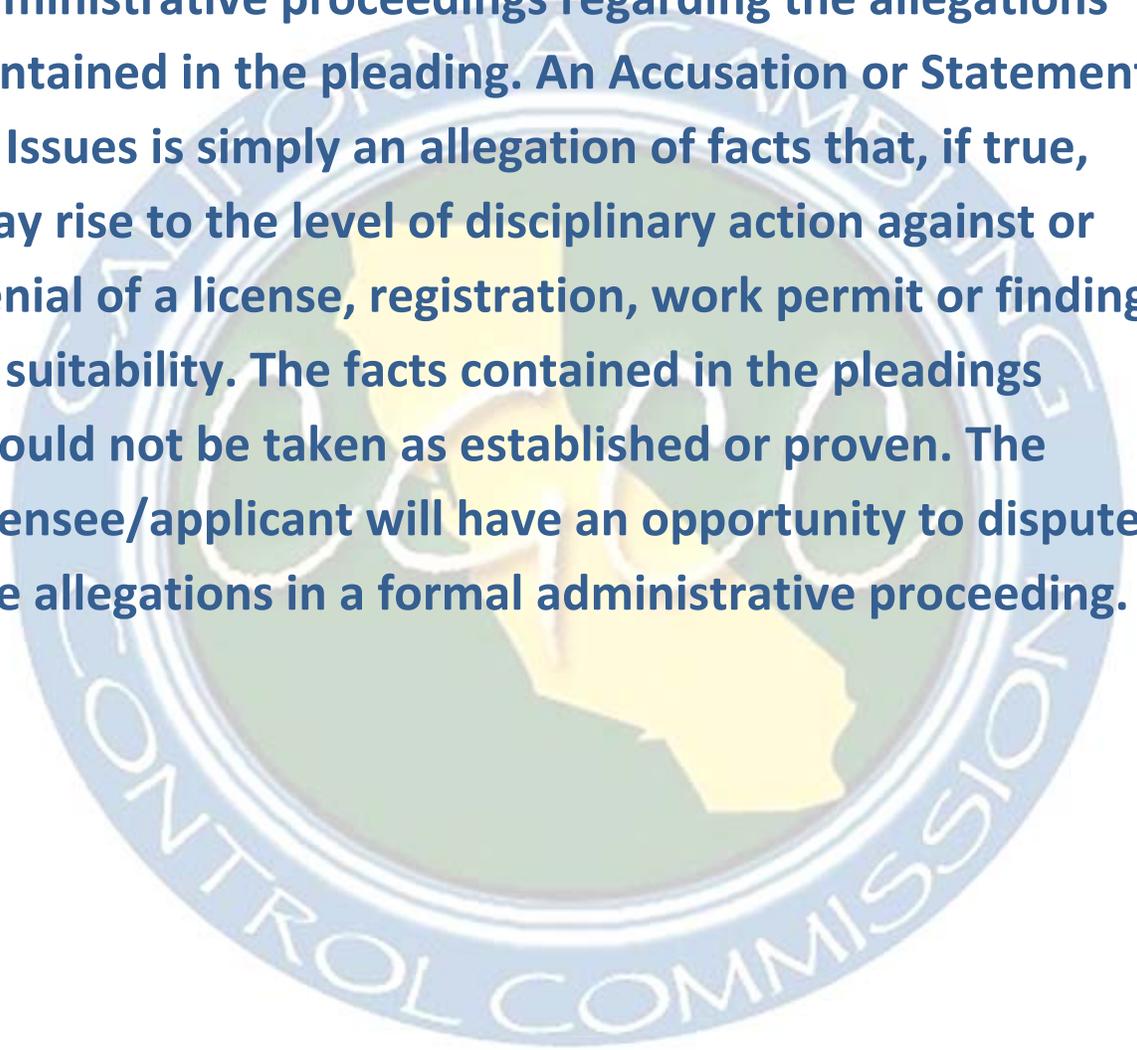


The Commission is providing a copy of this disciplinary pleading (Accusation, or Statement of Reasons, Statement of Particulars, or Statement of Issues) so the public is as informed as possible of pending administrative proceedings regarding the allegations contained in the pleading. An Accusation or Statement of Issues is simply an allegation of facts that, if true, may rise to the level of disciplinary action against or denial of a license, registration, work permit or finding of suitability. The facts contained in the pleadings should not be taken as established or proven. The licensee/applicant will have an opportunity to dispute the allegations in a formal administrative proceeding.



2012 JAN 25 PM 4: 50

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Senior Assistant Attorney General
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*Attorneys for Complainant, Chief of Bureau of
8 Gambling Control, Department of Justice*

9 **BEFORE THE**

10 **CALIFORNIA GAMBLING CONTROL COMMISSION**

11 **STATE OF CALIFORNIA**

12
13
14 **In the Matter of the Accusation Against:**

15 **ALBERT CIANFICHI, Sole Proprietor**
16 **KELLY'S CARDROOM**
17 **408 "O" Street**
Antioch, CA 94509

18 **License Number 990002**

BGC Case No. SA2011-00012

OAH No.

FIRST AMENDED
ACCUSATION AND PETITION
TO REVOKE PROBATION

19
20
21 Martin Horan, Jr., Complainant herein, alleges as follows:

22 **PARTIES**

23 1. Martin Horan, Jr. (Complainant) brings this Accusation and Petition to Revoke
24 Probation under the Gambling Control Act (Bus. & Prof. Code § 19800 et seq., "Act") solely in
25 his official capacity as the Acting Chief of the Bureau of Gambling Control within the California
26 Department of Justice (Bureau).

1 attempting to find a purchaser who is already licensed by the California
2 Gambling Control Commission, in order to expedite the licensing of the new
3 owner.

- 4 d. The purchase and sale agreement must contain a provision that a portion
5 (\$112, 000) of the purchase price must be set aside as a reserve fund to pay for
6 the penalty and costs agreed to in this Stipulation and will be paid to the
7 Bureau out of escrow at the time of sale.
- 8 e. If a purchase and sale agreement and an application for licensure by the
9 proposed purchaser are not submitted to the Commission on or before
10 November 25, 2011, the Cardroom shall be closed by operation this Stipulated
11 Settlement and Disciplinary Order. After closure of the Cardroom, the
12 Respondent shall have until May 26, 2012 to find a purchaser who may be
13 licensed.
- 14 f. If a purchase and sale agreement and an application for licensure by the
15 proposed purchaser are not submitted to the Commission before May 26, 2012,
16 the Respondent's gambling license shall be revoked by operation of this
17 Stipulated Settlement and Disciplinary Order. Notwithstanding any other
18 provision hereof, during the period of November 25, 2011 to May 26, 2012,
19 the Respondent may apply for an extension of time to file a purchase and sale
20 agreement for up to six (6) months upon a showing of good cause such as, but
21 not limited to, license processing delays by the Bureau or Commission, or the
22 rejection of a buyer by the Commission.
- 23 g. Respondent acknowledges that the Bureau seeks to have him to divest himself
24 of his interest in the Cardroom as soon as possible.
- 25 h. Respondent hereby agrees to employ an outside compliance consultant who
26 will be responsible for ensuring that the Cardroom is in complete compliance
27 with the regulations promulgated by the Commission and the Bureau.
- 28 i. The outside consultant shall have expertise in the above-referenced regulations

1 and the operations of the Commission and the Bureau.

2 * * *

- 3 k. Respondent agrees that he will minimize his activities in the gambling
4 establishment, and will charge a validly licensed key employee with the day-
5 to-day operation of the Cardroom.
- 6 l. Respondent shall obey all state and federal laws and regulations substantially
7 related to, or governing the practices and operation of gambling
8 establishments.

9 **JURISDICTION**

- 10 5. Business and Professions Code, section 19811 provides, in part:

11 (b) Jurisdiction, including jurisdiction over operation and
12 concentration, and supervision over gambling establishments in this state
13 and over all persons or things having to do with the operations of
14 gambling establishments is vested in the commission.

- 15 6. Business and Professions Code, section 19823 provides:

16 (a) The responsibilities of the commission include, without
17 limitation, all of the following:

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

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

- 27 7. Business and Professions Code, section 19824 provides, in part:

28 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:

* * *

1 (b) For any cause deemed reasonable by the commission, . . . limit,
2 condition, or restrict any license, permit, or approval, or impose any fine
3 upon any person licensed or approved. The commission may condition,
4 restrict, discipline, or take action against the license of an individual
5 owner endorsed on the license certificate of the gambling enterprise
6 whether or not the commission takes action against the license of the
7 gambling enterprise.

8 * * *

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

12 8. Business and Professions Code section 19826 provides, in part:

13 The department^[1] shall have all of the following responsibilities:

14 * * *

15 (c) To investigate suspected violations of this chapter or laws of this
16 state relating to gambling

17 * * *

18 (e) To initiate, where appropriate, disciplinary actions as provided in
19 this chapter. In connection with any disciplinary action, the department
20 may seek restriction, limitation, suspension, or revocation of any license
21 or approval, or the imposition of any fine upon any person licensed or
22 approved.

23 9. Business and Professions Code, section 19930 provides, in part:

24 (b) If, after any investigation, the department is satisfied that a
25 license, permit, finding of suitability, or approval should be suspended or
26 revoked, it shall file an accusation with the commission in accordance
27 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3
28 of title 2 of the Government Code.

(c) In addition to any action that the commission may take against a
license, permit, finding of suitability, or approval, the commission may
also require the payment of fines or penalties. However, no fine imposed
shall exceed twenty thousand dollars (\$20,000) for each separate violation
of any provision of this chapter or any regulation adopted thereunder.

(d) In any case in which the administrative law judge recommends
that the commission revoke, suspend, or deny a license, the administrative

¹ "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd. (h).)

1 law judge may, upon presentation of suitable proof, order the licensee or
2 applicant for a license to pay the department the reasonable costs of the
investigation and prosecution of the case.

3 (1) The costs assessed pursuant to this subdivision shall be
4 fixed by the administrative law judge and may not be increased by
5 the commission. When the commission does not adopt a proposed
6 decision and remands the case to the administrative law judge, the
administrative law judge may not increase the amount of any costs
assessed in the proposed decision.

7 (2) The department may enforce the order for payment in the
8 superior court in the county in which the administrative hearing was
9 held. The right of enforcement shall be in addition to any other
rights that the division may have as to any licensee to pay costs.

10 (3) In any judicial action for the recovery of costs, proof of the
11 commission's decision shall be conclusive proof of the validity of the
12 order of payment and the terms for payment.

13 * * *

14 (f) For purposes of this section, "costs" include costs incurred for
any of the following:

15 (1) The investigation of the case by the department.

16 (2) The preparation and prosecution of the case by the Office
17 of the Attorney General.

18 10. California Code of Regulations, title 4, section 12554 provides, in part:

19 (a) Upon the filing with the Commission of an accusation by the
20 Bureau recommending revocation, suspension, or other discipline of a
21 holder of a license, registration, permit, finding of suitability, or approval,
22 the Commission shall proceed under Chapter 5 (commencing with section
11500) of Part 1 of Division 3 of Title 2 of the Government Code.

23 11. California Code of Regulations, title 11, section 2053 provides:

24 (a) The Bureau may require a gambling establishment to present
25 satisfactory evidence that there is adequate financing available to protect the
26 public's health, safety and welfare.

27 (b) A gambling establishment shall maintain a separate, specifically
28 designated, insured account with a licensed financial institution in an

1 amount not less than the total value of the chips in use by the gambling
2 establishment. The funds from that account may only be used to redeem the
3 chips of that gambling establishment. That account may not be used as
4 collateral, or encumbered or hypothecated in any fashion. Alternatively, the
5 Bureau may allow the gambling establishment to provide some other form
6 of security acceptable to the Bureau, in lieu of maintaining the required
7 account.

8 (c) A gambling establishment shall maintain a separate, specifically
9 designated, insured account with a licensed financial institution in an
10 amount not less than the total amount of the monies that patrons of that
11 gambling establishment have on deposit with the gambling establishment.
12 The funds from that account may only be used to return to the patrons the
13 balance of monies on deposit with the gambling establishment. That account
14 may not be used as collateral, or encumbered or hypothecated in any
15 fashion. Alternatively, the Bureau may allow the gambling establishment to
16 provide some other form of security acceptable to the Bureau, in lieu of
17 maintaining the required account.

18 SPECIFIC STATUTORY AND REGULATORY PROVISIONS

19 12. Business and Professions Code section 19850, subdivision (a) provides in part:

20 Every person who, either as owner, lessee, or employee, whether for
21 hire or not, either solely or in conjunction with others, deals, operates,
22 carries on, conducts, maintains, or exposes for play any controlled game
23 in this state, or who receives, directly or indirectly, any compensation or
24 reward, or any percentage or share of the money or property played, for
25 keeping, running, or carrying on any controlled game in this state, shall
26 apply for and obtain from the commission, and shall thereafter maintain,
27 a valid state gambling license, key employee license, or work permit, as
28 specified in this chapter. In any criminal prosecution for violation of this
section, the punishment shall be as provided in Section 337j of the Penal
Code.

13 13. Business and Professions Code section 19856, subdivision (a) provides in part:

14 The burden of proving his or her qualifications to receive any license
15 is on the applicant.

16 14. Business and Professions Code section 19857 provides in part:

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

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

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

8
9
10 15. Business and Professions Code section 19859 provides in part:

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

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

15 (b) Failure of the applicant to provide information,
16 documentation, and assurance required by this chapter or
17 requested by the Chief, or failure of the applicant to reveal any
18 fact material to qualification, or the supplying of information
19 that is untrue or misleading as to a material fact pertaining to the
20 qualification criteria.

21 16. Business and Professions Code section 19920 provides:

22 It is the policy of the State of California to require that all establishments
23 wherein controlled gambling is conducted in this state be operated in a
24 manner suitable to protect the public health, safety, and general welfare of
25 the residents of the state. The responsibility for the employment and
26 maintenance of suitable methods of operation rests with the owner
27 licensee, and willful or persistent use or toleration of methods of operation
28 deemed unsuitable by the commission or by local government shall
constitute grounds for license revocation or other disciplinary action.

17. Business and Professions Code section 19922 provides:

No owner licensee shall operate a gambling enterprise in violation of any
provision of this chapter or any regulation adopted pursuant to this
chapter.

18. Business and Professions Code section 19924 provides:

Each owner licensee shall maintain security controls over the
gambling premises and all operations therein related to gambling,
and those security controls are subject to the approval of the
commission.

1 19. California Code of Regulations, title 4, section 12220.18, provides, in relevant part:

2 The Commission may revoke a registration or license, upon any of the
3 following grounds, after a hearing conducted pursuant to the same
4 procedures applicable to the revocation of a gambling establishment
license:

5 (a) The registrant or licensee committed, attempted to commit, or
6 conspired to commit any acts prohibited by the Act or this chapter.

7 (b) Any act or omission by the licensee that would disqualify the
8 licensee from obtaining licensing under this chapter.

9 20. California Code of Regulations, title 4, section 12568, provides, in relevant part:

10 (a) A license for an individual or any finding of suitability or
11 approval granted by the Commission, other than a work permit, and an
12 owner license for a gambling establishment if the owner licensee has
13 committed a separate violation from any violations committed by the
14 gambling establishment shall be subject to a minimum discipline of
suspension for one day of normal business operation and a maximum
discipline of revocation, which may be stayed on terms and conditions
and any monetary penalty as described in Section 12554(d)(7) of this
chapter, if the Commission finds that the holder has:

15 (1) Violated or is out of compliance with conditions, limitations, or
16 orders or directives imposed by the Commission, either as part of an
17 initial grant of license or registration, renewal of such, or pursuant to
disciplinary action,

18 * * *

19 (4) Engaged in any dishonest, fraudulent, or deceptive activities in
20 connection with controlled gambling,

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Unsuitable method of operation and failure to maintain security controls)**

23 21. Respondent's license is subject to discipline pursuant to Business and Professions
24 Code sections 19920 and 19924, in that on or about July 15, 2009, the Cardroom's surveillance
25 equipment was not operable during an armed robbery of the Cardroom and its patrons.
26
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1 promulgated by the Commission and the Bureau. The purchase agreement submitted to the
2 Commission does not comply with the 2011 Commission Order because the agreement does
3 not truly divest the owner of interest or control of the Cardroom. Grounds also exist to revoke
4 probation and impose the order of revocation for the Respondent's violations of the Gambling
5 Control Act's provisions and regulations.

6 **OTHER MATTERS**

7 33. On January 23, 2012, the Bureau issued an emergency order suspending
8 Respondent's license pursuant to Business and Professions Code section 19931, subdivision
9 (a). The emergency order was filed with the Commission on or about January 24, 2012, and
10 is effective until further order of the Commission or final disposition of any proceeding
11 conducted pursuant to Business and Professions Code section 19931, subdivision (d).

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Commission issue a decision:

- 15 1. Revoking or suspending Respondent's Gambling License.
- 16 2. Revoking probation and reimposing the order of revocation issued September 22,
17 2011 against the Respondent's Gambling License; and ordering payment of the \$60,000 fine and
18 the \$52,000 investigation and prosecution costs reimbursement set forth in the 2011 Settlement
19 and Order.
- 20 3. Awarding Complainant, pursuant to subdivisions (d) and (f) of Business and
21 Professions Code section 19930, the costs of investigation and costs of preparation and
22 prosecution of this Accusation and Petition to Revoke Probation before the Commission, in a sum
23 according to proof; and

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4. Taking such other and further action as the Commission may deem appropriate.

Dated: January 25, 2012



MARTIN HORAN IV, Acting Chief
Bureau of Gambling Control
California Department of Justice
Complainant

EXHIBIT A

1 KAMALA D. HARRIS
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Attorneys for Complainant, Chief of Bureau of
8 Gambling Control, Department of Justice

9 BEFORE THE

10 CALIFORNIA GAMBLING CONTROL COMMISSION

11 STATE OF CALIFORNIA

12
13 In the Matter of the Accusation Against:

14
15 ALBERT CIANFICHI, Sole Proprietor
KELLY'S CARDROOM
16 408 "O" Street
Antioch, CA 94509

17 License Number GEGE-000407
18
19

OAH No. 2010050095

STIPULATION AND ORDER

20
21 The parties to the above-captioned proceeding agree and stipulate as follows:

22 PARTIES

23 1. Albert Cianfichi (Respondent Owner) owns, as a sole proprietor, the gambling
24 enterprise presently known and doing business as Kelly's Cardroom, located at 408 "O" Street,
25 Antioch, California 94509 (Cardroom). Respondent Owner is presently the holder of gambling
26 license number GEGE-000407, formerly number 990002, for the gambling enterprise issued by
27 the California Gambling Control Commission (Commission) pursuant to the Gambling Control
28

Settlement and Order

1 Act (Bus. & Prof. Code, § 19800, et seq., the "Act"). Albert Cianfichi's state gambling license
2 was in full force and effect at all times relevant to the facts set forth herein. This license will
3 expire on June 30, 2011, unless renewed.

4 2. Martin Horan, Jr. (Complainant) is the Acting Chief of the Bureau of Gambling
5 Control, California Department of Justice (Bureau), and is hereby substituted in as the
6 Complainant in this proceeding. His involvement in this action was solely in his official capacity
7 under the Act and is represented in this matter by Kamala D. Harris, Attorney General of the State
8 of California, by Jennifer T. Henderson, Deputy Attorney General.

9 PROCEDURAL BACKGROUND

10 3. On April 7, 2006, the Bureau, then designated the Division of Gambling Control,
11 caused to be filed with the Commission and served upon Respondent a First Amended Accusation
12 which referred the matter for an evidentiary hearing.

13 4. Prior to the hearing, the parties entered into a stipulated settlement and disciplinary
14 order and on September 14, 2006, the Commission voted to adopt the Stipulated Settlement and
15 Disciplinary Order (2006 Commission Decision).

16 JURISDICTION

17 5. On or about January 19, 2010, pursuant to Business and Professions Code section
18 19930, the Bureau caused to be filed with the Commission and served upon Respondent an
19 Accusation and Petition to Revoke Probation. A copy of the Accusation and Petition to Revoke
20 Probation with attachments, including the 2006 Commission Decision, is attached hereto and
21 incorporated by reference herein as Exhibit A. Respondent timely filed a Notice of Defense with
22 the Commission.

23 6. This matter was set for hearing on May 16 and 17, 2011 before an administrative law
24 judge pursuant to the Administrative Procedure Act, Government Code section 11500 et seq.

25 7. The parties agree that the Commission has jurisdiction over this matter and has
26 authority to approve this Stipulation and Order under Business and Professions Code sections
27 19823, 19824, and 19930, and Government Code section 11415.60.

28 PURPOSE

1 possible.

2 b. Respondent will have until the end of the probationary period to find a
3 bonafide purchaser, who will be able to be licensed by the California Gambling
4 Control Commission.

5 c. A purchase and sale agreement and an application for licensure by the
6 proposed purchaser must be submitted to the Commission by the purchaser
7 within the probationary period. Respondent will use due diligence in
8 attempting to find a purchaser who is already licensed by the California
9 Gambling Control Commission, in order to expedite the licensing of the new
10 owner.

11 d. The purchase and sale agreement must contain a provision that a portion
12 (\$112,000) of the purchase price must be set aside as a reserve fund to pay for
13 the penalty and costs agreed to in this Stipulation and will be paid to the
14 Bureau out of escrow at the time of sale.

15 e. If a purchase and sale agreement and an application for licensure by the
16 proposed purchaser are not submitted to the Commission on or before
17 November 25, 2011, the Cardroom shall be closed by operation of this Stipulated
18 Settlement and Disciplinary Order. After closure of the Cardroom, the
19 Respondent shall have until May 26, 2012 to find a purchaser who may be
20 licensed.

21 f. If a purchase and sale agreement and an application for licensure by the
22 proposed purchaser are not submitted to the Commission before May 26, 2012,
23 the Respondent's gambling license shall be revoked by operation of this
24 Stipulated Settlement and Disciplinary Order. Notwithstanding any other
25 provision hereof, during the period of November 25, 2011 to May 26, 2012,
26 the Respondent may apply for an extension of time to file a purchase and sale
27 agreement for up to six (6) months upon a showing of good cause such as, but
28 not limited to, license processing delays by the Bureau or Commission, or the

- 1 rejection of a buyer by the Commission.
- 2 g. Respondent acknowledges that the Bureau seeks to have him to divest himself
- 3 of his interest in the Cardroom as soon as possible.
- 4 h. Respondent hereby agrees to employ an outside compliance consultant who
- 5 will be responsible for ensuring that the Cardroom is in complete compliance
- 6 with the regulations promulgated by the Commission and the Bureau.
- 7 i. The outside consultant shall have expertise in the above-referenced regulations
- 8 and the operations of the Commission and the Bureau.
- 9 j. Respondent will practice suitable methods of operation, including, but not
- 10 limited to, only employing individuals who hold a valid work permit or license
- 11 as required by the Act.
- 12 k. Respondent agrees that he will minimize his activities in the gambling
- 13 establishment, and will charge a validly licensed key employee with the day-
- 14 to-day operation of the Cardroom.
- 15 l. Respondent shall obey all state and federal laws and regulations substantially
- 16 related to, or governing the practices and operation of gambling
- 17 establishments. Respondent shall report any of the following occurrences to
- 18 the Commission, in writing, within seventy-two (72) hours of such occurrence:
- 19 1. An arrest or issuance of a criminal complaint for violation of any
- 20 provision of the Gambling Control Act;
- 21 2. A plea of guilty or nolo contendere, or conviction, in any state or federal
- 22 criminal proceeding involving any crime other than traffic violations.
- 23 15. Respondent and Complainant mutually agree that this stipulation and order is in
- 24 complete and final settlement of the allegations contained herein. Respondent has been fully
- 25 advised by his legal counsel, Rodney J. Blonien, as to the effect of this Stipulation and Order in
- 26 that it binds Respondent to the terms and conditions contained herein. By the terms of this
- 27 agreement, Respondent shall not have the right to further contest and/or appeal the sanctions
- 28 provided herein. Respondent recognizes that he is entering into this Stipulation in lieu of a

1 hearing and the ability to contest these allegations. Respondent enters into this Stipulation with
2 the advice of counsel, voluntarily, knowingly, and intelligently, and agrees to be bound by this
3 Stipulation and the terms of the Decision and Order upon adoption by the Commission.

4 16. The parties agree that in the event the Commission refuses to accept this Stipulation,
5 it shall become void and null, within 15 business days after the Commission meeting at which
6 this Stipulation is rejected.

7 17. Respondent agrees that in the event the Commission rejects the Stipulation as its
8 decision and order and an evidentiary hearing, pursuant to Business & Professions Code Section
9 19930 becomes necessary, no member of the Commission, nor the Executive Director, shall be
10 disqualified because of prior consideration of the Stipulation.

11 18. This Stipulated Settlement shall be subject to approval by the Commission.
12 Respondent specifically agrees that, at any time following execution of this Stipulated Settlement,
13 but prior to the Commission's decision whether to adopt this Stipulated Settlement as its decision
14 and enter the Disciplinary Order, counsel for Complainant and the staff of the Division may
15 communicate directly with the Commission regarding this stipulation and settlement without
16 notice to, or participation by, Respondent or his counsel, and that no such communications shall
17 be deemed a prohibited ex parte communication.

18 19. By signing the Stipulated Settlement and Disciplinary Order, Respondent understands
19 and agrees that he may not withdraw this agreement or seek to rescind the stipulation prior to the
20 time the Commission considers and acts upon it.

21 20. The parties agree should this Stipulation become void, nothing in the Stipulation, or
22 the fact that the parties entered into the Stipulation, shall be admissible in any subsequent hearing
23 on the merits of the violation that is the subject of the Stipulation.

24 **WAIVER AND ADVISEMENT**

25 21. This Stipulation has been fully discussed between Respondent Albert Cianfichi-
26 Kelly's Cardroom and its attorney, Rodney Blonien, and Respondent Albert Cianfichi has been
27 fully advised of the effect of this Stipulation as it waives any rights it may have to: (a) an
28 administrative hearing on the Accusation; (b) any judicial challenge to this Stipulation and Order;

RECEIVED BY
CGCC LEGAL DIVISION

2011 DEC 13 AM 11: 21

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Attorneys for Complainant, Chief of Bureau of
8 *Gambling Control, Department of Justice*

9 **BEFORE THE**
10 **CALIFORNIA GAMBLING CONTROL COMMISSION**
11 **STATE OF CALIFORNIA**

12
13
14 **In the Matter of the Accusation Against:**

15 **ALBERT CIANFICHI, Sole Proprietor**
16 **KELLY'S CARDROOM**
17 **408 "O" Street**
Antioch, CA 94509

18 **License Number 990002**
19

BGC Case No. DGC # 03-00130-01

OAH No. 2010050095

ACCUSATION AND PETITION
TO REVOKE PROBATION

20
21 Martin Horan, Jr., Complainant herein, alleges as follows:

22 **PARTIES**

23 1. Martin Horan, Jr. (Complainant) brings this Accusation and Petition to Revoke
24 Probation solely in his official capacity as the Acting Chief of the Bureau of Gambling Control
25 within the California Department of Justice (Bureau).

26 2. Albert Cianfichi (Respondent) owns, as a sole proprietor, the gambling enterprise
27 presently known and doing business as Kelly's, located at 408 "O" Street, Antioch, California
28

1 94509 (Cardroom). Respondent is presently the holder of gambling license number GEGE-
2 000407, issued by the California Gambling Control Commission (Commission), which was
3 revoked by the Commission on September 22, 2011, but the revocation was stayed and the
4 Respondent was placed on probation. This license will expire on January 31, 2012, unless
5 renewed.

6 JURISDICTION

7 3. This Accusation and Petition to Revoke Probation is brought before the Commission
8 pursuant to the terms of the Settlement and Order approved by the Commission in this proceeding
9 on September 22, 2011 (2011 Commission Order), and the statutes set forth below. A copy of the
10 2011 Commission Order is attached hereto as Exhibit A and incorporated herein by this reference.
11 All section references are to the Business and Professions Code unless otherwise stated.

12 4. The 2011 Commission Order imposed discipline against Respondent's license at
13 pages 3 through 6, in pertinent part, as follows:

14 **2011 COMMISSION ORDER**

15 Respondent's gambling license is revoked. However, the revocation is stayed and
16 Respondent is placed on probation until November 25, 2011, on the following terms and
17 conditions:

- 18 a. Respondent will sell his sole proprietorship in the Cardroom as soon as
19 possible.
- 20 b. Respondent will have until the end of the probationary period to find a
21 bonafide purchaser, who will be able to be licensed by the California Gambling
22 Control Commission.
- 23 c. A purchase and sale agreement and an application for licensure by the
24 proposed purchaser must be submitted to the Commission by the purchaser
25 within the probationary period. Respondent will use due diligence in
26 attempting to find a purchaser who is already licensed by the California
27 Gambling Control Commission, in order to expedite the licensing of the new
28 owner.

- 1 d. The purchase and sale agreement must contain a provision that a portion
2 (\$112, 000) of the purchase price must be set aside as a reserve fund to pay for
3 the penalty and costs agreed to in this Stipulation and will be paid to the
4 Bureau out of escrow at the time of sale.
- 5 e. If a purchase and sale agreement and an application for licensure by the
6 proposed purchaser are not submitted to the Commission on or before
7 November 25, 2011, the Cardroom shall be closed by operation this Stipulated
8 Settlement and Disciplinary Order. After closure of the Cardroom, the
9 Respondent shall have until May 26, 2012 to find a purchaser who may be
10 licensed.
- 11 f. If a purchase and sale agreement and an application for licensure by the
12 proposed purchaser are not submitted to the Commission before May 26, 2012,
13 the Respondent's gambling license shall be revoked by operation of this
14 Stipulated Settlement and Disciplinary Order. Notwithstanding any other
15 provision hereof, during the period of November 25, 2011 to May 26, 2012,
16 the Respondent may apply for an extension of time to file a purchase and sale
17 agreement for up to six (6) months upon a showing of good cause such as, but
18 not limited to, license processing delays by the Bureau or Commission, or the
19 rejection of a buyer by the Commission.
- 20 g. Respondent acknowledges that the Bureau seeks to have him to divest himself
21 of his interest in the Cardroom as soon as possible.
- 22 h. Respondent hereby agrees to employ an outside compliance consultant who
23 will be responsible for ensuring that the Cardroom is in complete compliance
24 with the regulations promulgated by the Commission and the Bureau.
- 25 i. The outside consultant shall have expertise in the above-referenced regulations
26 and the operations of the Commission and the Bureau.

27 * * *

- 28 k. Respondent agrees that he will minimize his activities in the gambling

1 establishment, and will charge a validly licensed key employee with the day-
2 to-day operation of the Cardroom.

- 3 1. Respondent shall obey all state and federal laws and regulations substantially
4 related to, or governing the practices and operation of gambling
5 establishments.

6 **JURISDICTION**

- 7 5. Business and Professions Code, section 19811 provides, in part:

8 (b) Jurisdiction, including jurisdiction over operation and
9 concentration, and supervision over gambling establishments in this state
10 and over all persons or things having to do with the operations of
11 gambling establishments is vested in the commission.

- 12 6. Business and Professions Code, section 19823 provides:

13 (a) The responsibilities of the commission include, without
14 limitation, all of the following:

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

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

- 24 7. Business and Professions Code, section 19824 provides, in part:

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

(b) For any cause deemed reasonable by the commission, . . . limit,
condition, or restrict any license, permit, or approval, or impose any fine
upon any person licensed or approved. The commission may condition,
restrict, discipline, or take action against the license of an individual
owner endorsed on the license certificate of the gambling enterprise

1 whether or not the commission takes action against the license of the
2 gambling enterprise.

3 * * *

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

7 8. Business and Professions Code section 19826 provides, in part:

8 The department^[1] shall have all of the following responsibilities:

9 * * *

10 (c) To investigate suspected violations of this chapter or laws of this
11 state relating to gambling

12 * * *

13 (e) To initiate, where appropriate, disciplinary actions as provided in
14 this chapter. In connection with any disciplinary action, the department
15 may seek restriction, limitation, suspension, or revocation of any license
16 or approval, or the imposition of any fine upon any person licensed or
17 approved.

18 9. California Code of Regulations, title 4, section 12554 provides, in part:

19 (a) Upon the filing with the Commission of an accusation by the
20 Bureau recommending revocation, suspension, or other discipline of a
21 holder of a license, registration, permit, finding of suitability, or approval,
22 the Commission shall proceed under Chapter 5 (commencing with section
23 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

24 10. California Code of Regulations, title 11, section 2053 provides:

25 (a) The Bureau may require a gambling establishment to present
26 satisfactory evidence that there is adequate financing available to protect the
27 public's health, safety and welfare.

28 (b) A gambling establishment shall maintain a separate, specifically
designated, insured account with a licensed financial institution in an
amount not less than the total value of the chips in use by the gambling
establishment. The funds from that account may only be used to redeem the
chips of that gambling establishment. That account may not be used as

¹ "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd.
(h).)

1 collateral, or encumbered or hypothecated in any fashion. Alternatively, the
2 Bureau may allow the gambling establishment to provide some other form
3 of security acceptable to the Bureau, in lieu of maintaining the required
4 account.

4 (c) A gambling establishment shall maintain a separate, specifically
5 designated, insured account with a licensed financial institution in an
6 amount not less than the total amount of the monies that patrons of that
7 gambling establishment have on deposit with the gambling establishment.
8 The funds from that account may only be used to return to the patrons the
9 balance of monies on deposit with the gambling establishment. That account
10 may not be used as collateral, or encumbered or hypothecated in any
11 fashion. Alternatively, the Bureau may allow the gambling establishment to
12 provide some other form of security acceptable to the Bureau, in lieu of
13 maintaining the required account.

11 COST RECOVERY

12 11. Business and Professions Code, section 19930 provides, in part:

13 (b) If, after any investigation, the department is satisfied that a
14 license, permit, finding of suitability, or approval should be suspended or
15 revoked, it shall file an accusation with the commission in accordance
16 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3
17 of title 2 of the Government Code.

17 (c) In addition to any action that the commission may take against a
18 license, permit, finding of suitability, or approval, the commission may
19 also require the payment of fines or penalties. However, no fine imposed
20 shall exceed twenty thousand dollars (\$20,000) for each separate violation
21 of any provision of this chapter or any regulation adopted thereunder.

21 (d) In any case in which the administrative law judge recommends
22 that the commission revoke, suspend, or deny a license, the administrative
23 law judge may, upon presentation of suitable proof, order the licensee or
24 applicant for a license to pay the department the reasonable costs of the
25 investigation and prosecution of the case.

24 (1) The costs assessed pursuant to this subdivision shall be
25 fixed by the administrative law judge and may not be increased by
26 the commission. When the commission does not adopt a proposed
27 decision and remands the case to the administrative law judge, the
28 administrative law judge may not increase the amount of any costs
assessed in the proposed decision.

(2) The department may enforce the order for payment in the
superior court in the county in which the administrative hearing was

1 held. The right of enforcement shall be in addition to any other
2 rights that the division may have as to any licensee to pay costs.

3 (3) In any judicial action for the recovery of costs, proof of the
4 commission's decision shall be conclusive proof of the validity of the
5 order of payment and the terms for payment.

6 * * *

7 (f) For purposes of this section, "costs" include costs incurred for
8 any of the following:

9 (1) The investigation of the case by the department.

10 (2) The preparation and prosecution of the case by the Office
11 of the Attorney General.

12 SPECIFIC STATUTORY AND REGULATORY PROVISIONS

13 12. Business and Professions Code section 19850, subdivision (a) provides in part:

14 Every person who, either as owner, lessee, or employee, whether for
15 hire or not, either solely or in conjunction with others, deals, operates,
16 carries on, conducts, maintains, or exposes for play any controlled game
17 in this state, or who receives, directly or indirectly, any compensation or
18 reward, or any percentage or share of the money or property played, for
19 keeping, running, or carrying on any controlled game in this state, shall
20 apply for and obtain from the commission, and shall thereafter maintain,
21 a valid state gambling license, key employee license, or work permit, as
22 specified in this chapter. In any criminal prosecution for violation of this
23 section, the punishment shall be as provided in Section 337j of the Penal
24 Code.

25 13. Business and Professions Code section 19856, subdivision (a) provides in part:

26 The burden of proving his or her qualifications to receive any license
27 is on the applicant.

28 14. Business and Professions Code section 19857 provides in part:

No gambling license shall be issued unless, based on all 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

1 controlled gambling, or create or enhance the dangers of unsuitable,
2 unfair, or illegal practices, methods, and activities in the conduct of
3 controlled gambling or in the carrying on of the business and financial
arrangements incidental thereto.

4 15. Business and Professions Code section 19859 provides in part:

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

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

8
9 (b) Failure of the applicant to provide information,
10 documentation, and assurance required by this chapter or
11 requested by the Chief, or failure of the applicant to reveal any
12 fact material to qualification, or the supplying of information
that is untrue or misleading as to a material fact pertaining to the
qualification criteria.

13 16. Business and Professions Code section 19920 provides:

14 It is the policy of the State of California to require that all establishments
15 wherein controlled gambling is conducted in this state be operated in a
16 manner suitable to protect the public health, safety, and general welfare of
17 the residents of the state. The responsibility for the employment and
18 maintenance of suitable methods of operation rests with the owner
licensee, and willful or persistent use or toleration of methods of operation
deemed unsuitable by the commission or by local government shall
constitute grounds for license revocation or other disciplinary action.

19 17. Business and Professions Code section 19922 provides:

20 No owner licensee shall operate a gambling enterprise in violation of any
21 provision of this chapter or any regulation adopted pursuant to this
22 chapter.

23 18. Business and Professions Code section 19924 provides:

24 Each owner licensee shall maintain security controls over the
25 gambling premises and all operations therein related to gambling,
26 and those security controls are subject to the approval of the
27 commission.
28

1 19. California Code of Regulations, title 4, section 12220.18, subdivisions (b) and (j)
2 provide:

3 The Commission may revoke a registration or license, upon any of the
4 following grounds, after a hearing conducted pursuant to the same
5 procedures applicable to the revocation of a gambling establishment
6 license:

7 (a) The registrant or licensee committed, attempted to commit, or
8 conspired to commit any acts prohibited by the Act or this chapter.

9 (b) Any act or omission by the licensee that would disqualify the
10 licensee from obtaining licensing under this chapter.

11 * * *

12 (j) The registrant or licensee lends money or chips to gambling
13 establishment patrons or proposition players, except for exchanging with
14 a patron chips of one denomination for chips of another denomination.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(Unsuitable method of operation and failure to maintain security controls)**

17 20. Respondent's license is subject to discipline pursuant to Business and Professions
18 Code sections 19920 and 19924, in that on or about July 15, 2009, the Cardroom's surveillance
19 equipment was not operable during an armed robbery of the Cardroom and its patrons.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Allowing unlicensed individuals to receive share of gaming revenue)**

22 21. Respondent's license is subject to discipline pursuant to Business and Professions
23 Code sections 19823 and 19850, in that on or about June 13, 2010 and/or August 14, 2010,
24 Respondent contracted with unlicensed individuals to share forty percent of the Cardroom's net
25 revenue.

26 **THIRD CAUSE FOR DISCIPLINE**

27 **(Lending money to gambling establishment patrons)**

28 22. Respondent's license is subject to discipline pursuant to Business and Professions
Code sections 19920 and 19922, and California Code of Regulations, title 4, section 12220.18,

1 subdivisions (j) in that on or about May 14, 2010, June 6, 2010, and/or July 13, 2010, Respondent
2 lent money to a gambling establishment patron.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Unqualified for Licensure – financial problems and inadequate**
5 **funding pose threats to public interest)**

6 23. Respondent's license is subject to discipline pursuant to Business and Professions
7 section 19857, subdivision (b), and California Code of Regulations, title 11, section 2053 in that
8 Respondent is a person whose prior activities, reputation, and/or habits pose a threat to the public
9 interest of this state, or to the effective regulation and control of controlled gambling, or create or
10 enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the
11 conduct of controlled gambling or in the carrying on of the business and financial arrangements
12 incidental thereto and that the Cardroom is operating while not adequately funded. Respondent
13 has failed to pay employees for all hours worked, and/or failed to have sufficient funds to cover
14 payroll accounts. Respondent has borrowed money from an employee and from a patron.
15 Respondent does not have adequate funds to cover the Cardroom's chips-in-use liability. State
16 and federal tax authorities have filed tax liens against the Respondent and Respondent's real
17 property in connection with the Cardroom's tax liabilities. Notices of default have been recorded
18 against the Respondent's residence. Respondent does not have the resources required to meet all
19 his financial obligations.

20 **FIFTH CAUSE FOR DISCIPLINE**

21 **(Unqualified for Licensure – Poses Threat: Comingling of Financial Transactions)**

22 24. Complainant realleges paragraphs 20 through 23 as if fully set forth herein.
23 Respondent is unqualified for a state gambling license pursuant to Business and Professions Code
24 section 19857, subdivision (b), in that Respondent is a person whose prior activities, reputation,
25 and/or habits pose a threat to the public interest of this state, or to the effective regulation and
26 control of controlled gambling, or create or enhance the dangers of unsuitable, unfair, or illegal
27 practices, methods, and activities in the conduct of controlled gambling or in the carrying on of
28

1 the business and financial arrangements incidental thereto. Respondent has inappropriately
2 comingled his personal, financial transactions with the financial transactions of the Cardroom.

3 **FIRST CAUSE TO REVOKE PROBATION**

4 25. Complainant realleges paragraphs 20 through 24 as if fully set forth
5 herein.

6 26. Grounds exist to revoke probation and impose the order of revocation
7 in that the Respondent has failed to comply with the terms of the probation set forth
8 in the 2011 Settlement and Order by failing to employ as of March 2011 an outside
9 compliance consultant to ensure that the Cardroom is in complete compliance with
10 the regulations promulgated by the Commission and the Bureau, by failing to
11 provide a purchase agreement that does not truly divest the owner of interest or
12 control in the Cardroom. Grounds also exist to revoke probation and impose the
13 order of revocation for the Respondent's violations of the Gambling Control Act's
14 provisions and regulations.

15 **PRAYER**

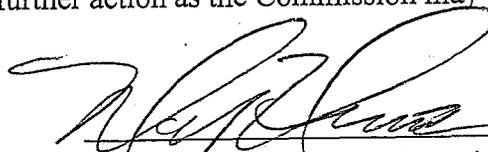
16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Commission issue a decision:

- 18 1. Revoking or suspending Respondent's Gambling License.
- 19 2. Revoking probation and reimposing the order of revocation issued September 22,
20 2011 against the Respondent's Gambling License; and ordering payment of the \$60,000 fine and
21 the \$52,000 investigation and prosecution costs reimbursement set forth in the 2011 Settlement
22 and Order.
- 23 3. Awarding Complainant, pursuant to subdivisions (d) and (f) of Business and
24 Professions Code section 19930, the costs of investigation and costs of preparation and
25 prosecution of this Accusation and Petition to Revoke Probation before the Commission, in a sum
26 according to proof; and

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4. Taking such other and further action as the Commission may deem appropriate.

Dated: December 12, 2011.



MARTIN HORAN IV, Acting Chief
Bureau of Gambling Control
California Department of Justice

Complainant