

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

In the Matter of the Application for a Key
Employee License Regarding:

DONALD LY

Applicant.

CGCC Case No. CGCC-2018-0510-5J
BGC Case No. BGC-HQ2018-00031SL

DECISION AND ORDER

Hearing Date: December 19, 2018
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(b), in Sacramento, California, on December 19, 2018.

Michelle Laird, Supervising Deputy Attorney General, State of California, represented complainant Stephanie Shimazu, Chief of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

John Cammack, Esq. Michael & Cammack, represented Donald Ly (Applicant) at the hearing.

During the administrative hearing, Presiding Officer Jason Pope took official notice of the following: (1) Notice of Evidentiary Hearing and attachments; (2) the Bureau's Statement of Reasons; (3) Applicant's Notice of Defense; and (4) the Conclusion of Prehearing Conference Letter.

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

- (1) The Bureau's Statement of Reasons, Bates Nos. 001-015;
- (2) The Bureau's Statement to Respondent, Bates Nos. 016-025;
- (3) May 11, 2018 Referral of Initial Portable Personal Key Employee License to an Evidentiary Hearing, Bates Nos. 026-028;
- (4) May 16, 2018 Notice of Defense, Bates Nos. 029-031;

- 1 (5) July 24, 2018 Notice of Hearing, Bates Nos. 032-052;
- 2 (6) Application for Interim Key Employee License, Bates Nos. 053-070;
- 3 (7) March 2018 Cardroom Key Employee Background Investigation Report with
- 4 Attachments A through F, Bates Nos. 071-094;
- 5 (8) Commission Licensing Division Memorandum with Attachments, Bates Nos. 095-
- 6 105;
- 7 (9) September 23, 2016 License History, Bates Nos. 106-107;
- 8 (10) August 21, 2017 Criminal Background Check, Bates Nos. 108-118;
- 9 (11) Series of correspondence between Applicant and the Bureau, Bates Nos. 119-154;
- 10 (12) March 16, 2018 Appointment of Designated Agent, Bates Nos. 155-156;
- 11 (13) September 7, 2016 Fingerprint Response, Bates Nos. 157-160.

12 The matter was submitted on December 19, 2018.

13 FINDINGS OF FACT

- 14 1. On or about May 21, 2001, Applicant was convicted upon a plea of guilty to a
- 15 violation of California Fish and Game Code section 2002, unlawful possession of a creature taken
- 16 in violation of the Fish and Game Code, a misdemeanor, in the case of *People v. Donald Anghia*
- 17 *Ly*, Mendocino County Superior Court Case No. MCTM-CRNT-2001-43423-2.
- 18 2. On September 20, 2016, the Bureau received Applicant's interim key employee
- 19 license application. On September 23, 2016, the Commission issued an interim key employee
- 20 license, number GEKE-002250, to Applicant allowing him to work as a key employee at the
- 21 Palace Poker Casino, a licensed gambling establishment in Hayward, California, while his
- 22 application for an initial key employee license was being processed.
- 23 3. On or about October 24, 2016, the Bureau received Applicant's Application for
- 24 Gambling Establishment Key Employee License and a Key Employee Supplemental Background
- 25 Investigation Information, with attached schedules, dated September 2, 2016 (collectively,
- 26 Application).
- 27 4. On his Application, Applicant stated, under penalty of perjury, that he had never been
- 28

1 convicted of a crime.

2 5. On July 8, 2017, Jeanine Velasquez, Manager of the Bureau's Cardroom Licensing
3 Section, wrote to Applicant and identified four criminal court cases that Applicant was allegedly
4 involved in. The cases were filed in Mendocino County, Redwood City, South San Francisco, and
5 San Luis Obispo. The letter requested that Applicant explain the nature of each case, provide
6 court documentation, a copy of the disposition, and explain why he failed to disclose the
7 convictions to the Bureau. The letter also asked Applicant to identify which date he assumed his
8 duties as a key employee at the Palace Poker Casino. As noted below, it was later confirmed that
9 only one of these four criminal court cases actually involved Applicant.

10 6. Applicant responded to the Bureau's inquiry on July 18, 2017. Applicant stated that he
11 assumed his key employee duties on September 30, 2016. Regarding the four criminal cases,
12 Applicant responded, "this is not me."

13 7. On August 8, 2017, the Bureau again wrote to Applicant to inquire further about
14 Mendocino County Superior Court Case No. MCTM-CRNT-2001-43423-2. The letter states that
15 the Bureau verified with the court, by checking Applicant's date of birth and driver's license
16 number, that Applicant was a defendant in the case. The Bureau asked Applicant to explain the
17 discrepancy.

18 8. Applicant responded to the Bureau's inquiry on August 16, 2017, requesting
19 additional time to obtain documents from the court. Applicant further stated that he believes that
20 he was not a defendant in the case, but he was acting as a translator for a defendant who received
21 a citation.

22 9. On August 23, 2017, the Bureau again requested that Applicant explain the
23 discrepancy between information obtained from the Mendocino County Superior Court and
24 Applicant's assertion that he had never been convicted of a crime.

25 10. On August 28, 2017, Applicant faxed a three page Case Summary Report, for
26 Mendocino County Superior Court Case No. MCTM-CRNT-2001-43423-2 to the Bureau with a
27 handwritten letter. In the letter, Applicant explained which the portions of the document
28

1 supported his conclusion that he was only acting as a translator in the case.

2 11. On October 9, 2017, the Bureau notified Applicant that it obtained information from
3 his employer indicating that he assumed his key employee duties on September 14, 2016, which
4 would make his key employee application, submitted October 24, 2016, outside the 30-day
5 required period. On October 30, 2017, Applicant responded stating that he initially accepted the
6 position as a key employee knowing that there was no immediate opening and he worked as a
7 poker dealer until the key employee position became available.

8 12. A series of further written exchanges occurred between the Bureau and Applicant,
9 wherein, the Bureau stated that information that Applicant provided regarding his involvement in
10 Mendocino County Superior Court Case No. MCTM-CRNT-2001-43423-2 was not consistent
11 with records received by the Bureau. Applicant requested that the Bureau provide him a copy of
12 the records because he was unable to obtain any additional documentation from the court because
13 the records had been purged.

14 13. On November 9, 2017, Applicant sent an email to the Bureau stating that after
15 traveling to the Mendocino County Courthouse, he was able to identify that he was charged and
16 convicted for illegal possession of abalone. Applicant and three others pled guilty to the
17 misdemeanor charge in May 2001. Applicant stated that: "I did not disclose this because it was
18 over 16 years ago and I had no recollection of ever receiving a citation. I do recall being in the
19 presence of a judge as a translator, but that was all I could recall until this research."

20 14. On or about March 14, 2018, the Bureau submitted a Cardroom Key Employee
21 Background Investigation Report (Report) to the Commission recommending Applicant's
22 Application be denied on the basis that he failed to disclose his conviction and provided untrue or
23 misleading information regarding the conviction. The Report also alleged that Applicant
24 submitted his application for an initial key employee license 10 days late.

25 15. On or about March 23, 2018, Applicant's interim key employee license was cancelled
26 by the Commission pursuant to California Code of Regulations, title 4, section 12354, subdivision
27 (e)(5), because the Bureau recommended denial of Applicant's Application.
28

1 16. On May 10, 2018, pursuant to California Code of Regulations, title 4, section 12054,
2 subdivision (a)(2), the Commission referred consideration of Applicant's Application to an
3 evidentiary hearing to be held under the provisions of California Code of Regulations, title 4,
4 section 12060.

5 17. On or about May 16, 2018, Applicant submitted a Notice of Defense to the
6 Commission requesting an evidentiary hearing.

7 18. An evidentiary hearing was held before the Commission on December 19, 2018. At
8 the hearing, Applicant testified that when he submitted the interim key employee license
9 application, there was not a current key employee opening at the Palace Poker Casino. However,
10 Applicant submitted his application in anticipation of a position opening. Applicant testified that
11 he was training and preparing, but was not acting as a key employee at the time he filled out the
12 interim key employee license application.

13 19. Applicant testified that when he filled out the Application, he did not realize that he
14 had been convicted of a misdemeanor violation.

15 20. Applicant stated that he had undergone other criminal background checks in relation
16 to his past employment, including with Wells Fargo Bank, and never had any indication that he
17 was ever charged with or convicted of a misdemeanor until he was notified by the Bureau.

18 21. Applicant testified that in July 2017, when he initially told the Bureau that he was not
19 involved in the four criminal cases, that he was responding based on his honest belief at the time.
20 Indeed, three of the cases provided by the Bureau did not actually involve Applicant. However,
21 for the case filed in Mendocino County Superior Court, Applicant testified that he later learned
22 that he was in fact convicted of a misdemeanor as a result of that case.

23 22. Applicant testified that he made multiple attempts to obtain documents from the
24 Mendocino County Superior Court regarding the conviction and was repeatedly told that the
25 documents had been purged. Applicant testified that he asked the Bureau for a copy of the records
26 the Bureau's investigators obtained, but the Bureau declined to provide the documents to him and
27 told Applicant that he must do his own research.

28

1 23. Applicant testified that he was only able to obtain a few pages of records from the
2 Mendocino County Superior Court. Applicant testified that after reviewing the court records, he
3 believed that a single defendant was involved in the case. Applicant recognized the defendant as
4 someone he went abalone fishing with and Applicant recalled translating for this person in court.
5 Applicant further explained that he was identified as a translator in the “notes” section of the
6 document. Applicant recalled providing a translation service for the court for the other
7 defendants.

8 24. Applicant testified that he hired Chris Ray as his designated agent because he felt that
9 he was stuck in the application process. Mr. Ray advised Applicant to go to the Mendocino
10 Superior Court in person to ask for a disposition sheet.

11 25. Applicant testified that he drove approximately three hours to the Mendocino County
12 Superior Court to see if he could obtain any additional information. Applicant explained to the
13 clerk that he had been repeatedly told that the case file was purged. However, the Bureau had
14 somehow obtained documents regarding the case. The clerk confirmed that the records for the
15 case were purged. However, the clerk was able to identify for Applicant that he was charged with
16 a misdemeanor for violation of a Fish and Game Code section. Then the clerk looked up the code
17 section for Applicant and told him that it involved abalone.

18 26. Applicant testified that this visit helped him recall receiving a ticket from a Fish and
19 Game warden, and thought this could have explained the conviction. Applicant testified that he
20 had been fishing for abalone with a group of divers. The warden issued tickets to the entire group
21 for suspicion that they were unlawfully sharing the abalone they caught. Applicant testified that
22 he previously thought that the ticket he received was similar to a traffic ticket because he was not
23 put in handcuffs, arrested, or taken to jail.

24 27. Applicant testified that he first saw the documents that the Bureau received regarding
25 his conviction when he received a copy of the Bureau’s Report recommending licensure denial.
26 Applicant testified that the Bureau’s documents were more detailed than what he had been able to
27 obtain from the court.
28

1 28. Palace Poker Casino owner, Cathy Aganon, testified that when she first hired
2 Applicant as a dealer, she called his prior employer, Wells Fargo Bank. Applicant's prior
3 employer did not provide any derogatory information about Applicant. Further, the City of
4 Hayward did a background check on Applicant and determined that he did not have any criminal
5 convictions.

6 29. Ms. Aganon testified that if Applicant's key employee license application is granted,
7 she wants to re-hire him as a key employee. Ms. Aganon testified that of the many employees
8 she has to choose from, Applicant is her first choice to be a key employee and she trusts him to be
9 in charge of the cardroom when she is not there. Ms. Aganon testified that Applicant is honest
10 and that she has never received any complaints about him from patrons or employees or had
11 reason to discipline Applicant.

12 30. Chris Ray testified that he is the Designated Agent for Palace Poker Casino and he
13 assisted Applicant with filling out his Application. Mr. Ray testified that he instructs all
14 applicants to be over inclusive and truthful when filling out the application. With regard to
15 disclosing any criminal matters, Mr. Ray testified that he advised applicants to disclose any
16 criminal activity, arrests, or convictions. Applicant told Mr. Ray that he did not have any criminal
17 convictions to disclose.

18 31. Mr. Ray testified that at the time Applicant filled out his interim key employee
19 application, there was not an open key employee position, but they were filling the application out
20 early so that Applicant would be licensed by the time the position was open.

21 32. Leon Clincy, Bank Branch Manager at Wells Fargo Bank, testified that he worked
22 with applicant beginning in 1998 for approximately 7 years. Mr. Clincy testified that Applicant
23 started as an Account Agent and thereafter received several promotions.

24 33. Mr. Clincy testified that he was very happy with Applicant's work during Applicant's
25 tenure at Wells Fargo. Mr. Clincy also testified that Applicant underwent state and federal
26 criminal background checks in the course of his employment to enable him to be certified and
27 licensed to sell securities and insurance. Mr. Clincy testified that he believes Applicant is honest
28

1 and possess integrity. Further, Mr. Clincy was impressed by Applicant's desire to provide safe,
2 secure products for the bank's clients.

3 34. Cheng Ngo, Chief Financial Officer for the Palace Poker Casino, testified that he has
4 worked with Applicant at Wells Fargo Bank and at the Palace Poker Casino. Mr. Ngo testified
5 that Applicant has integrity, is honest, has good character, and follows the policies and procedures
6 of his employers.

7 35. Applicant's testimony that he was applying for an interim key employee position in
8 anticipation of a position opening was credible and consistent with his two prior written
9 statements to the Bureau and with Mr. Ray's testimony. The Commission finds that Applicant
10 timely submitted his initial key employee license application within 30 days of assuming the
11 duties of a key employee.

12 36. Applicant's testimony that when he filled out the Application he was unaware that he
13 had a 2001 misdemeanor conviction in relation to an abalone fishing incident was credible. The
14 conviction occurred long ago and was not included or discussed in relation to other background
15 investigations Applicant underwent. Applicant was not arrested and believed that he received a
16 citation similar to a traffic ticket rather than a misdemeanor conviction. Given these
17 circumstances, the Commission finds that when Applicant stated in his Application that he had
18 never been convicted of a crime, he believed that his response was truthful and was not
19 attempting to conceal or mislead the Bureau.

20 37. Further, it is understandable that Applicant had a difficult time explaining the
21 discrepancies between the information contained in his Application and documents obtained by
22 the Bureau because Applicant apparently did not have access to the court documents at issue.

23 38. Applicant has met his burden of proving that he is a person of good character, honesty
24 and integrity.

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

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

LEGAL CONCLUSIONS

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

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

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

4. 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. Business and Professions Code section 19856(b).

5. 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. Business and Professions Code section 19856(c).

6. The Commission has the responsibility of 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. Business and Professions Code section 19823(a)(1).

7. An "unqualified person" means a person who is found to be unqualified pursuant to the criteria set forth in Business and Professions Code section 19857, and "disqualified person" means a person who is found to be disqualified pursuant to the criteria set forth in Business and

1 Professions Code section 19859. Business and Professions Code section 19823(b).

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

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

8 10. An application for a Key Employee License shall be denied by the Commission if the
9 applicant is found unqualified pursuant to the criteria set forth in subdivisions (a) or (b) of
10 Business and Professions Code section 19857.

11 11. Applicant met his burden of demonstrating that he is a person of honesty and integrity.
12 Therefore, Applicant is qualified for the issuance of a Key Employee License pursuant to
13 Business and Professions Code section 19857(a).

14 NOTICE OF APPLICANT'S APPEAL RIGHTS

15 Applicant Donald Ly has the following appeal rights available under state law:

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

17 An applicant denied a license, permit, registration, or finding of suitability, or whose
18 license, permit, registration, or finding of suitability has had conditions, restrictions,
19 or limitations imposed upon it, may request reconsideration by the Commission
20 within 30 calendar days of service of the decision, or before the effective date
21 specified in the decision, whichever is later. The request shall be made in writing to
22 the Commission, copied to the Bureau, and shall state the reasons for the request,
23 which must be based upon either newly discovered evidence or legal authorities that
24 could not reasonably have been presented before the Commission's issuance of the
25 decision or at the hearing on the matter, or upon other good cause which the
26 Commission may decide, in its sole discretion, merits reconsideration.

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

24 A decision of the commission denying a license or approval, or imposing any
25 condition or restriction on the grant of a license or approval may be reviewed by
26 petition pursuant to Section 1085 of the Code of Civil Procedure. Section 1094.5 of
27 the Code of Civil Procedure shall not apply to any judicial proceeding described in
28 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:


1 A decision of the Commission denying an application or imposing conditions on license
2 shall be subject to judicial review as provided in Business and Professions Code section
3 19870, subdivision (e). Neither the right to petition for judicial review nor the time for
4 filing the petition shall be affected by failure to seek reconsideration.

5 ORDER


- 6 1. Applicant Donald Ly's Application for a Key Employee License is GRANTED.
7 2. Each side to pay its own attorneys' fees.

8 This Order is effective on 1/23, 2019.

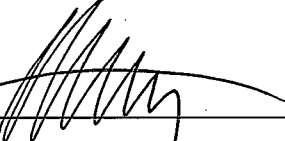
9 Dated: 1/23/19

10 Signature: 
Jim Evans, Chairman

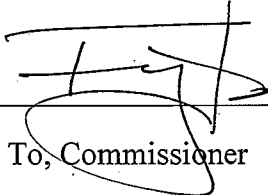
11 Dated: 1/23/19

12 Signature: 
Paula LaBrie, Commissioner

13 Dated: 1/23/19

14 Signature: 
Gareth Lacy, Commissioner

15 Dated: 1/23/19

16 Signature: 
Trang To, Commissioner