

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

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

RICHARD THOAI KWAN

Applicant.

BGC Case No. BGC-HQ2014-00011SL
CGCC Case No. CGCC-2014-0626-8D

DECISION AND ORDER

Hearing Date: February 24, 2014
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 February 24, 2014.

Ronald Diedrich, Deputy Attorney General, State of California, represented complainant Wayne J. Quint, Jr., Chief of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

Applicant Richard Thoai Kwan (Kwan) represented himself.

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

- (a) Notice of Hearing and Prehearing Conference, dated November 7, 2014, served by certified mail, return receipt requested.

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

- (1) Statement of Particulars filed and served by the Bureau;
- (2) Copies of the June 30, 2014 letter from Katherine Ellis notifying Kwan that the Commission voted to refer consideration of his application to a hearing; November 7, 2014 Notice of Hearing and Prehearing Conference; and January 8, 2015 Conclusion of Prehearing Conference letter;
- (3) Copies of Kwan's August 22, 2012 Application for Gambling

1 Establishment Key Employee License and Key Employee Supplemental
2 Background Investigation Information form; and May 8, 2014 Application
3 for Gambling Establishment Key Employee License;

- 4 (4) Commission staff's May 28, 2014 Licensing Division Memorandum;
- 5 (5) Unofficial Transcripts of the Commission's June 26, 2014 meeting;
- 6 (6) Certified court records for the case of *People of the State of California v.*
7 *Richard Thoai Kwan* (Super. Ct. San Mateo County, 1999, No.
8 NM292512A), consisting of the following: (a) Complaint [sic]; (b) Waiver
9 of Rights for Entry of Plea of Guilty or Nolo Contendere [sic] (No
10 Contest); (c) Criminal Case Docket; and (d) Petition and Order for
11 Expungement;
- 12 (7) San Bruno Police Department's Crime Report regarding the incident that
13 gave rise to Kwan's conviction in the case of *People of the State of*
14 *California v. Richard Thoai Kwan* (Super. Ct. San Mateo County, 1999,
15 No. NM292512A);
- 16 (8) Certified court records for the case of *People of the State of California v.*
17 *Richard Thoai Kwan* (Super. Ct. Santa Clara, 2009, No. BB836611);
- 18 (9) Certified copy of the Mountain View Police Department's Incident Report
19 regarding the incident that gave rise to Kwan's conviction in the case of
20 *People of the State of California v. Richard Thoai Kwan* (Super. Ct. Santa
21 Clara, 2009, No. BB836611);
- 22 (10) Certified court records regarding the Restraining Order After Hearing
23 issued by the San Francisco Court in case number FCS-06-339448;
- 24 (11) Redacted copy of Installment Agreement between the Internal Revenue
25 Service and Kwan;
- 26 (12) April 8, 2014 letter from the San Francisco Department of Child Support
27 Services, with attachments;
- 28

- 1 (13) April 3, 2014 emailed letter from MINI Financial Services, a division of
2 BMW Financial Services NA, LLC, to Kwan; and
3 (14) February 25, 2014 letter to Kwan for additional information and
4 documents, with his responses.

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

- 7 (a) Letter from Ky Phuon, Owner and Operator of Garlic City Club, in support
8 of Kwan's application;
9 (b) Letter from Barry Ko, Peace Officer for the Oakland Police Department, in
10 support of Kwan's application;
11 (c) February 8, 2015 letter from Frank Phillips, Staff Engineer with Lattice
12 Semiconductor, in support of Kwan's application;
13 (d) February 3, 2015 letter from Tam M. Vu, Casino Table Games Dealer for
14 Graton Casino and Resort, in support of Kwan's application; and
15 (e) February 6, 2015 letter from Lawrence Lance, Table Games Dealer for
16 The Isle of Capri Resort and Casino, in support of Kwan's application.

17 The matter was submitted on February 24, 2015.

18 FINDINGS OF FACT

- 19 1. Kwan is employed as a Floor Supervisor at Garlic City Club, a gambling
20 establishment licensed by the Commission.
21 2. A Floor Supervisor is a key employee position that requires the applicant to submit an
22 application for a key employee license with the Commission.
23 3. On or about June 27, 2012, Kwan submitted an Application for Interim Key Employee
24 License to the Commission.
25 4. The Commission granted Kwan an Interim Key Employee License, license number
26 GEKE-001790.
27 5. On or about August 22, 2012, Kwan submitted an Application for Gambling
28

1 Establishment Key Employee License (Application) and Key Employee Supplemental
2 Background Investigation Information form to the Commission.

3 6. At its June 26, 2014 meeting, the Commission voted to refer the matter of Kwan's
4 Application to an evidentiary hearing.

5 7. On or about June 30, 2014, the Executive Director of the Commission set the
6 matter for an administrative hearing to be conducted pursuant to Business and Professions Code
7 sections 19870 and 19871 and Title 4, CCR section 12050(b)(2).

8 8. On or about October 23, 2014, the Bureau filed a Statement of Particulars with the
9 Commission, with a copy sent to Kwan via certified mail.

10 9. On or about November 7, 2014, the Commission served a Notice of Hearing and
11 Prehearing Conference on Kwan and the Bureau.

12 10. On or about January 7, 2015, the noticed Prehearing Conference was held before
13 Presiding Officer Jason Pope, Attorney III of the Commission. Ronald Diedrich, Deputy
14 Attorney General, attended on behalf of the Bureau. Kwan appeared on his own behalf.

15 11. On or about January 8, 2015, the Commission served a Conclusion of Prehearing
16 Conference letter on Kwan and the Bureau.

17 12. The Commission heard Case No. CGCC-2014-0626-8D on February 24, 2015. The
18 Bureau was represented throughout the pendency of the hearing by Deputy Attorney General
19 Ronald Diedrich. Kwan appeared and represented himself throughout the pendency of the
20 hearing.

21 13. On or about May 7, 1999, Kwan was convicted of violating California Penal Code
22 section 484f(a), use of a counterfeit access card with intent to defraud, a misdemeanor, in the case
23 *People v. Kwan* (Super. Ct. San Mateo County, 1999, No. NM292512A). Kwan was sentenced to
24 one day in jail, 18 months' court probation, and ordered to pay \$110 to the State Restitution Fund.

25 14. According to the San Bruno Police Department Crime Report, Kwan attempted to buy
26 merchandise from a computer store with a fraudulent credit card.

27 15. The San Bruno Police Department Crime Report is a reliable and accurate record
28

1 regarding the circumstances surrounding Kwan's May 7, 1999 conviction.

2 16. Kwan's conviction for violating California Penal Code section 484f(a), use of a
3 counterfeit access card with intent to defraud, has been dismissed pursuant to California Penal
4 Code section 1203.4.

5 17. During the hearing, Kwan testified that he found two credit cards on the ground and
6 attempted to use them to purchase merchandise from a computer store. Kwan's testimony
7 appears honest and credible.

8 18. The attempted use of fraudulent credit cards to defraud others is a serious crime that
9 reflects poorly on Kwan's character, honesty and integrity.

10 19. Kwan appeared remorseful while testifying. His testimony demonstrated ownership of
11 his prior actions. The conviction occurred more than 15 years ago and Kwan has not had any
12 similar criminal convictions since that time. As a result, Kwan has demonstrated a sufficient
13 level of rehabilitation from this criminal conviction.

14 20. On or about March 18, 2009, Kwan was convicted of violating California Vehicle
15 Code section 14601.1(a), driving on a suspended license, a misdemeanor, and California Vehicle
16 Code section 23123(a), use of a cell phone while driving without a hands free device, an
17 infraction, in the case *People v. Kwan* (Super. Ct. Santa Clara County, 2009, No. BB836611).
18 Kwan was sentenced to two years' probation and ordered to pay a fine.

19 21. During the hearing, Kwan accepted responsibility for his actions. Kwan testified that
20 he has paid all of the fines associated with his March 18, 2009 convictions and that his driver's
21 license is currently in good standing. Kwan's testimony appears honest and credible.

22 22. On or about August 26, 2009, the San Francisco Superior Court, Unified Family
23 Court, issued a Restraining Order After Hearing, restraining Kwan from contact with his ex-
24 girlfriend and their child, in case number FCS-06-339448.

25 23. During the hearing, Kwan testified that he had his ex-girlfriend and mother of their
26 child sign a tax document that allowed Kwan to list their child as an exemption on his tax return.
27 His ex-girlfriend alleged that Kwan forced her to sign the tax document. She obtained a
28

1 Restraining Order After Hearing (Order of Protection) against Kwan for the time period August
2 26, 2009 to August 26, 2014. The Restraining Order After Hearing has expired and no new
3 restraining order has been obtained. Kwan's testimony appears honest and credible.

4 24. Kwan's restraining order is a very serious matter. However, Kwan's character is not
5 negatively impacted by the restraining order because he offered honest and credible testimony
6 regarding the circumstances surrounding the restraining order, the restraining order has expired
7 and no new restraining order has been obtained, and there was no evidence offered of any
8 physical violence by Kwan or any violations of the restraining order.

9 25. On or about January 17, 2013, Kwan's driver's license was suspended for non-
10 payment of child support. According to documents from the San Francisco Department of Child
11 Support, Kwan has been providing regular monthly payments for child support through wage
12 garnishment since October 2008. The documents from the San Francisco Department of Child
13 Support are reliable and accurate records regarding the circumstances surrounding Kwan's child
14 support obligations.

15 26. During the hearing, Kwan testified that there was a period in which his employer did
16 not send his child support payments, resulting in missed payments. As of April 8, 2014, Kwan's
17 overdue balance for child support was \$1,442.66. Kwan testified that he is now current on his
18 child support. Kwan's driver's license is currently in good standing. Kwan's testimony appears
19 honest and credible.

20 27. The failure to pay child support is a very serious matter that would ordinarily reflect
21 extremely negatively on Kwan's character and integrity. However, given Kwan's lengthy record
22 of making payments, credible testimony regarding the circumstances of the non-payments, and
23 his prompt resolution of this matter through making additional payments, Kwan's character and
24 integrity is not negatively impacted by the missed child support payments.

25 28. Kwan currently has a delinquent account with BMW Financial Services. As of April
26 3, 2014, Kwan had a current balance owed of \$2,317.89. Kwan has set up a payment
27 arrangement by which he pays \$200 per month. Kwan's account with BMW Financial Services
28

1 will be fully paid off by March 2015.

2 29. Kwan's delinquent account with BMW Financial Services has no impact on his
3 character, honesty or integrity.

4 30. The Bureau's investigation revealed that Kwan had a collection account with AFNI-
5 BLOOM for the failure to pay DirecTV. Kwan testified that he was the victim of identity theft,
6 whereby another individual set up a DirecTV account using Kwan's personal information. Kwan
7 further testified that his collection account with AFNI-BOOM was dismissed by the creditor and
8 the matter has been resolved. Kwan's testimony appears honest and credible.

9 31. Kwan's collection account with AFNI-BLOOM is an unfortunate result of identity
10 theft and has no impact on his character, honesty or integrity.

11 32. As of April 2014, Kwan owed \$1,442.78 to the Internal Revenue Service for back
12 federal taxes for the tax periods 2010 and 2012. Kwan is currently paying \$100 per month to the
13 Internal Revenue Service pursuant to a signed Installment Agreement. Kwan testified that the
14 back federal taxes will be paid off in full within the next few months.

15 33. Owing money for back federal taxes to the Internal Revenue Service is a serious
16 matter. However, the taxes due were the result of under withholding and not a result of a failure
17 to file his tax return or inaccuracies in the return. Kwan has accepted responsibility and set up an
18 Installment Agreement to pay off his back federal taxes. Kwan's owing back federal taxes has no
19 impact on his character, honesty or integrity.

20 34. Kwan submitted a letter written by Ky Phuon (Phuon), Owner and Operator of Garlic
21 City Club, in support of his Application. Phuon is Kwan's supervisor at Garlic City Club. Phuon
22 states that Kwan's work at Garlic City Club, and his rapport with his peers and customers, has
23 been outstanding. Phuon wants to promote Kwan to a key employee position. During the
24 hearing, Kwan testified that Phuon is familiar with Kwan's criminal history.

25 35. Kwan submitted a letter from Barry Ko (Ko), a peace officer for the Oakland Police
26 Department, in support of his Application. Ko states that Kwan's customer service skills, while
27 Kwan worked at Advance Wireless and Paging, Inc., were impressive. Ko states that they
28

1 became good friends and that he gave Kwan personal advice and guidance. Ko states that he is
2 proud of the progress Kwan has made in his life. During the hearing, Kwan testified that Ko is
3 familiar with Kwan's criminal history.

4 36. Kwan submitted a letter from Frank Phillips (Phillips), Staff Engineer with Lattice
5 Semiconductor, in favor of his Application. Phillips states that he has known Kwan for more than
6 four years as a neighbor and friend. Phillips describes Kwan as a true gentleman, polite and
7 friendly, respectful of others, and a person of high integrity and hard work. During the hearing,
8 Kwan testified that Phillips is not aware of Kwan's criminal history.

9 37. Kwan submitted a letter from Tam M. Vu (Vu), Casino Table Games Dealer for
10 Graton Casino and Resort, in support of his Application. Vu states that he was a student of
11 Kwan's at Casino College, and worked with Kwan for a couple of years for 21 Fun Casino. Vu
12 describes Kwan as an excellent team player, an enthusiastic, responsible, committed and
13 outstanding casino teacher. Vu states Kwan expresses genuine concern for his students, assists
14 them in finding new job opportunities, advocates for their rights, and prepares the students in
15 gaming and interview skills. Vu further describes Kwan as an excellent educator. During the
16 hearing, Kwan testified that Vu is not aware of Kwan's criminal history.

17 38. Kwan submitted a letter from Lawrence Lance (Lance), Table Games Dealer for The
18 Isle of Capri Resort and Casino, in support of his Application. Lance states that he met Kwan in
19 October 2009 when Kwan was an instructor at the Casino College. Lance describes Kwan as
20 readily communicative, friendly and well-informed in casino gaming procedures. Lance
21 describes Kwan as the "best bet" for any gambling establishment to have him on the floor.
22 During the hearing, Kwan testified that Lance is not aware of Kwan's criminal history.

23 39. Kwan's letters of support come from a number of individuals with different
24 backgrounds. The letters from Phuon, Ko, Phillips, Vu, and Lance, and the lack of any evidence
25 to the contrary, are persuasive that Kwan is hard-working, responsive and helpful to customers
26 and students, respectful and friendly to others, and very qualified and experienced in the
27 gambling industry. The letters are favorable toward Kwan's character and in support of his
28

1 Application.

2 40. Kwan testified that he has not had any employment issues or disciplinary action
3 related to his work, and no evidence was provided to show otherwise.

4 41. Given Kwan's testimony, which demonstrated ownership of his prior criminal actions
5 and financial issues and an appropriate level of remorse and genuine honesty, the nearly complete
6 resolution of all of his outstanding financial issues, the favorable recommendations of five
7 character witnesses, and a lengthy employment record without any disciplinary issues, Kwan has
8 demonstrated that he is a person of good character, honesty and integrity.

9 42. Given Kwan's honest and genuine testimony, the remoteness of his 1999 conviction,
10 the lack of any criminal convictions since 2009, the credible and satisfactory explanations of his
11 restraining order and missed child support payments, and his positive work history, Kwan is a
12 person whose prior activities, criminal record, reputation, habits and associations do not pose a
13 threat to the public interest of the State of California or to the effective regulation and control of
14 controlled gambling.

15 43. The matter was submitted for Commission consideration on February 24, 2015.

16 LEGAL CONCLUSIONS

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

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

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

28

1 47. No person may be issued a key employee license unless the person would qualify for a
2 state gambling license. Business and Professions Code section 19854(b).

3 48. The burden of proving his or her qualifications to receive any license from the
4 Commission is on the applicant. Business and Professions Code section 19856(a).

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

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

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

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

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

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

27 55. No gambling license shall be issued unless, based on all of the information and
28

1 documents submitted, the commission is satisfied that the applicant is a person whose prior
2 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the
3 public interest of this state, or to the effective regulation and control of controlled gambling, or
4 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
5 the conduct of controlled gambling or in the carrying on of the business and financial
6 arrangements incidental thereto. Business and Professions Code section 19857(b).

7 56. No gambling license shall be issued unless, based on all of the information and
8 documents submitted, the commission is satisfied that the applicant is a person that is in all other
9 respects qualified to be licensed as provided in this chapter. Business and Professions Code
10 section 19857(c).

11 57. Kwan has met his burden of proving that he is a person of good character, honesty and
12 integrity. Therefore, Kwan is qualified for licensure pursuant to Business and Professions Code
13 section 19857(a).

14 58. Kwan's prior activities, criminal record, reputation, habits and associations do not
15 pose a threat to the public interest of the State of California or to the effective regulation and
16 control of controlled gambling. As a result, Kwan is qualified for licensure pursuant to Business
17 and Professions Code section 19857(b).

18 59. Kwan is qualified to be licensed in all other respects pursuant to Business and
19 Professions Code section 19857(c).

ORDER

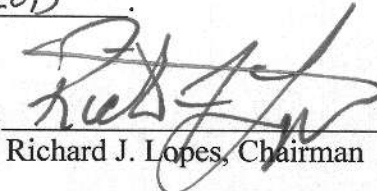
1
2 1. Richard Thoi Kwan's Application for Gambling Establishment Key Employee
3 License is APPROVED.¹

4 2. No costs are to be awarded.

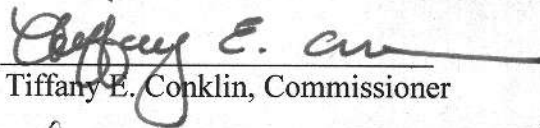
5 3. Each side to pay its own attorneys' fees.

6 This Order is effective on April 13, 2015.

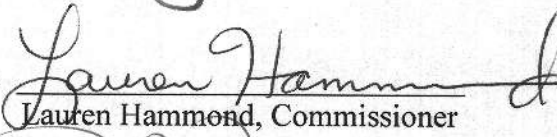
7 Dated: 3/12/2015

8 Signature: 
Richard J. Lopes, Chairman

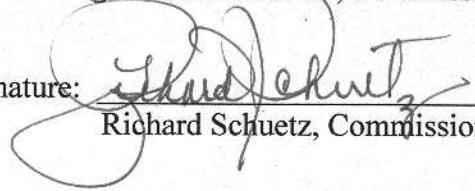
9 Dated: March 12, 2015

10 Signature: 
Tiffany E. Conklin, Commissioner

11 Dated: 3-12-15

12 Signature: 
Lauren Hammond, Commissioner

13 Dated: 3/12/2015

14 Signature: 
Richard Schuetz, Commissioner

15
16
17
18
19
20
21
22
23
24
25
26
27 ¹ As a result of this Decision and Order, pursuant to Title 4, CCR section 12354(d), upon the issuance of a
28 regular key employee license by the Commission, Kwan's interim key employee license shall become invalid and shall not be used thereafter.