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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Approval
of Renewal of State Gambling License
Regarding:

Otho M. Smith: GEOW-000472,
Sole Proprietor
S&K Cardroom: GEGE-000206

Applicant.

CGCC Case No. GCADS-GEOW-000472
GCADS-GEGE-000206

DEFAULT DECISION AND ORDER

Hearing Date: June 22, 2017
Time: 10:00 a.m.

1. This matter was scheduled for hearing before 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, in Sacramento, California, on June 22, 2017.

2. Otho M. Smith, as owner of S&K Cardroom, (Applicant) failed to appear and was not represented at the hearing.

FINDINGS OF FACT

3. On or about November 3, 2016, the Bureau of Gambling Control (Bureau) received an Application for State Gambling License from Applicant.

4. On or about December 16, 2016, the Bureau issued its Gambling Establishment and Owner Application Review (Bureau Report) in which in which it concluded that Applicant was unqualified for licensure pursuant to Business and Professions Code section 19857 and disqualified for licensure pursuant to Business and Professions Code section 19859. The Bureau recommended that the Commission deny Applicant's application.

5. On or about January 26, 2017, the Commission considered Applicant's application and voted to refer the matter to an evidentiary hearing pursuant to Title 4, CCR section 12050, subdivision (b).

6. Applicant received notice of Commission consideration of Applicant's application in two ways. First, Commission staff mailed an evidentiary hearing referral letter via certified

1 mail to Applicant's address of record on February 2, 2017 which included a blank Notice of
2 Defense form with instructions to return it to the Commission within 15 days of receipt or else the
3 Commission may issue a default decision. Commission staff received no response from Applicant
4 including a Notice of Defense form or otherwise as of March 8, 2017. (Exhibit A)

5 7. Second, Applicant further received notice of the hearing through a hearing notice
6 sent certified mail on March 21, 2017 to Applicant's address of record which included Exhibit A
7 and stated that the hearing was set to occur on Thursday, June 22, 2017 at 10:00 a.m.

8 **DETERMINATION OF ISSUES**

9 8. An owner of a gambling enterprise shall apply for and obtain a state gambling
10 license. (Bus. & Prof. Code § 19851, subd. (1).)

11 9. An application to receive a license constitutes a request for a determination of the
12 applicant's general character, integrity, and ability to participate in, engage in, or be associated
13 with, controlled gambling. (Bus. & Prof. Code § 19856, subd. (b).)

14 10. In addition, the burden of proving Applicant's qualifications to receive any license
15 from the Commission is on the applicant. (Bus. & Prof. Code § 19856, subd. (a).)

16 11. At an evidentiary hearing pursuant to Business and Professions Code sections
17 19870 and 19871 and Title 4, CCR section 12060 the burden of proof rests with the applicant to
18 demonstrate why a license should be issued. (Cal. Code Regs., tit. 4, § 12060, subd. (i).)

19 12. Title 4, CCR section 12052, subdivision (c), provides in pertinent part:

20 (c) An applicant for any license, permit, finding of suitability,
21 renewal, or other approval shall be given notice of the meeting at
22 which the application is scheduled to be heard. Notice shall be given
pursuant to Section 12006.

23 * * *

24 (2) If the application is to be scheduled at an evidentiary
25 hearing, pursuant to subsections (a) or (b) of Section 12060, the
notice of hearing shall inform the applicant of the following:

26 * * *

27 (F) The waiver of an evidentiary hearing, or failure of
28 the applicant to submit a Notice of Defense, or failure of an applicant
to appear at an evidentiary hearing, may result in:

1 1. A default decision being issued by the
2 Commission based upon the Bureau report, any supplemental reports
3 by the Bureau and any other documents or testimony already
4 provided or which might be provided to the Commission

5 13. The Commission has the power to deny applications for the renewal of licenses.
6 (Bus. & Prof. Code § 19876, subd. (1).)

7 14. The Commission takes official notice of the Bureau Report, any supplemental
8 reports by the Bureau and any other documents or testimony already provided to it in this matter
9 as required by Business and Professions Code section 19870, subdivision (a) and Title 4, CCR
10 section 12052, subdivision (c)(2)(F)(1).

11 15. The Commission has jurisdiction to adjudicate this case by default.

12 16. The Commission may deny Applicant’s application based upon the Bureau report,
13 any supplemental reports by the Bureau and any other documents or testimony already provided
14 to it, pursuant to CCR section 12052, subdivision (c)(2)(F)(1), and Business and Professions
15 Code sections 19857 and 19859.

16 17. The Commission may further also deny Applicant’s application based upon
17 Applicant’s failure to prove to the Commission Applicant is qualified to receive a license or other
18 approval as required by Business and Professions Code section 19856, subdivision (a) and Title 4,
19 CCR section 12060(i).

20 18. Therefore, as the Applicant failed to return a Notice of Defense form, did not
21 attend the default hearing, and did not submit any information or evidence in favor of granting
22 Applicant’s Application, Applicant did not meet Applicant’s burden of demonstrating why a
23 license should be issued pursuant to Business and Professions Code section 19856(a) and Title 4,
24 CCR section 12060(i). The Commission further finds that pursuant to California Code of
25 Regulations, Title 4, section 12052, subdivision (c)(2)(F)(1), Applicant’s Application is subject to
26 denial.

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NOTICE OF APPLICANT’S APPEAL RIGHTS

Applicant has the following appeal rights available under state law:

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

(a) After the Commission issues a decision following a GCA hearing conducted pursuant to Section 12060, an applicant denied a license, permit, registration, or finding of suitability, or whose license, permit, registration, or finding of suitability has had conditions, restrictions, or limitations imposed upon it, may request reconsideration by the Commission within 30 calendar days of service of the decision, or before the effective date specified in the decision, whichever is later.

(b) A request for reconsideration shall be made in writing to the Commission, copied to the Bureau, and shall state the reasons for the request, which must be based upon either:

- (1) Newly discovered evidence or legal authorities that could not reasonably have been presented before the Commission’s issuance of the decision or at the hearing on the matter; or,
- (2) Other good cause which the Commission may decide, in its sole discretion, merits reconsideration.

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

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

Title 4, CCR section 12066, subdivision (c) provides:

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

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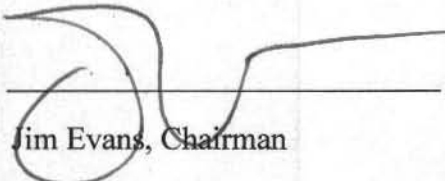
ORDER

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3 1. Otho M. Smith's Application for State Gambling License, GEOW-000472, as
4 owner of S&K Cardroom, GEGE-000206, is DENIED.


5 2. Otho M. Smith may not apply to the Commission or the Bureau for any type of
6 license, registration or work permit for one (1) year after the effective date of this Order.

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8 This Order is effective on 6/22/17.

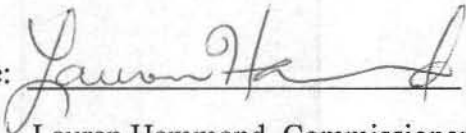
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10 Dated: 6-22-17

Signature: 
Jim Evans, Chairman

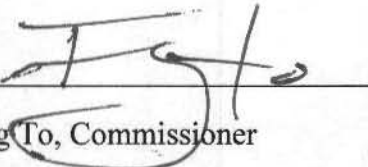
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13 Dated: 6.22.17

Signature: 
Paula Labrie, Commissioner

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Signature: 
Lauren Hammond, Commissioner

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19 Dated: 6-22-17

Signature: 
Trang To, Commissioner

DECLARATION OF STEPHANIE CLARK

I, Stephanie Clark, declare as follows:

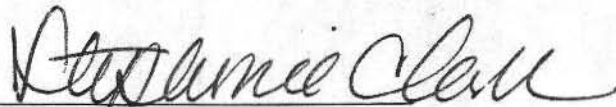
I am employed by the California Gambling Control Commission as an analyst in the Commission's Licensing Division. Otho Smith dba S&K Cardroom case has been assigned to me for processing.

On February 2, 2017, I mailed a Gambling Control Act hearing referral letter to Otho Smith dba S&K Cardroom at 1418 California Street, Eureka, CA 95501 by certified mail pursuant to California Code of Regulations (CCR) Title 4, Division 18, Chapter 1, section 12006. This letter provided notice to Otho Smith dba S&K Cardroom that consideration of his application was being referred to a Gambling Control Act hearing pursuant to CCR, Title 4, Division 18, Chapter 1, section 12060(b). This letter included a Notice of Defense form (CGCC-ND-002) with instructions to return the Notice of Defense to the Commission within 15 days of receipt in order to preserve their right to an administrative hearing.

Today is March 8, 2017, and I have not received the Notice of Defense form or any communication from Otho Smith dba S&K Cardroom regarding a request for a Gambling Control Act hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct.

Executed on March 8, 2017, in Sacramento, California.



Stephanie Clark