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

13 **In the Matter of the Statement of Reasons for**
14 **Denial of Application for a Key Employee**
15 **License Re:**

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

16 **DONALD LY**

STATEMENT OF REASONS

17 Respondent.

20
21 Complainant alleges as follows:

22 **PARTIES**

23 1. Stephanie Shimazu (Complainant) brings this Statement of Reasons for a denial of an
24 application for a key employee license solely in her official capacity as the Director of the
25 California Department of Justice, Bureau of Gambling Control (Bureau).

26 2. On September 20, 2016, the Bureau received an interim key employee license
27 application from Respondent. On September 23, 2016, the California Gambling Control
28 Commission (Commission) issued an interim key employee license, number GEKE-002250, to

1 Donald Ly (Respondent) with an expiration date of September 30, 2018. This interim key
2 employee license application allowed for Respondent's employment as a key employee at the
3 Palace Poker Casino, a licensed gambling establishment in Hayward, California, while his
4 application for an initial key employee license was being processed.

5 3. On October 24, 2016, the Bureau received an Application for Gambling
6 Establishment Key Employee License and a Key Employee Supplemental Background
7 Investigation Information, with attached schedules, dated September 2, 2016 (collectively,
8 Application), from Respondent.

9 4. On or about March 14, 2018, the Bureau submitted a Cardroom Key Employee
10 Background Investigation Report to the Commission recommending Respondent's Application be
11 denied.

12 5. On or about March 23, 2018, Respondent's interim key employee license was
13 cancelled by the Commission pursuant to California Code of Regulations, title 4, section 12354,
14 subdivision (e)(5),¹ because, as alleged above, the Bureau recommended denial of Respondent's
15 Application.²

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

20 7. On or about May 16, 2018, Respondent submitted a Notice of Defense.

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25 ¹ The statutes and regulations applicable to this Statement of Reasons are quoted in
26 pertinent part in Appendix A.

27 ² In its letter to Respondent dated March 23, 2018, the Commission notified Respondent
28 that "[n]otwithstanding the cancellation of your Interim Key Employee License, the Commission
will still consider your application for Initial Key Employee License at a future Commission
meeting."

1 **BURDEN OF PROOF**

2 8. Respondent has the burden of proving he is qualified to receive a key employee
3 license. (Bus. & Prof. Code, § 19856, subd. (a).)

4 **FIRST CAUSE FOR DENIAL OF APPLICATION**

5 **(Criminal Conviction)**

6 9. Respondent's Application is subject to denial³ because Respondent was convicted of
7 the following crime:

8 a. On or about May 21, 2001, Respondent was convicted upon his plea of guilty to a
9 violation of California Fish and Game Code section 2002, unlawful possession of a bird, fish,
10 reptile, or amphibian, a misdemeanor, in the case of *People v. Donald Anghia Ly* (Super. Ct.
11 Mendocino County, 2001, Case No. MCTM-CRNT-2001-43423-2).

12 (Bus. & Prof. Code, §§ 19854, subd. (b), 19856, 19857 & 19859; Cal. Code Regs., tit. 4, §§
13 12346, subds. (a)(1) and (c) & 12355, subds. (a)(1) and (c).)

14 **SECOND CAUSE FOR DENIAL OF APPLICATION**

15 **(Failure to Truthfully Disclose Criminal Conviction)**

16 10. Respondent's Application is subject to denial⁴ because Respondent, under penalty of
17 perjury, falsely stated on his Application that he had never been convicted or plead guilty to a
18 crime. Respondent failed to disclose the following criminal conviction on his Application:

19 a. Respondent failed to disclose that on or about May 21, 2001, Respondent was
20 convicted upon his plea of guilty to a violation of California Fish and Game Code section 2002,
21 unlawful possession of a bird, fish, reptile, or amphibian, a misdemeanor, in the case of *The*
22 *People v. Donald Anghia Ly* (Super. Ct. Mendocino County, 2001, Case No. MCTM-CRNT-
23 2001-43423-2).

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25 _____
26 ³ Respondent's application is subject to mandatory denial if Respondent is found to be
27 unqualified or disqualified for licensure under any of the applicable criteria set forth in Business
28 and Professions Code sections 19857 or 19859. (Cal. Code. Regs., tit. 4, § 12355, subd. (a)(1);
see also, Bus. & Prof. Code, § 19823.)

⁴ See footnote 3, *supra*.

1 (Bus. & Prof. Code, §§ 19854, 19856, 19857, 19859, subds. (a) and (b) & 19866; Cal.
2 Code Regs., tit. 4, §§ 12346, subds. (a)(1) and (c) & 12355, subds. (a)(1) and (c).)

3 **THIRD CAUSE FOR DENIAL OF APPLICATION**
4 **(Providing Untrue and Misleading Information Material to Licensure)**

5 11. Respondent's Application is subject to denial because Respondent provided other
6 untrue and misleading information material to his qualification for licensure as follows:

7 a. When asked by the Bureau to provide information concerning Respondent's May 21,
8 2001 conviction for violating California Fish and Game Code section 2002, in the case of *The*
9 *People v. Donald Anghia Ly* (Super. Ct. Mendocino County, 2001, Case No. MCTM-CRNT-
10 2001-43423-2), Respondent provided information regarding the circumstances of the conviction
11 in conflict with relevant court records.

12 b. When asked by the Bureau to explain his failure to disclose his conviction for
13 violating California Fish and Game Code section 2002, in the case of *The People v. Donald*
14 *Anghia Ly* (Super. Ct. Mendocino County, 2001, Case No. MCTM-CRNT-2001-43423-2),
15 Respondent provided inconsistent explanations for his failure to disclose the conviction.

16 (Bus. & Prof. Code, §§ 19854, 19856, 19857, 19859, subds. (a) and (b) & 19866; Cal.
17 Code Regs., tit. 4, §§ 12346, subds. (a)(1) and (c) & 12355, subds. (a)(1) and (c).)

18 **FOURTH CAUSE FOR DENIAL OF APPLICATION**
19 **(Unsuitable for Licensure – Disregard of Gambling Control Act)**

20 12. Respondent's Application is subject to denial on the ground that Respondent is
21 unsuitable for licensure because he has engaged in a pattern of noncompliance with the laws
22 regulating controlled gambling, in that:

23 a. Respondent acted in the ways alleged in paragraphs 9 through 11, above, which are
24 incorporated herein by reference.

25 b. Respondent was appointed shift manager, a position requiring a key employee
26 license, on September 14, 2016, and was required to apply for an initial key employee license
27 within thirty days thereof, but Respondent's application for an initial key employee license was
28 not received by the Bureau until October 24, 2016, 10 days after the application was due.

1 (Bus. & Prof. Code, §§ 19854, 19856, 19857, 19859, subs. (a) and (b); Cal. Code Regs.,
2 tit. 4, §§ 12346, subs. (a)(1) and (c), 12354, subd. (c)(1) & 12355, subs. (a)(1) and (c).)

3 **PRAYER**

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

- 6 1. Denying Respondent's Application for Gambling Establishment Key Employee
7 License; and
8 2. Taking such other and further action as the Commission may deem appropriate.

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11 Dated: November 19, 2018


STEPHANIE SHIMAZU, Director
Bureau of Gambling Control
California Department of Justice
Complainant

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1 fine upon any person licensed or approved. The commission may
2 condition, restrict, discipline, or take action against the license of an
3 individual owner endorsed on the license certificate of the gambling
4 enterprise whether or not the commission takes action against the
5 license of the gambling enterprise.

6 * * *

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

10 4. Business and Professions Code section 19854, subdivisions (a) and (b) provide:

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

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

15 5. Business and Professions Code section 19870 provides:

16 (a) The commission, after considering the recommendation of
17 the chief and any other testimony and written comments as may be
18 presented at the meeting, or as may have been submitted in writing to
19 the commission prior to the meeting, may either deny the application
20 or grant a license to an applicant who it determines to be qualified to
21 hold the license.

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

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

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

(e) A decision of the commission denying a license or
approval, or imposing any condition or restriction on the grant of a
license or approval may be reviewed by petition pursuant to Section
1085 of the Code of Civil Procedure. Section 1094.5 of the Code of
Civil Procedure shall not apply to any judicial proceeding described in
the foregoing sentence, and the court may grant the petition only if the

1 court finds that the action of the commission was arbitrary and
2 capricious, or that the action exceeded the commission's jurisdiction.

3 6. Business and Professions Code section 19871 provides:

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

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

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

10 (A) To call and examine witnesses.

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

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

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

18 (E) To offer rebuttal evidence.

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

22 (4) The meeting need not be conducted according to
23 technical rules relating to evidence and witnesses. Any relevant
24 evidence may be considered, and is sufficient in itself to support
25 a finding, if it is the sort of evidence on which responsible
26 persons are accustomed to rely in the conduct of serious affairs,
27 regardless of the existence of any common law or statutory rule
28 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's⁵ 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.

⁵ Hereinafter, "department" refers to the Department of Justice, Bureau of Gambling
Control. (Bus. & Prof. Code, § 19805, subd. (h).)

1 Commission shall identify those issues for which it requires
2 additional information or consideration related to the applicant's
3 suitability.

4 (3) Table or continue an item for consideration at a
5 subsequent meeting, for any purpose, including obtaining new or
6 additional information from the applicant, Bureau or
7 Commission staff, provided however in the case of renewals, the
8 Commission must act on the application before the license
9 expires.

10 (4) Extend a license for up to 180 calendar days as
11 necessary, as provided in Business and Professions Code section
12 19876, subdivision (c).

13 (5) Approve or deny a request for withdrawal pursuant to
14 Section 12015.

15 (6) Make a finding of abandonment pursuant to subsection
16 (c) of Section 12017.

17 (7) If the Bureau has filed an accusatory pleading with the
18 Commission pursuant to Business and Professions Code section
19 19930 prior to Commission action on a renewal application, the
20 Commission shall issue an interim renewal license pursuant to
21 Section 12035.

22 11. California Code of Regulations, title 4, section 12060, provides:

23 (a) If the Executive Director determines it is appropriate, he or
24 she may set an application for consideration at a GCA hearing in
25 advance of a meeting pursuant to Section 12054. The Executive
26 Director shall give notice to the applicant, pursuant to paragraph (2)
27 subsection (c) of Section 12052, to the Office of the Attorney General,
28 and to the Bureau no later than 90 calendar days in advance of the
GCA hearing. The Executive Director's determination will be based
on information contained in the Bureau's report or other appropriate
sources including, without limitation, a request from the Bureau or
applicant as well as the Commission's operational considerations. The
Commission retains the authority to refer the matter to an APA
hearing pursuant to subsection (a) of Section 12056 or hear the matter
at a Section 12054 meeting if the Commission deems it appropriate.

(b) When the Commission has elected to hold a GCA hearing,
the Executive Director shall give notice to the applicant, pursuant to
paragraph (2) subsection (c) of Section 12052, to the Office of the
Attorney General, and to the Bureau no later than 60 calendar days in
advance of the GCA hearing.

1 (c) The presiding officer shall have no communication with
2 the Commission or Commission staff upon the merits, or upon
3 information or documents related to the application prior to the
4 evidentiary hearing. The Executive Director shall designate a
5 presiding officer which shall be:

- 6 (1) A member of the Commission's legal staff; or,
- 7 (2) An Administrative Law Judge.

8 (d) The applicant or the complainant, or the applicant and the
9 complainant, may request a continuance in writing to the Executive
10 Director stating the reason for the continuance and any proposed
11 future hearing dates. The Executive Director or Commission may
12 approve the request.

13 (e) The complainant shall provide to the applicant, at least 45
14 calendar days prior to the GCA hearing, and the applicant shall
15 provide to the complainant, at least 30 calendar days prior to the GCA
16 hearing, the following items:

- 17 (1) A list of potential witnesses with the general subject
18 of the testimony of each witness;
- 19 (2) Copies of all documentary evidence intended to be
20 introduced at the hearing and not previously provided;
- 21 (3) Reports or statements of parties and witnesses, if
22 available; and
- 23 (4) All other written comments or writings containing
24 relevant evidence.

25 (f) A presiding officer shall rule on the admissibility of
26 evidence and on any objections raised except for objections raised
27 under subsection (g). A ruling by the presiding officer shall be final.

28 (1) In advance of the GCA hearing, upon a motion of a
party or by order of the presiding officer, the presiding officer
may conduct a pre-hearing conference, either in person, via
teleconference, or by email exchange, subject to the presiding
officer's availability and shall issue a prehearing order if
appropriate or requested by either party. The prehearing
conference and order may address the following:

- (A) Evidentiary issues;
- (B) Witness and exhibit lists;
- (C) Alterations in the Bureau recommendation;

1 (D) Stipulation for undisputed facts including the
2 admission of the Bureau's report; and

3 (E) Other issues that may be deemed appropriate to
4 promote the orderly and prompt conduct of the hearing.

5 (2) The GCA hearing need not be conducted according
6 to technical rules of evidence. Any relevant evidence may be
7 considered, and is sufficient in itself to support findings if it is
8 the sort of evidence on which reasonable persons are accustomed
9 to rely in the conduct of serious affairs, regardless of the
10 existence of any common law or statutory rule that might make
11 improper the admission of that evidence over objection in a civil
12 action.

13 (g) The Commission may, at any time upon a showing of
14 prejudice by the objecting party:

15 (1) Prohibit the testimony of any witness or the
16 introduction of any documentary evidence that has not been
17 disclosed pursuant to subsection (e); or

18 (2) Continue any meeting or hearing as necessary to
19 mitigate any prejudice.

20 (h) The complainant shall present all facts and information in
21 the Bureau report, if any, and the results of the Bureau's background
22 investigation, and the basis for any recommendation, if the Bureau
23 filed one with the Commission according to Business and Professions
24 Code section 19868, to enable the Commission to make an informed
25 decision on whether the applicant has met his, her, or its burden of
26 proof. The complainant may but is not required to recommend or seek
27 any particular outcome during the evidentiary hearing, unless it so
28 chooses.

(i) The burden of proof is on the applicant at all times to prove
his, her, or its qualifications to receive any license or other approval
under the Act.

(j) The applicant may choose to represent himself, herself, or
itself, or may retain an attorney or lay representative.

(k) Except as otherwise provided in subsection (g), the
complainant and applicant shall have the right to call and examine
witnesses under oath; to introduce relevant exhibits and documentary
evidence; to cross-examine opposing witnesses on any relevant matter,
even if the matter was not covered in direct examination; to impeach
any witness, regardless of which party first called the witness to
testify; and to offer rebuttal evidence. If the applicant does not testify

1 on his, her or its own behalf, the applicant may be called and
2 examined, under oath, as if under cross-examination.

3 (l) Oral evidence shall be taken upon oath or affirmation,
4 which may be administered by the Executive Director, a member of
5 the Commission, or the presiding officer, if an Administrative Law
6 Judge.

7 (m) At the conclusion of the evidentiary hearing, the members
8 of the Commission shall take the matter under submission, may
9 discuss the matter in a closed session meeting, and may schedule
10 future closed session meetings for deliberation.

11 12. California Code of Regulations, title 4, section 12354, subdivision (e)(5), provides:

12 (e) With ten day's advance written notice to the interim key
13 employee and to the gambling enterprise, the Executive Director shall
14 cancel the interim key employee license based upon the following.

15 * * *

16 (5) A Bureau recommendation of denial of the
17 applicant's key employee application.

18 13. California Code of Regulations, title 4, section 12355, subs. (a)(1), (b)(2)(A), and
19 (c), provide:

20 (a) An application for a portable personal key employee
21 license shall be denied by the Commission if any of the following
22 applies.

23 (1) The Commission finds that the applicant is
24 ineligible, unqualified, disqualified, or unsuitable pursuant to the
25 criteria set forth in the Act or other applicable law or that
26 granting the license would be inimical to public health, safety,
27 welfare, or would undermine the public trust that gambling
28 operations are free from criminal or dishonest elements.

(b) An application for a key employee license may be denied
if:

(2) The Commission finds that the applicant's past
behavior calls into question the applicant's qualification
requirements and considerations outlined in Business and
Professions Code section 19856. Examples of past behavior that
may be considered include, but are not limited to:

(A) Convictions which demonstrate a pattern of
disregard for the law.

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(c) The grounds for denial set forth in this section apply in addition to any grounds prescribed by statute or any grounds that would support revocation under chapter 10 of these regulations.

14. California Code of Regulations, title 4, section 12568, subs. (c)(3) and (c)(4), provide:

(c) A state gambling license, finding of suitability, or approval granted by the Commission, other than a work permit, and an owner license for a gambling establishment if the owner licensee has committed a separate violation from any violations committed by the gambling establishment shall be subject to revocation by the Commission on any of the following grounds:

* * *

(3) If the Commission finds the holder no longer meets any criterion for eligibility, qualification, suitability or continued operation, including those set forth in Business and Professions Code sections 19857, 19858, or 19880, as applicable, or

(4) If the Commission finds the holder currently meets any of the criteria for mandatory denial of an application set forth in Business and Professions Code sections 19859 or 19860.