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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

**In the Matter of the Statement of Reasons
for Denial of License Renewal Regarding:**

**NASEEM SALEM, Key Employee
PALOMAR CARD CLUB**

**2724 El Cajon Boulevard
San Diego, CA 92104**

License No. GEKE-001211

Respondent.

BGC Case No. BGC-SD2010-00017
CGCC Case No: CGCC-2012-0314-3
OAH No.

**STATEMENT OF REASONS FOR
DENIAL OF LICENSE RENEWAL**

Hearing Date: October 15 - 23, 2012
Time: 9:30 a.m.

1 Complainant alleges as follows:

2 **PARTIES**

3 1. Martin Horan IV (Complainant) brings this Statement of Reasons for Denial solely in
4 his official capacity as the Acting Chief of the California Department of Justice, Bureau of
5 Gambling Control (Bureau).

6 2. On or about August 8, 2011, the California Gambling Control Commission
7 (Commission) received an Application for a State Gambling License (application) submitted by
8 Naseem Salem (Respondent), to renew his key employee license, license number GEKE-001211,
9 related to his employment at the Palomar Card Club (Palomar), which is located in El Cajon,
10 California.

11 3. Complainant recommended to the Commission that Respondent's application to renew
12 his key employee license be denied. Rather than adopt the recommendation, at its February 23,
13 2012 meeting, the Commission referred the question of Respondent's suitability for licensure to an
14 evidentiary hearing.

15 4. On or about March 14, 2012, pursuant to California Code of Regulations, title 4,
16 section 12050, subdivision (b), the Executive Director of the Commission set the matter for a
17 hearing to be conducted pursuant to the provisions of Business and Professions Code sections
18 19870 and 19871.

19 5. Respondent's license, number GEKE-001211, expired on November 30, 2011.

20 6. On April 19, 2012, the Commission ordered this matter consolidated for hearing with
21 the hearings on the pending applications of Donald and Susan Staats, the owners of Palomar, and
22 for University Heights, Palomar's landlord. The consolidated hearing is presently calendared to
23 begin on October 15, 2012.

24 **JURISDICTION**

25 7. Business and Professions Code section 19811, subdivision (b), provides:

26 Jurisdiction, including jurisdiction over operation and
27 concentration, and supervision over gambling establishments in this
28 state and over all persons or things having to do with the operation of
gambling establishments is vested in the commission.

1 8. Business and Professions Code section 19823 provides:

2 (a) The responsibilities of the commission include, without
3 limitation, all of the following:

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

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

15 (b) For the purposes of this section, "unqualified person"
16 means a person who is found to be unqualified pursuant to the
17 criteria set forth in Section 19857, and "disqualified person" means
18 a person who is found to be disqualified pursuant to the criteria set
19 forth in Section 19859.

20 9. Business and Professions Code section 19876 provides in part:

21 (a) Subject to the power of the commission to deny, revoke,
22 suspend, condition, or limit any license, as provided in this chapter¹, a
23 license shall be renewed biennially.:

24 10. Business and Professions Code section 19824 provides in part:

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

* * *

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

¹ "Chapter" refers to the "Gambling Control Act." (Bus. & Prof. Code, § 19800 et seq.)

1 discipline, or take action against the license of an individual owner
2 endorsed on the license certificate of the gambling enterprise whether
3 or not the commission takes action against the license of the gambling
4 enterprise.

4 * * *

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

8 11. Business and Professions Code section 19870 provides:

9 (a) The commission, after considering the recommendation of the
10 chief and any other testimony and written comments as may be
11 presented at the meeting, or as may have been submitted in writing to
12 the commission prior to the meeting, may either deny the application or
13 grant a license to an applicant who it determines to be qualified to hold
14 the license.

15 (b) When the commission grants an application for a license or
16 approval, the commission may limit or place restrictions thereon as it
17 may deem necessary in the public interest, consistent with the policies
18 described in this chapter.

19 (c) When an application is denied, the commission shall prepare
20 and file a detailed statement of its reasons for the denial.

21 (d) All proceedings at a meeting of the commission relating to a
22 license application shall be recorded stenographically or by audio or
23 video recording.

24 (e) A decision of the commission denying a license or approval,
25 or imposing any condition or restriction on the grant of a license or
26 approval may be reviewed by petition pursuant to Section 1085 of the
27 Code of Civil Procedure. Section 1094.5 of the Code of Civil Procedure
28 shall not apply to any judicial proceeding described in the foregoing
sentence, and the court may grant the petition only if the court finds that
the action of the commission was arbitrary and capricious, or that the
action exceeded the commission's jurisdiction.

12. Business and Professions Code section 19871 provides:

(a) The commission meeting described in Section 19870 shall be
conducted in accordance with regulations of the commission and as
follows:

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(1) Oral evidence shall be taken only upon oath or affirmation.

(2) Each party shall have all of the following rights:

(A) To call and examine witnesses.

(B) To introduce exhibits relevant to the issues of the case.

(C) To cross-examine opposing witnesses on any matters relevant to the issues, even though the matter was not covered on direct examination.

(D) To impeach any witness, regardless of which party first called the witness to testify.

(E) To offer rebuttal evidence.

(3) If the applicant does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.

(4) The meeting need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be considered, and is sufficient in itself to support a finding, if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of that evidence over objection in a civil action.

(b) Nothing in this section confers upon an applicant a right to discovery of the department's² investigative reports or to require disclosure of any document or information the disclosure of which is otherwise prohibited by any other provision of this chapter.

COST RECOVERY

13. Business and Professions Code section 19930 provides in part:

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

* * *

² "Department" refers to the Department of Justice, Bureau of Gambling Control. (Bus. & Prof. Code, § 19805, subd. (h).)

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

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

4 (2) The preparation and prosecution of the case by the
5 Office of the Attorney General.

6 **SPECIFIC STATUTORY AND REGULATORY PROVISIONS**

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

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

10 15. Business and Professions Code section 19857 provides in part:

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

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

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

22 16. Business and Professions Code section 19920 provides:

23 It is the policy of the State of California to require that all
24 establishments wherein controlled gambling is conducted in this state
25 be operated in a manner suitable to protect the public health, safety, and
26 general welfare of the residents of the state. The responsibility for the
27 employment and maintenance of suitable methods of operation rests
28 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.

1 17. Business and Professions Code section 19924 provides:

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

5 **FIRST CAUSE FOR DENIAL OF LICENSE RENEWAL**

6 **(Unsuitable for Licensure – Unsuitable Methods of Operation and Failure to Maintain
7 Security Controls: Conduct of Personal Transactions on Gambling Establishment Premises)**

8 18. Respondent's license application to renew his key employee license is subject to
9 denial pursuant to Business and Professions Code section 19857, subdivision (b), in that
10 Respondent, as the manger and key employee of Palomar, failed to operate that gambling
11 establishment using suitable methods of operation and failed to maintain security controls in
12 violation of Business and Professions Code sections 19920 and 19924, in that:

13 a. On or about January 11, 2010, on behalf of and at the direction of Respondent,
14 Palomar's cage cashier, Amen Abraham, paid \$10,000 in cash to Cynthia Morrello, owner of
15 Morrello Concrete Construction, Inc. (Morrello Concrete), at the gambling establishment's cage
16 for construction work performed for Respondent's benefit. The work performed by Morrello
17 Concrete was not in any way related to the operation of Palomar. The source of the \$10,000 cash
18 payment was Respondent's "marker"³ at Palomar.

19 b. Between on or about December 16, 2009, and on or about February 8, 2010, on behalf
20 of, and at the direction of, Respondent, Palomar's cage manager Sabrina Konja made three (3)
21 separate \$10,000 cash payments to Cynthia Morrello in the gambling establishment for
22 construction work performed by Morrello Concrete for Respondent's benefit. The work
23 performed by Morrello Concrete was not in any way related to the operation of Palomar. On or
24 about December 16, 2009, on behalf of and at the direction of Respondent, Sabrina Konja made
25

26 ³ A "marker" is commonly understood to be a written promise to repay money loaned by
27 the gambling establishment to a patron for the purpose of gambling. Respondent, as the key
28 employee and manager of Palomar, authorized his own loan (marker) of gambling establishment
monies to himself for non-gambling purposes.

1 one (1) of those \$10,000 cash payments to Cynthia Morello from cash withdrawn from
2 Respondent's Palomar player's bank.⁴

3 c. Between on or about January 29, 2010, and on or about March 19, 2010, on three (3)
4 separate occasions, Respondent paid Joseph Morello of Morello Concrete in cash payments in the
5 gambling establishment for construction work performed for Respondent's benefit. The work
6 performed by Morrello Concrete was not in any way related to the operation of Palomar.

7 19. Respondent conducted business transactions for his non-gaming businesses in the
8 gambling establishment; he used his position as manager and key employee to require Palomar
9 employees to aide in conducting these transactions; and/or he used his position as manager and
10 key employee to use Palomar's financial resources to conduct these transactions. Such conduct
11 constitutes an unsuitable method of operation and a failure to maintain security controls in
12 violation of Business and Professions Code sections 19920 and 19924.

13 **SECOND CAUSE FOR DENIAL OF LICENSE RENEWAL**

14 **(Unsuitable for Licensure –Unsuitable Methods and Failure to Maintain Security Controls:
15 Intertwining of Cardroom and Third-Party Proposition Provider Operations)**

16 20. Respondent's application to renew his key employee license is subject to denial
17 pursuant to Business and Professions Code section 19857, subdivision (b), in that between on or
18 about March 1, 2006, and on or about November 21, 2011, Respondent, as the key employee and
19 manager, allowed the function, operation and control of Palomar and the former third-party
20 proposition player provider for Palomar, ATS Gaming, Inc. (ATS), to be improperly intertwined in
21 violation of Business and Professions Code sections 19920 and 19924, in that:

22 a. The contract between ATS and Palomar submitted by Respondent to the Bureau did
23 not reveal that ATS shared office space within Palomar.

24 b. On at least three (3) occasions, at the direction of Respondent, ATS employees made
25 large cash withdrawals from Palomar's bank account on behalf of the gambling establishment.

26 _____
27 ⁴ "Player's bank' means the total amount of moneys a patron of the gambling
28 establishment has on deposit with the gambling establishment." (Cal. Code Regs., tit. 4, § 12400,
subd. (b)(11)).

1 c. On at least one (1) occasion, ATS employees counted the table fee collections on
2 behalf of Palomar.

3 d. Respondent allowed ATS to maintain and move large sums of cash out of the ATS
4 safe that was improperly located in Palomar's cage.

5 21. As the key employee and manager, Respondent allowed the functions, operation and
6 control of ATS and Palomar to be improperly intertwined, which is an unsuitable method of
7 operation and a failure to maintain security controls in violation of Business and Professions Code
8 sections 19920 and 19924.

9 **PRAYER**

10 WHEREFORE, Complainant requests that following the hearing to be held on the matters
11 herein alleged, the Commission issue a decision:

12 1. Denying the Application for a State Gambling License submitted by Naseem Salem
13 to renew his key employee license, license number GEKE-001211;

14 2. Awarding Complainant the costs of investigation and costs of bringing this Statement
15 of Issues before the Commission, pursuant to Business and Professions Code section 19930,
16 subdivisions (d) and (f), in a sum according to proof; and

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

18
19 Dated: August 1, 2012



Martin Horan IV, Acting Chief
Bureau of Gambling Control
California Department of Justice
Complainant