

BEFORE THE
GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

In the Matter of the Statement of Issues and
Application for a Finding of Suitability as a
Key Employee of:

JIMMY JOON YUM,
a.k.a. HEE JOON YUM
Sacramento, California 92827

OAH No. 2009040763

Applicant/Appellant.

DECISION

This matter was heard by a quorum of the California Gambling Control Commission of the State of California, on August 03, 2009, in Sacramento, California. Administrative Law Judge Stephen J. Smith, Office of Administrative Hearings, State of California, presided, but took no part in the making of the Decision.

Neil D. Houston, Deputy Attorney General, California Department of Justice, represented the Department of Justice, Division of Gambling Control.

Jimmy Joon Yum appeared and was represented by James M. Warden, Attorney at Law.

The panel of the Gambling Control Commission (Commission Panel) heard oral argument, considered the pleadings, papers and documents in evidence, and decided the matter in Executive Session on August 03, 2009. The ALJ was instructed to prepare the Decision for the Chairperson's signature.

FACTUAL FINDINGS

1. On April 11, 2006, Jimmy Joon Yum filed an application "Tribal Gaming Agency Tribal Key Employee Application for Finding of Suitability" (the Application) with the California Gambling Control Commission (Commission). The Application sought the Commission's approval and a Finding of Suitability for Mr. Yum to work as a pit boss at the United Auburn Indian Community's (UAIC) Thunder Valley Casino (Thunder Valley) in Rocklin, California. The UAIC operates Thunder Valley as a Tribal Gaming Agency (TGA). To the point of the Application, Mr. Yum has worked for UAIC at Thunder Valley under a

temporary permit issued under the authority of the Tribal-State Compact of 1999 between the UAIC and the State of California. Mr. Yum's application was referred to the Bureau of Gambling Control (Bureau) of the Department of Justice for investigation.

2. The Bureau notified Mr. Yum and the UAIC TGA in writing on April 23, 2007, that the Bureau was recommending to the Commission that Mr. Yum's application for a Finding of Suitability be denied, due to the existence of two disqualifying criminal convictions. The Bureau also invited Mr. Yum and a representative of the UAIC TGA to schedule a meeting with the Bureau's Deputy Director to discuss the basis for the Bureau's recommendation that Mr. Yum's application be denied.

3. Mr. Yum did not reply to the April 23, 2007, letter. The UAIC TGA did respond and scheduled a meeting with the Deputy Director to discuss the proposed denial. The meeting took place on May 14, 2007. Mr. Yum failed to attend the meeting.

4. On May 15, 2007, the Bureau mailed Mr. Yum a written notice that the Bureau intended to pursue its recommendation to the Commission that Mr. Yum's Application for Finding of Suitability as a Key Employee be denied. The notice included the reasons for the recommendation.

5. Mr. Yum submitted a renewal "Application for Finding of Suitability Tribal Key Employee" on June 26, 2007. This was a second application and was made while the first application was pending.

6. The Commission acted on January 2, 2008 by sending Mr. Yum a written notice that the matter of his applications was to be heard by the Commission at the Commission's public meeting on January 31, 2008. The written notice advised Mr. Yum that the Commission's staff agreed with the Bureau in recommending denial of the applications. The written notice also advised Mr. Yum of his right to a hearing on the proposed action.

7. Mr. Yum timely requested an evidentiary hearing before the Commission on the proposed denial of his Applications for a Finding of Suitability as a Key Employee (or renewal of same previously made on a temporary basis).

8. Mathew J. Campoy, acting in his official capacity only as Interim Chief of the Bureau, made the charges and allegations in the Statement of Issues and caused it to be filed. The Statement of Issues was signed on July 17, 2008, and was served on Mr. Yum. Mr. Yum timely filed a Notice of Defense to the Statement of Issues through counsel, requesting this evidentiary hearing. The Commission has jurisdiction to grant, grant with conditions or deny any Application for a Finding of Suitability as a Key Employee in a regulated Tribal gaming enterprise.¹

¹ Business and Professions Code sections 19811, 19823 and 19825, and Amended Compact of 1999 between the State of California and California Tribes (Amended Compact), sections 2.18 and 6.5.5.

9. Mr. Yum, then known as Hee Joon Yum, was convicted upon his pleas of guilty on January 22, 1993, in the Superior Court of the County of Sacramento, of felony violations of Penal Code section 459, first degree residential burglary, and 664/459, attempted first degree burglary. Mr. Yum was ineligible for probation due to the nature of his criminal offenses. Nevertheless, the sentencing judge granted probation and admitted Mr. Yum to a five year formal probation due to his young age (21 years) and his lack of a criminal record. As part of his five year probation, Mr., Yum was also sentenced to serve 180 days in the County jail, with credit for four days, to enroll in and continue school or to seek and maintain steady employment, and to pay restitution and a restitution and crime victim's fine.

10. The offenses that resulted in the criminal convictions occurred on October 27, 1992. Mr. Yum burglarized one home and attempted to burglarize another on that date.

11. Mr. Yum's attorney moved the sentencing court ex parte for an otherwise undisclosed sentence modification on April 9, 1993. The motion was denied as good cause was not shown.

12. Mr. Yum successfully completed his probation and all the terms and conditions imposed upon him. On September 26, 2000, Mr. Yum's Petition for Relief pursuant to Penal Code section 1203.4 was granted by the Superior Court, expunging Mr. Yum's convictions. The Sacramento County Probation Department supported the Petition, based upon Mr. Yum's good performance on probation and lack of any subsequent violation of law. Mr. Yum's Petition for Relief pursuant to Penal Code section 17, subdivision (b), seeking to have the court make the convictions misdemeanors post judgment and sentencing, was denied. The court noted Mr. Yum successfully completed his probation and had not been involved in any subsequent violations of law. But it found Mr. Yum was not eligible for Penal Code section 17, subdivision (b) (3) relief as he sought because first degree burglary is a strict felony offense and cannot be made a misdemeanor, either before or after sentencing.

13. On July 31, 2009, Mr. Yum, through counsel, filed a Petition for a Certificate of Rehabilitation and Pardon pursuant to Penal Code section 4852.01. The Petition is pending hearing in the Superior Court on November 4, 2009.

14. Mr. Yum has been employed at Thunder Valley Casino for the past six years. His first three years, starting in August 2003, he was employed as a dealer. He was promoted to supervisor three years ago, necessitating the Application for a Finding of Suitability as a Key Employee, as that is the status he currently occupies. He is married to a very supportive wife, supports his family and owns a home. He has a good reputation as a good provider, a supportive husband and a reliable and trustworthy worker. There was no evidence that Mr. Yum has had any trouble with the law since the convictions set forth above, a period of more than 15 years.

15. In 2000, Mr. Yum completed self-funded university level education and certification as an electronics technician after his convictions. He worked as a certified electronics technician for several years for Agilent Technologies. When Agilent moved its manufacturing overseas, Mr. Yum sought employment at Thunder Valley.

LEGAL CONCLUSIONS

1. (a) The responsibilities of the commission include, without limitation, all of the following:

(1) Assuring that licenses, approvals, and permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(2) Assuring that there is no material involvement, directly or indirectly, with a licensed gambling operation, or the ownership or management thereof, by unqualified or disqualified persons, or by persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare.

(b) For the purposes of this section, "unqualified person" means a person who is found to be unqualified pursuant to the criteria set forth in Section 19857, and "disqualified person" means a person who is found to be disqualified pursuant to the criteria set forth in Section 19859.²

2. The commission shall have all powers necessary and proper to enable it fully and effectually to carry out the policies and purposes of this chapter, including, without limitation, the power to do all of the following:

(a) Require any person to apply for a license, permit, registration, or approval as specified in this chapter, or regulations adopted pursuant to this chapter.

(b) For any cause deemed reasonable by the commission, deny any application for a license, permit, or approval provided for in this chapter or regulations adopted pursuant to this chapter, limit, condition, or restrict any license, permit, or approval, or impose any fine upon any person licensed or approved.

(c) Approve or disapprove transactions, events, and processes as provided in this chapter.

(d) Take actions deemed to be reasonable to ensure that no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled gambling activities.

² Business and Professions Code section 19823.

- (e) Take actions deemed to be reasonable to ensure that gambling activities take place only in suitable locations.
 - (f) Grant temporary licenses, permits, or approvals on appropriate terms and conditions.
 - (g) Institute a civil action in any superior court against any person subject to this chapter to restrain a violation of this chapter. An action brought against a person pursuant to this section does not preclude a criminal action or administrative proceeding against that person by the Attorney General or any district attorney or city attorney.
 - (h) Issue subpoenas to compel attendance of witnesses and production of documents and other material things at a meeting or hearing of the commission or its committees, including advisory committees.³
3. (a) The owner of a gambling enterprise shall apply for and obtain a state gambling license.
- (b) Other persons who also obtain a state gambling license, or key employee license, as required by this chapter, shall not receive a separate license certificate, but the license of every such person shall be endorsed on the license that is issued to the owner of the gambling enterprise.
- (c) Notwithstanding subdivision (b), this section shall not apply to key employee licenses issued on or after July 1, 2008, or the effective date of the process established pursuant to subdivision (d) of Section 19854 to make key employee licenses personal and portable, whichever is sooner.⁴

4. (a) The commission, by regulation or order, may require that the following persons register with the commission, apply for a finding of suitability as defined in subdivision (i) of Section 19805, or apply for a gambling license:

- (1) Any person who furnishes any services or any property to a gambling enterprise under any arrangement whereby that person receives payments based on earnings, profits, or receipts from controlled gambling.
- (2) Any person who owns an interest in the premises of a licensed gambling establishment or in real property used by a licensed gambling establishment.
- (3) Any person who does business on the premises of a licensed gambling establishment.

³ Business and Professions Code section 19824.

⁴ Business and Professions Code section 19851.

(4) Any person who is an independent agent of, or does business with, a gambling enterprise as a ticket purveyor, a tour operator, the operator of a bus program, or the operator of any other type of travel program or promotion operated with respect to a licensed gambling establishment.

(5) Any person who provides any goods or services to a gambling enterprise for compensation that the commission finds to be grossly disproportionate to the value of the goods or services provided.

(6) Every person who, in the judgment of the commission, has the power to exercise a significant influence over the gambling operation.

(b) The department may conduct any investigation it deems necessary to determine whether a publicly traded corporation is, or has, engaged in activities specified in paragraph (2), (3), or (4) of subdivision (a), and shall report its findings to the commission. If a publicly traded corporation is engaged in activities described in paragraph (2), (3), or (4) of subdivision (a), the commission may require the corporation and the following other persons to apply for and obtain a license or finding of suitability:

(1) Any officer or director.

(2) Any owner, other than an institutional investor, of 5 percent or more of the outstanding shares of the corporation.⁵

5. (a) Every key employee shall apply for and obtain a key employee license.

(b) No person may be issued a key employee license unless the person would qualify for a state gambling license.

(c) A key employee license shall entitle the holder to work as a key employee in any key employee position at any gambling establishment, provided that the key employee terminates employment with one gambling establishment before commencing work for another.

(d) The commission shall establish a program for portable personal licenses for key employees, as well as a process by which valid key employee licenses then in effect shall be converted to personal portable licenses. The commission may, as part of that process, establish a fee to be paid by a key employee when seeking a personal portable license. The commission shall seek to implement the requirements imposed by this subdivision on or before July 1, 2008.⁶

⁵ Business and Professions Code section 19853.

⁶ Business and Professions Code section 19854.

6. (a) Any person who the commission determines is qualified to receive a state license, having due consideration for the proper protection of the health, safety, and general welfare of the residents of the State of California and the declared policy of this state, may be issued a license. The burden of proving his or her qualifications to receive any license is on the applicant.

(b) An application to receive a license constitutes a request for a determination of the applicant's general character, integrity, and ability to participate in, engage in, or be associated with, controlled gambling.

(c) In reviewing an application for any license, the commission shall consider whether issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the license will undermine public trust that the gambling operations with respect to which the license would be issued are free from criminal and dishonest elements and would be conducted honestly.⁷

7. No gambling license shall be issued unless, based on all of the information and documents submitted, the commission is satisfied that the applicant is all of the following:

(a) A person of good character, honesty, and integrity.

(b) A person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state, or to the effective regulation and control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto.

(c) A person that is in all other respects qualified to be licensed as provided in this chapter.⁸

8. The commission shall deny a license to any applicant who is disqualified for any of the following reasons:

(a) Failure of the applicant to clearly establish eligibility and qualification in accordance with this chapter.

(b) Failure of the applicant to provide information, documentation, and assurances required by this chapter or requested by the chief, or failure of the applicant to reveal any fact material to qualification, or the supplying of

⁷ Business and Professions Code section 19856.

⁸ Business and Professions Code section 19857.

information that is untrue or misleading as to a material fact pertaining to the qualification criteria.

(c) *Conviction of a felony, including a conviction by a federal court or a court in another state for a crime that would constitute a felony if committed in California.*

(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.

(e) Association of the applicant with criminal profiteering activity or organized crime, as defined by Section 186.2 of the Penal Code.

(f) Contumacious defiance by the applicant of any legislative investigatory body, or other official investigatory body of any state or of the United States, when that body is engaged in the investigation of crimes relating to gambling; official corruption related to gambling activities; or criminal profiteering activity or organized crime, as defined by Section 186.2 of the Penal Code.

(g) The applicant is less than 21 years of age.⁹

9. Respondent/Applicant Mr. Yum is statutorily ineligible for issuance of the finding of Suitability as a Key Employee he seeks through these proceedings. He has been convicted of two felonies, and therefore, legal cause exists to deny his application and deny him the Finding, within the meaning of section 19859, subdivision (c). The Commission must, pursuant to the language of section 19859, deny Mr. Yum the Finding of Suitability as a Key Employee he seeks. The statutory language is not discretionary. Unlike subdivision (d) of that same section, the Legislature did not provide the Commission discretion to grant a Finding of Suitability or issue a license if the convicted applicant has obtained post-judgment relief. Respondent's counsel objected to this lack of discretion, characterizing it as unconstitutional. That issue is reserved for another day, as respondent has yet to obtain the post-judgment relief he seeks through his Petition for a Certificate of Rehabilitation and Pardon.

10. Nothing in the foregoing paragraph is intended to denigrate or devalue Mr. Yum's praiseworthy efforts to rehabilitate himself and live a crime free, productive, and contributing life in his community. He has obtained advanced education, learned two trades,

⁹ Business and Professions Code section 19859. (italics added)

electronics repair and gaming, and has successfully undertaken considerable responsibilities at home and at work. His claim of rehabilitation is backed with substantial evidence. His convictions were the product of youthful indiscretion and appear, in retrospect, to be the anomaly he claims. The UAIC did not promote him and assist in seeking the Finding of Suitability because Mr. Yum has been a poor performer at work or an untrustworthy employee. In fact, Mr. Yum's trustworthiness, honesty and good work performance are assumed by the nature of the tribe's promotion of him, retaining him in the supervisor position for more than three years to date, and their support of his application. Mr. Yum should not take this Decision as a refusal of the Commission to recognize his rehabilitation or endorse his efforts. The law provides no discretion or latitude, at least upon the current state of the evidence. There was some inference made during the hearing that Mr. Yum will become unemployed and perhaps lose his home if he is not granted the Finding of Suitability. There was no evidence why he cannot return to his previous position of dealer, which he obviously performed well, while pursuing his Petition and a likely reapplication.

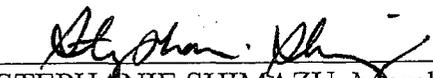
ORDER

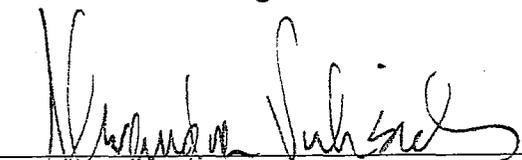
The application of Jimmy Joon Yum for a Finding of Suitability as a Key Employee for the UAIC Thunder Valley Casino is DENIED. The California Gambling Control Commission's denial of Mr. Yum's application is AFFIRMED.

This decision shall become effective on the 1st of November, 2009.

IT IS SO ORDERED this 22 of OCTOBER, 2009.


DEAN SHELTON, Chair
California Gambling Control Commission


STEPHANIE SHIMAZU, Member
California Gambling Control Commission


ALEXANDRA VUKSICH, Member
California Gambling Control Commission