

1
2
3
4
5
6
7
8

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for a Finding
of Suitability, Tribal Key Employee
Regarding:

LINH DAO

Respondent.

BGC Case No. BGC-HQ2015-00014SL
CGCC Case No. CGCC-2015-0528-10B

DECISION AND ORDER

Hearing Date: April 7, 2016
Time: 10:00 a.m.

9 This matter was heard by the California Gambling Control Commission (Commission)
10 pursuant to Business and Professions Code sections 19870 and Title 4, California Code of
11 Regulations (CCR) section 12060(b), in Sacramento, California, on April 7, 2016.

12 James Waian, Deputy Attorney General, State of California, represented complainant
13 Wayne J. Quint, Jr., Chief of the Bureau of Gambling Control (Bureau), Department of Justice,
14 State of California.

15 Linh Dao (Respondent) represented himself at the hearing.

16 During the administrative hearing, Presiding Officer Jason Pope took official notice of the
17 following:

- 18 (a) Notice of Hearing and Prehearing Conference with enclosures;
19 (b) Letter at Conclusion of Prehearing Conference;
20 (c) Bureau's Statement of Reasons;

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

- 23 (1) Statement of Reasons and Statement to Respondent, filed and served by the
24 Bureau, Bates Nos. 000001-000017;
25 (2) June 11, 2015, Executed Notice of Defense form for Respondent, signed
26 June 8, 2015, Bates Nos. 000018-000019;
27 (3) Notices from the Commission: (a) November 2, 2015 Notice of Hearing
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

- and Prehearing Conference, with attachments, Bates Nos. 000020-000054;
- (b) May 29, 2015, Referral of Initial Tribal-State Compact Key Employee Finding of Suitability to an Evidentiary Hearing, Bates Nos. 000055-000058;
- (4) August 7, 2012, renewal Application for Finding of Suitability, Tribal Key Employee, signed July 25, 2012, for Respondent, Bates Nos. 000059-000060;
- (5) May 16, 2012, Application for Finding of Suitability, Tribal Key Employee, Signed March 14, 2012, for Respondent, Bates Nos. 000061-000070;
- (6) Certified Copy of the court records regarding Respondent’s felony conviction for violation of Penal Code section 140, threats and use of force against a witness of a crime, in the case of *People v. Linh Duy Dao*, Sacramento Superior Court, Case No. 98F07356, Bates Nos. 000071-000091;
- (7) Certified Copy of the court records regarding Respondent’s misdemeanor conviction for violation of Penal Code section 484, subdivision (a), theft, in the case of *People v. Linh Duy Dao*, Sacramento Superior Court, Case No. LM018041A, Bates Nos. 000092-000096;
- (8) Certified Copy of the Galt Police Department’s records and report, Case No. 98-1128, regarding the incident that gave rise to Respondent’s felony conviction for violation of Penal Code section 140, threats and use of force against a witness of a crime, in the case of *People v. Linh Duy Dao*, Sacramento Superior Court Case No. 98F07356, Bates Nos. 000097-000118;
- (9) Court order dated January 23, 2013, and related records, ordering Respondent to pay a fine of \$320.00 for violation of Vehicle Code section

1 4000, subdivision (a), operation of an unregistered vehicle, an infraction,
2 and ordering Respondent to pay an additional fine of \$300 for violation of
3 Penal Code section 1214.1, subdivision (a), failure to pay a fine, a civil
4 assessment, in the case of *State of California v. Linh Duy Dao*, Sacramento
5 Superior Court Case No. 2012193845, Bates Nos. 000119-000126;

6 (10) Certified copy of the Certificate for Summary Judgment, Summary
7 Judgment, and Notice of Entry of Judgment dated September 30, 2010, in
8 favor of the State of California, Employment Development Department,
9 and against Respondent, in the amount of \$11,528.06, for overpayment of
10 benefits, in the case of *State of California ex. Rel. Employment*
11 *Development Department v. Linh Dao*, Sacramento Superior Court Case
12 No. 34-2010-90027049, Bates Nos. 000127-000133.

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

15 (A) March 16, 2016 receipt for payment of \$320.00 to the Sacramento Superior
16 Court by Respondent for Citation 2012193845, showing a final balance of \$300.00;

17 (B) April 6, 2016 receipt for payment of \$300 to the Sacramento Superior Court by
18 Respondent for Citation 2012193845, showing a final balance of \$0.00;

19 (C) March 3, 2016 Character reference for Linh Dao by John Duarte;

20 (D) Excerpt from US Department of Education, Wage Garnishment;

21 After the administrative hearing, but before the close of evidence, Presiding Officer Jason
22 Pope accepted into evidence the following exhibits offered by Respondent:

23 (E) Notarized character reference by Wendell Orines;

24 (F) Certificate for Summary Judgment, *State of California, Employment*
25 *Development Department v. Linh Dao*, Sacramento Case No. 34-2010-90027049;

26 (G) Notice of Determination by Employment Development Department mailed
27 to Respondent on March 2, 2010, page 1;

28

1 (H) Notice of Determination by Employment Development Department mailed
2 to Respondent on March 2, 2010, page 2;

3 (I) Notice of Determination by Employment Development Department mailed
4 to Respondent on March 2, 2010, page 3;

5 (J) Civil Case Cover Sheet filed September 30, 2010, in *State of California,*
6 *Employment Development Department v. Linh Dao*, Sacramento Case No. 34-2010-90027049;

7 (K) Abstract of Judgment in *State of California, Employment Development*
8 *Department v. Linh Dao*, Sacramento Case No. 34-2010-90027049, page 1;

9 (L) Abstract of Judgment in *State of California, Employment Development*
10 *Department v. Linh Dao*, Sacramento Case No. 34-2010-90027049, page 2;

11 The matter was submitted on June 6, 2016.

12 FINDINGS OF FACT

13 1. Respondent is a Slot Lead Ambassador at Thunder Valley Casino Resort (Thunder
14 Valley), a key employee position that requires him to submit a Finding of Suitability application
15 to the Commission pursuant to the Tribal-State Gaming Compact between the State of California
16 and the United Auburn Indian Community.

17 2. On or about May 28, 1998, Respondent was convicted, upon a plea of guilty, of
18 violating Penal Code section 484, subdivision (a), theft, a misdemeanor in *People v. Linh Dao*,
19 San Joaquin Superior Court Case No. LM018041A (Shoplifting conviction).

20 3. On or about August 24, 1998, Respondent was convicted, upon a plea of nolo
21 contendere, of violating Penal Code section 140, threats and use of force against a witness of a
22 crime, a felony, in the case of *People v. Linh Dao, Sacramento Superior Court*, Case No.
23 98F07356 (Fighting Conviction).

24 4. On March 8, 2001, Respondent's Fighting Conviction was reduced to a misdemeanor
25 pursuant to California Penal Code section 17(b).

26 5. On or about September 30, 2010, Judgment was entered in the Sacramento Superior
27 Court against Respondent in the amount of \$11,173.06 in favor of the Employment Development
28

1 Department.

2 6. Respondent began working at Thunder Valley in October 2010 in a Non-Key
3 Employee position. In March 2012, Respondent was moved into a Key Employee position,
4 causing Respondent to submit a Finding of Suitability Application with the Commission.

5 7. On or about May 16, 2012, the Commission received Respondent's initial Application
6 for Finding of Suitability, Tribal Key Employee.

7 8. On or about August 7, 2012, the Commission received Respondent's renewal
8 Application for Finding of Suitability, Tribal Key Employee. Respondent did not disclose the
9 Shoplifting Conviction on his application.

10 9. On or about January 13, 2013, Respondent was ordered to pay a fine of \$320.00 for
11 violation of Vehicle Code section 4000, subdivision (a), operation of an unregistered vehicle, and
12 to pay an additional fine of \$300 for violation of Penal Code section 1214.1, subdivision (a),
13 failure to pay a fine, a civil assessment, in the case of *State of California v. Linh Dao*, Sacramento
14 Superior Court Case No. 2012193845 (Unregistered Vehicle Fine).

15 10. In April 2015, the Bureau issued a Tribal Key Employee Background Investigation
16 Report, Level II, recommending that Respondent's license application be approved with
17 conditions.

18 11. At its May 28, 2015 hearing, the Commission referred Respondent's license
19 application to an evidentiary hearing.

20 12. On or about June 11, 2015, the Commission received Respondent's signed Notice of
21 Defense form confirming his request for an evidentiary hearing before the Commission.

22 13. On or about February 22, 2016, the Bureau filed a Statement of Reasons requesting
23 that the Commission deny Respondent's finding of suitability.

24 14. The Commission heard Case No. CGCC-2015-0528-10B on April 7, 2016. The
25 Bureau was represented throughout the pendency of the hearing by Deputy Attorney General
26 James Waian. Respondent represented himself at the hearing.

27 15. At the Commission hearing, Respondent testified that the Shoplifting Conviction
28

1 occurred while he was in high school while he was shopping with a friend at a Walmart.
2 Respondent testified that his friend handed him a hat to hold. The hat was similar to
3 Respondent's friend's hat and Respondent thought that his friend wanted him to hold the hat
4 while his friend paid for items he was purchasing. Respondent testified that the hat did not have a
5 price tag on it. As Respondent and his friend walked out of the store, they were stopped by
6 security and the police were called. Respondent received a ticket by mail to appear in court.

7 16. Respondent's testimony regarding the Shoplifting Conviction was consistent with an
8 earlier written statement that Respondent provided to the Bureau about the incident.

9 17. Respondent testified that he did not disclose the Shoplifting Conviction on his
10 application out of inadvertence. Respondent testified that he previously disclosed the conviction
11 to the Tribal Gaming Agency two years ago, but when he filled out the Commission application,
12 Respondent forgot about the conviction because he was more concerned about disclosing his
13 Fighting Conviction.

14 18. The Bureau report confirms that the Tribal Gaming Agency is aware of Respondent's
15 Shoplifting Conviction.

16 19. Respondent testified regarding the events that led to his Fighting Conviction.
17 Respondent testified that he was involved in a fight during lunch hour when he was in high
18 school. The fight occurred at a Carls Jr. parking lot. Respondent testified that a classmate's
19 cousin had been harassing him for some time prior to the fight. When Respondent confronted the
20 classmate about the harassment, the fight occurred. Respondent testified that he left Carls Jr.
21 after the fight and was later arrested.

22 20. Respondent's testimony regarding the Fighting Conviction was consistent with an
23 earlier written statement that Respondent provided to the Bureau about the incident.

24 21. The Bureau admitted as evidence the Police Report related to Respondent's Fighting
25 Conviction. The Report stated that the victim of the fight claimed that Respondent walked up to
26 him and said "this is for your cousin snitching on my friend," and then Respondent punched him
27 in the face knocking him to the ground. While the victim was on the ground, Respondent and two
28

1 other people kicked and punched the victim in the head. The victim also stated that Respondent
2 took his wallet.

3 22. At the Commission hearing, Respondent denied taking the victim's wallet and denied
4 that anyone was involved in the fight other than Respondent and the victim. Respondent denied
5 that he started the fight in response to the victim's cousin "snitching." Respondent testified that
6 he and the victim resolved their issues and have remained friends since high school.

7 23. Respondent testified that he pled guilty to the felony Fighting Conviction because his
8 family wanted him to enter into a plea agreement because they were embarrassed about the
9 charges. Respondent testified that he had a court appointed attorney, but he did not understand
10 the outcome of his plea. Respondent also testified that his parents did not understand the plea
11 agreement because they could not understand English.

12 24. The Bureau Report found that Respondent owes \$11,918 to the Department of
13 Education in student loans. According to the Report, Respondent made payments of \$50 a month
14 pursuant to a payment plan between November 2012 and March 2013. However, Respondent's
15 January and March 2013 payments were declined due to insufficient funds and thereafter he
16 stopped making payments.

17 25. At the hearing, Respondent testified that he is currently making payments on his
18 student loans through a wage garnishment. Respondent also admitted documentary evidence
19 demonstrating that a wage garnishment is in effect.

20 26. Respondent testified regarding the September 2010 judgment in favor of the EDD in
21 the amount of \$11,173.06. Respondent testified that he was receiving unemployment checks and
22 after six months, his benefits were cancelled because the EDD claimed to have overpaid him.
23 Respondent testified that the EDD requested that Respondent return the overpaid funds.
24 Respondent was unable to return the funds because he was not working at the time.

25 27. Respondent testified that while he received unemployment, he had a part time job
26 cleaning trailers. Respondent stated that he notified the EDD of his part time employment.

27 28. Respondent testified that he noticed that his unemployment checks were higher than
28

1 those he received during a past period of unemployment. However, Respondent assumed that if
2 there was an error, it was caused by the EDD so he did not take any action to address the potential
3 error.

4 29. Respondent testified that as of the date of the hearing, he had not made any payments
5 towards the EDD judgment.

6 30. According to the Bureau Report, the Bureau requested copies of Respondent's bank
7 statements and pay stubs as part of its investigation. The Bureau found that Respondent had
8 made several withdrawals from ATMs at the following tribal casinos: Cache Creek Casino
9 Resort, Colusa Casino Resort, Jackson Rancheria Casino & Hotel, and Red Hawk Casino.

10 31. The Bureau contacted each of the Tribal Gaming Agencies and asked if Respondent
11 had a player reward card. The Bureau found that Respondent had activity on his player reward
12 cards, some of which occurred around the same time of the ATM withdrawals.

13 32. Respondent testified that he did not gamble with the money he withdrew at the
14 casinos. Respondent testified that he withdrew the funds because the ATMs at the casinos would
15 give cash advances. Respondent stated that he did not have a credit card or a loan and would
16 occasionally need the cash advances to pay bills.

17 33. The Bureau Report also indicated that Respondent made withdrawals from ATMs at
18 Atlantis Casino Resort Spa, Grand Sierra Casino, and Silver Legacy in Reno, Nevada.
19 Respondent told the Bureau that the withdrawals were for a family trip to Reno and food
20 expenses, but that he did not gamble.

21 34. Respondent testified that his friends would use his player reward cards and then he
22 would use the free slot plays that would accrue. Respondent testified that his friends did not have
23 their own player reward cards and used his because they were superstitious about getting their
24 own cards. Respondent testified that he only uses free slot play accrued by his friends on his
25 player reward cards and that Respondent had not gambled with his own money since August
26 2013.

27 35. Respondent admitted evidence that he made a payment of \$320 on March 16, 2016,
28

1 and a second payment of \$300 on April 6, 2016 to pay the full amount owed to the Sacramento
2 Superior Court for his Unregistered Vehicle Fine.

3 36. Respondent admitted a letter of reference from his manager stating that Respondent is
4 a person of good character and is professionally dedicated, resulting in Respondent advancing in
5 his job at Thunder Valley.

6 37. At the conclusion of the April 7, 2016 hearing, the Commission requested additional
7 evidence regarding the circumstances surrounding the EDD's overpayment of benefits to
8 Respondent. Specifically, the Commission requested information regarding the reason for the
9 overpayment, i.e. whether the overpayment was caused by Respondent or was a mistake by the
10 EDD. The Commission also requested that Respondent obtain a notarized character reference
11 from the victim of the fight at Carls Jr. resulting in Respondent's Fighting Conviction. The
12 Bureau was ordered to confirm that the person who signed the letter was the same person
13 identified as the victim in the police report.¹ The Commission held the record open for 60 days
14 for Respondent to admit new evidence on these limited issues.

15 38. On or about June 1, 2016, Respondent admitted a notarized character reference signed
16 by Wendell Orines. The reference states that Respondent and Mr. Orines have been close friends
17 since high school and states that Respondent is dependable, responsible, honest, and courteous.

18 39. Also on or about June 1, 2016 Respondent admitted a copy of the Motion for
19 Summary Judgment that resulted in the EDD judgment. The Motion alleged that an overpayment
20 occurred because in some weeks, Respondent received benefits during periods when he was not
21 entitled to full benefits and/or was not eligible for benefits at all due to his employment at Cal
22 Custom.

23 40. Before the Commission, Respondent appeared evasive and did not sufficiently accept
24 responsibility for causing the EDD overpayment or for failing to make any payments towards the
25 judgment.

26 41. The Commission finds that Respondent's failure to disclose his Shoplifting

27 ¹ The victim's name was redacted from the version of the police report admitted by the
28 Bureau.

1 Conviction was not intentional. Respondent disclosed the more serious Fighting Conviction and
2 also disclosed the Shoplifting Conviction to the Tribal Gaming Agency, which indicates that he
3 did not omit the information from his application with the intent to deceive the Bureau.

4 42. The Commission finds that Respondent's testimony about the circumstances of the
5 fight that occurred at Carls Jr. was not credible based on the contradictory account in the police
6 report and the fact that Respondent was convicted of Penal Code section 140, threats and use of
7 force against a witness of a crime.

8 43. Although there is no prohibition against Respondent gambling in and of itself, the
9 Commission found Respondent's testimony that the activity on his player reward cards was
10 caused by his friends using his card to be not credible.

11 44. The Commission is not convinced that the funds Respondent withdrew from multiple
12 casino ATMs were used to pay bills. Respondent did not provide any evidence that any of his
13 ATM withdrawals were used to pay bills or that the amounts withdrawn were similar to the
14 amount of bills he owed at the time.

15 45. Respondent failed to demonstrate that he is a person of good character, honesty, and
16 integrity.

17 46. All documentary and testimonial evidence submitted by the parties that is not
18 specifically addressed in this Decision and Order was considered but not used by the Commission
19 in making its determination on Respondent's Application.

20 47. The matter was submitted for Commission consideration on June 6, 2016.

21 LEGAL CONCLUSIONS

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

25 2. Public trust and confidence can only be maintained by strict and comprehensive
26 regulation of all persons, locations, practices, associations, and activities related to the operation
27 of lawful gambling establishments and the manufacture and distribution of permissible gambling
28

1 equipment. Business and Professions Code section 19801(h).

2 3. At an evidentiary hearing pursuant to Business and Professions Code sections 19870
3 and 19871 and Title 4, CCR section 12060(b), the burden of proof rests with the applicant to
4 prove his or her qualifications to receive any license under the Gambling Control Act. Title 4,
5 CCR section 12060(i). Business and Professions Code section 19856(a).

6 4. An application to receive a license constitutes a request for a determination of the
7 applicant's general character, integrity, and ability to participate in, engage in, or be associated
8 with, controlled gambling. Business and Professions Code section 19856(b).

9 5. In reviewing an application for any license, the Commission shall consider whether
10 issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the
11 license will undermine public trust that the gambling operations with respect to which the license
12 would be issued are free from criminal and dishonest elements and would be conducted honestly.
13 Business and Professions Code section 19856(c).

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

18 7. An "unqualified person" means a person who is found to be unqualified pursuant to
19 the criteria set forth in Business and Professions Code section 19857, and "disqualified person"
20 means a person who is found to be disqualified pursuant to the criteria set forth in Business and
21 Professions Code section 19859. Business and Professions Code section 19823(b).

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

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

28

ORDER

1
2 1. Linh Dao's Application for a Finding of Suitability, Tribal Key Employee is
3 DENIED.

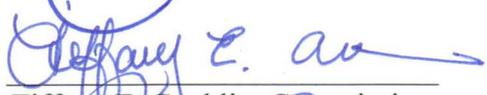
4 2. Each side to pay its own attorneys' fees.

5 This Order is effective on August 8, 2016.

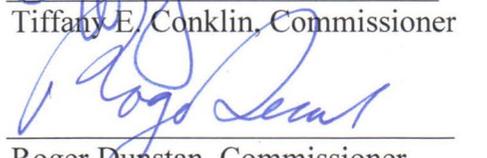
6 Dated: 7/7/16

Signature: 
Jim Evans, Chairman

8 Dated: 7/7/2016

Signature: 
Tiffany E. Conklin, Commissioner

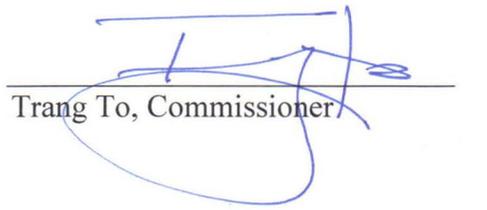
10 Dated: 7/27/2016

Signature: 
Roger Dunstan, Commissioner

13 Dated: 7/7/2016

Signature: 
Lauren Hammond, Commissioner

15 Dated: 7/7/16

Signature: 
Trang To, Commissioner