again, please understand that you are under no obligation whatsoever to withdraw your request for that hearing. And, please further understand, that if you decide not to clearly withdraw your notice of defense the evidentiary hearing will go forward as scheduled.

Additionally, who is Andrew Hoelscher? Is he now representing you in this matter? The records I have indicated that Michelle Fernandez is your designated agent. Accordingly, I have copied her on this email.

I look forward to your reply.

Ronald Diedrich, Deputy Attorney General

Office of the Attorney General

Indian and Gaming law Section

916.210.7834

Attorneys for Complainant

From: Andrew Hoelscher [REDACTED]
Sent: Tuesday, October 02, 2018 10:32 PM
To: Ronald Diedrich [REDACTED]
Subject: Diana P. Plong

Good Evening, Mr. Diedrich.

Thank you so much for offering to take up my case. However, I have decided to drop the case and I will not need representation. I think it is best for me to move onto different ventures as the California Gambling Control Commission is making it an incredibly difficult process for me to simply work. And I do not have the energy or finances to follow through.

Again, thank you for offering a hand in this hard time.

Diana P. Plong

Andrew M. Hoelscher

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