

BEFORE THE
STATE OF CALIFORNIA
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of:

TIMOTHY EUGENE STROUD

Respondent.

File No. DC # 1059

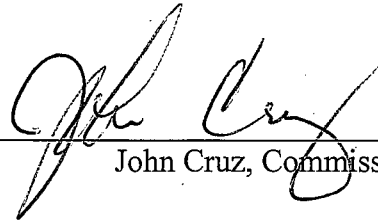
OAH No. N-2006110055

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the CALIFORNIA GAMBLING CONTROL COMMISSION as its Decision in the above-entitled matter.

This Decision shall become effective on AUG 1 0 2007.

IT IS SO ORDERED JUL 1 0 2007.



John Cruz, Commissioner

BEFORE THE
GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

In the Matters of:

TIMOTHY EUGENE STROUD,

Respondent.

Case No. DC #1059

OAH No. N2006110055

PROPOSED DECISION

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California, on January 31, February 1 and 2, 2007.

Niromi L. Wijewantha and Christine M. Murphy, Deputy Attorneys General, State of California, represented complainant Robert E. Lytle, Jr., Director of the Division of Gambling Control, Department of Justice, State of California.

Ogden & Fricks, Attorneys at Law, by John W. Fricks, Esq., represented Timothy Eugene Stroud.

Evidence was received and, to permit the filing of written briefs, the matter submitted on March 6, 2007.

FACTUAL FINDINGS

1. In August 2006, Robert E. Lytle, Jr., Director, Division of Gambling Control (Division), Department of Justice, State of California, filed a Statement of Issues solely in his official capacity against Timothy Eugene Stroud (respondent).

2. On October 12, 1999, respondent submitted to the Division an application for a license to own and operate the Gold Rush Casino/Resort in Grover Beach, San Luis Obispo County, California. The application sought Division approval to operate two card tables within a cardroom.

3. At various intervals between October 12, 1999 and until February 8, 2005, respondent and/or his counsel met with Division staff. On February 8, 2005, the Division recommended that the Gambling Control Commission (Commission) deny respondent's application for licensure. On October 20, 2005, respondent filed an appeal.

4. An Application for State Gambling License (application) requires an applicant to disclose particular information concerning the applicant, including financial history, criminal history, work history, and other detailed information.¹ The application is executed by an applicant under penalty of perjury.

5. The application asks, "Do you anticipate participation in the management and operation of the gambling establishment?" Respondent replied, "Yes." The application then inquires, "If yes, in what capacity." Respondent replied, "owner/operator."

A. The application inquired, "Amount to be invested in the business." Respondent replied, "\$20,000.00 to 40,000.00 (Startup and 6 mo. Operation Expenses). The application then asked, "Percentage of ownership this will represent." Respondent replied, "100%."

B. The application directed: "Identify the source of all monies used for your investment, include account numbers and institution names." Respondent replied, "Personal Funds (Have Equipment & Cash For Opening and Monthly Expenses For 2 Table Casino)."

C. The application also inquired, "Has your interest in this gambling establishment been assigned, pledged, or hypothecated to any person, firm, or corporation, or has any agreement been entered into whereby your interest is to be assigned, pledged, or sold either in part or in whole?" Respondent replied, "No."

6. Following Division review of an application, Division staff may make further inquiries of an applicant to expand upon response set forth in the application. Upon such review of respondent's application, Division staff sought additional information from him.

7. In response to the query: "Identify the source of all monies used for your investment, include account numbers and institution names." On November 16, 1999, respondent amended his response as follows: "Personal Funds (Have Equipment & Cash For Opening and Monthly Expenses For 2 Table Casino) Acc # 19113175-11 Mid State Bank 3600 Saqunto Santa Ynez, CA 93460 11-16-99" Further Division review indicated respondent

¹ Business and Professions Code section 19856, subdivision (b) provides: "An application to receive a license constitutes a request for a determination of the applicant's general character, integrity, and ability to participate in, engage in, or be associated with, controlled gambling."

lacked available funds in that account. Whereupon, on July 23, 2000, respondent subsequently amended his response by deleting reference to Mid State Bank and including the following statement: "Funds were from sale of property's (sic) and mutual funds, universal life policy and monthly income. At times used Mid State Account to pay current bills."

8. Division staff, seeking to validate respondent's financial history, found that each response by respondent generated a response that only functioned to compel further investigation. Respondent was unable to provide particular records demonstrating funds sufficiently extant to support his intended business activities. Included with his application were Statements of Assets and Statements of Liabilities. A Statement of Asset (Schedule II "A" Cash) seeks to elicit from an applicant: (a) fund location (e.g., name and address of bank), (b) account signatories, (c) account numbers, (d) date account opened, (e) type of account, and (f) balance.

- A. In his original submission, respondent's Statement of Asset (Schedule II "A" Cash) referenced cash located at "Home (cashier's check)." A following line further set forth: "Line of credit (25,000 aviable (sic))" and elsewhere on the form, a further reference to "(Line of credit if needed)."
- B. In his November 16, 1999 amendment to this Statement of Asset, respondent expanded his response with respect to the line of credit by indicating that the source was "assorted credit cards - separate." Adding Mid State Bank, respondent indicated the balance in that account amounted to \$800.00.
- C. On March 28, 2000, respondent further amended this Statement of Assets by, first, modifying the reference to "cashier's check" to "money orders" amounting to "13,000.00"; second, deleting any reference to "line of credit."

9. Another Statement of Assets (Schedule II "F" Other Assets) directs an applicant to list "all other assets you hold (e.g., automobiles, jewelry, artwork, household furnishings, cash surrender value of life insurance policies, pension plans, etc.)." This form seeks further information with respect to each asset by having an applicant identify (a) the type of asset, (b) other information concerning the asset, (c) the date of purchase (acquisition), (d) purchase price, and (e) current market value.

- A. In his original submission, respondent's Statement of Asset (Schedule II "F" Other Assets) set forth an automobile, jewelry, rare Indian artwork, household furnishings, cash, and gaming equipment totaling \$90,000.
- B. In a November 16, 1999 amendment to this Statement of Asset,

respondent expanded his response to the gaming equipment by indicating that the equipment was a gift from an "Irv McQuade who had them in Montana and now is retired." Respondent reiterated that the combined assets totaled \$90,000.

- C. On March 28, 2000, respondent further amended this Statement of Assets by, first, deleting reference to "cash" reportedly valued at \$25,000, and second, deleting all references to the gaming equipment reportedly valued at \$10,000, and amending his combined asset value to \$55,000.

10. The application also inquired or directed:

- A. "Has your interest in this gambling establishment been assigned, pledged, or hypothecated to any person, firm, or corporation, or has any agreement been entered into whereby your interest is to be assigned, pledged, or sold either in part or in whole?" Respondent replied, "No."
- B. "List all individuals with a financial interest in the gambling establishment. Each of the persons named is required to submit a separate application." Respondent listed only himself and represented that he was contributing 100% of the investment amount and possessed 100% of the interest in the gaming establishment.

11. The application further included Statements of Liabilities. Respondent included a Statement of Liabilities (Schedule II "G" Accounts Payable) relating to revolving accounts/credit cards, and a Statement of Liabilities (Schedule II "H" Taxes Payable) wherein he indicated a disputed amount owing to the Franchise Tax Board. On July 9, 2003, respondent submitted an amended Statement of Liabilities (Schedule II "H" Taxes Payable) and indicated, "Dismissed and Removed Error."

12. Respondent expressed significant frustration with the Division's delay in processing his application. He claims that a concern with "Y2K" induced him to keep funds at his residence. He claims that he has been fully forthcoming and cooperative with Division staff.

13. Respondent has engaged in the gaming industry. He has a broad range of experience. Respondent is not a wealthy man. He seeks licensure to pursue an ambition and provide cardroom services to a discrete clientele. In pursuance of this ambition and Commission licensure, respondent found a location, met various municipal ordinances, including the acquisition of a license issued by the Alcoholic Beverage Control Board, and expended significant funds.

14. In furtherance of his ambition, and lacking sufficient available funds, it is clear that respondent sought funds from friends and acquaintances. One such friend was Stuart John McQuade. Mr. McQuade shared a residence with respondent. He admits providing funds to respondent but claims that such funds represent rental reimbursement offsets. He denies that his funds or willingness to provide an unsecured line of credit to respondent's ambition or expenses ever represented an ownership interest or forthcoming ownership interest in the gaming establishment, known as the Gold Rush Casino.

15. Aldert Noordwal provided a \$30,000 and \$50,000 line of credit, and some rent payments to respondent toward the furtherance of the Gold Rush Casino with the understanding expressed by respondent that Mr. Noordwal would acquire a one-third ownership interest. Respondent never utilized (nor reported) either line of credit.

16. Jill Perry, a long acquaintance of respondent, also tendered various and multiple checks to respondent in anticipation and furtherance of the Gold Rush Casino. Ms. Perry testified that she had inherited a substantial sum of money. She recalled a meeting in which respondent offered her a one-third interest (belonging to Mr. Noordwal) in the Gold Rush Casino. Upon that basis and interested in the promising investment, she tendered checks to respondent to defray ongoing expenses being incurred by the Gold Rush Casino's development.

17. Yvonne Redding, a former Division staff member, was assigned respondent's application. Ms. Redding indicated that funding limitations combined with an inability to verify respondent's reported cash, available bank funds, and other documentation also contributed to intermittent interaction between herself and respondent in an effort to ascertain whether sufficient unencumbered capital existed for the gaming establishment. Ms. Redding further testified that Division scrutiny is more focused on an applicant seeking to own a gaming establishment versus an applicant seeking employment in a gaming establishment. During her review and evaluation of respondent's application, Ms. Redding discovered that respondent had:

- A. Numerous undisclosed and unsatisfied civil judgments rendered against him.
- B. Numerous civil restraining orders rendered against him.
- C. Failed to disclose a State Board of Equalization tax lien.
- D. Failed to fully account for the source and extent of his reported liquidity and assets.

18. Respondent acknowledges the various judgments but states he was unaware of their rendition. With respect to the civil restraining orders, he intimates an unawareness of their import. Respondent claims a willingness to satisfy the civil judgments. He claims he owes no financial obligations to Mr. McQuade, Mr. Noordwal, a Robert Savoie, or Ms. Perry. Respondent subsequently resolved liens owed the State of California.

19. Respondent claims he never offered nor intended a one-third interest in the Gold Rush to any person. He claims that Ms. Perry was offered the ability, and still has the ability, to operate the bar located at the Gold Rush Casino. He claims that her funds were for the establishment of a martini bar.

20. In an administrative disciplinary proceeding, the hearing does not need to "be conducted according to technical rules relating to evidence and witnesses."² In balancing the respective testimony provided by each party, the undersigned applied, in part, the criteria set forth at Evidence Code sections 412,³ 413,⁴ 780,⁵ 786,⁶ 790⁷ and 791⁸ in ascertaining the relative convincing force of the evidence presented.⁹ It is found that:

² Government Code section 11512, subdivision (c).

³ Evidence Code section 412 provides, "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."

⁴ Evidence Code section 413 provides, "In determining what inferences to draw from the evidence or facts in the case against a party, the trier of fact may consider, among other things, the party's failure to explain or to deny by his testimony such evidence or facts in the case against him, or his willful suppression of evidence relating thereto, if such be the case."

⁵ Evidence Code section 780 provides, in pertinent part: "Except as otherwise provided by statute, the court may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following: (a) His demeanor while testifying and the manner in which he testifies. (b) The character of his testimony. (c) The extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies. (d) The extent of his opportunity to perceive any matter about which he testifies. (e) His character for honesty or veracity or their opposites. (f) The existence or nonexistence of a bias, interest, or other motive. (g) A statement previously made by him that is consistent with his testimony at the hearing. (h) A statement made by him that is inconsistent with any part of his testimony at the hearing. (i) The existence or nonexistence of any fact testified to by him. (j) His attitude toward the action in which he testifies or toward the giving of testimony. (k) His admission of untruthfulness."

⁶ Evidence Code section 786: "Evidence of traits of his character other than honesty or veracity, or their opposites, is inadmissible to attack or support the credibility of a witness."

⁷ Evidence Code section 790: "Evidence of the good character of a witness is inadmissible to support his credibility unless evidence of his bad character has been admitted for the purpose of attacking his credibility."

⁸ Evidence Code section 791: "Evidence of a statement previously made by a witness that is consistent with his testimony at the hearing is inadmissible to support his credibility unless it is offered after: (a) Evidence of a statement made by him that is inconsistent with any part of his testimony at the hearing has been admitted for the purpose of attacking his credibility, and the statement was made before the alleged inconsistent statement; or (b) An express or implied charge has been made that his testimony at the hearing is recently fabricated or is influenced by bias or other improper motive, and the statement was made before the bias, motive for fabrication, or other improper motive is alleged to have arisen."

⁹ Business and Professions Code section 19856, subdivision (a).

A. Respondent failed to properly and fully complete his application.

- (1) Respondent, clearly faced with additional costs toward the acquisition of a gaming establishment, required further funds. To that end, he acquired personal lines of credit from Mr. McQuade (\$50,000) and Mr. Noordwal (\$50,000/\$30,000) which were not expressly revealed in relevant application Statements.¹⁰
- (2) Respondent did not disclose civil judgments rendered against him.
- (3) Respondent failed to adequately provide documentation supporting extant available funds. While respondent claimed that cash resided at his location because of Y2K, the source documentation for such cash was never properly produced at this hearing to support a finding that such funds ever existed.
- (4) Respondent's claimed misapprehension that he did not believe certain matters required reporting in his application is specious. Respondent is not the touchstone in determining what or whether information is to be withheld. In the completion of a Division application, the burden rests with him to be fully and completely forthcoming.¹¹ Respondent's completion of his application demonstrated a lack of due diligence or attendant gravity.¹²

B. Respondent has engaged in multiple acts of moral turpitude.

- (1) Respondent subsequently, unilaterally and without prior notice to Ms. Perry altered her checks to reflect a purported agreement not made by the parties. He deliberately entered a reference that represented each check was tendered toward a martini bar. Respondent's claims to the contrary are not found credible.
- (2) Respondent, having obtained Ms. Perry's signature to a document on August 16, 2001, subsequently, unilaterally and without prior notice of Ms. Perry, inserted a line in the purported agreement that re-characterized the parties' comprehension of Ms. Perry's involvement and what her funds represented. Ms. Perry's testimony was found credible and competent.

¹⁰ Business and Professions Code section 19864, subdivision (b)(4).

¹¹ Business and Professions Code section 19856, subdivision (b).

¹² Business and Professions Code section 19864, subdivision (b)(6).

- (3) Although Mr. McQuade claimed Ms. Perry expressed interest in the casino's bar, he did not recall discussions concerning her acquisition of a one-third interest in the Gold Rush Casino. His testimony, combined with respondent's, is not found credible when balanced against Mr. Noordwal and Ms. Perry; particularly when measured with respondent's alterations of relevant documents.
- (4) Respondent engaged in a pattern of conduct deliberately designed to deceive the Division into believing that he was the sole owner and investor in the gambling establishment for which he sought licensure.
- (5) Without prior authorization or approval, respondent, while employed at C.R. Visions and lacking any equity interest in the business, unilaterally obtained bank checks which he then used to direct payments toward himself. Respondent has not yet effected restitution to C.R. Visions.
- (6) In a separate proceeding before the Alcoholic Beverage Control Board, respondent misrepresented, under oath, his Commission licensure.

C. Respondent lacks the capacity to properly and responsibly handle or account for others' funds. Mindful of the scrutiny to which respondent must subject himself to obtain Commission licensure,¹³ what emerges is an applicant who simply put lacks sufficient funds to own or operate a cardroom. With extant civil judgments, it is clear his capacity to obtain credit is limited. He is compelled to therefore exhort or borrow funds from friends or acquaintances. The manner in which respondent took funds from C.R. Visions, or inveigled funds from Ms. Perry, or sought a line of credit from Mr. Noordwal or has been required to seek Mr. McQuade's assistance compels Division concern into respondent's solvency and capacity for financial responsibility. That he has yet failed to effect restitution to C.R. Visions or Jonathan Neil & Associates,¹⁴ and categorically denies any culpability or liability to Ms. Perry further calls into doubt his character.

¹³ Business and Professions Code section 19801, subdivisions (e), (f), (g), and (h).

¹⁴ Respondent seeks a license conditioned upon satisfaction of civil judgments. Respondent clearly does not comprehend the import of this proceeding. The effectuation of restitution is a factor that demonstrates responsibility and moral character.

D. Respondent lacks the moral character to own and operate a Commission licensed cardroom.

21. Gambling is a disfavored business.¹⁵ What emerges from the evidence presented herein is an applicant who seriously seeks to provide a service to the public. Lacking, however, is cogent or competent evidence that demonstrates a financially stable or solvent applicant. That combined with his moral shortcomings compels denial of the instant application.

LEGAL CONCLUSIONS

1. Cause exists to deny the application of respondent for failure to properly disclose information in an application pursuant to the provisions of Business and Professions Code section 19859, subdivision (b), and as set forth in Findings 2 through 21.

2. Cause exists to deny the application of respondent for failing to demonstrate good character, honesty, and integrity pursuant to the provisions of Business and Professions Code section 19857, subdivision (a), and as set forth in Findings 2 through 21.

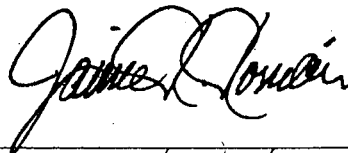
3. Cause exists to deny the application of respondent for inappropriate prior activities or associations pursuant to the provisions of Business and Professions Code section 19857, subdivision (b), and as set forth in Findings 2 through 21.

ORDER

1. The appeal of respondent Timothy Eugene Stroud is DENIED pursuant to Legal Conclusions 1 through 3, and each of them.

2. The application of Timothy Eugene Stroud for licensure by the Gambling Control Commission, State of California, to own and operate a cardroom is DENIED pursuant to Legal Conclusions 1 through 3, and each of them.

Dated: March 30, 2007



JAIME RENÉ ROMÁN
Administrative Law Judge
Office of Administrative Hearings

¹⁵ Business and Professions Code section 19801, subdivision (a).

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10 *Bureau of Gambling Control*

11
12 BEFORE THE
13 CALIFORNIA GAMBLING CONTROL COMMISSION
14 STATE OF CALIFORNIA
15

16	In the Matter of the Statement of Issues	Application for State Gambling License
17	Against:	DC No. 1059
18	TIMOTHY EUGENE STROUD,	OAH No. 2006110055
19	Respondent.	STIPULATION AND PROPOSED
20		DECISION AND ORDER
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27 ¹ The original Complainant in this action was the Director of the Division of Gambling Control,
Robert E. Lytic, Jr. The current Complainant is the Chief of the Bureau of Gambling Control, Jacob A.
28 Appelsmith.

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

2 1. Following a hearing on the Statement of Issues before an administrative law judge
3 (ALJ) of the Office of Administrative Hearings (OAH), the ALJ issued a proposed decision. The
4 proposed decision found, *inter alia*, that cause existed to deny Respondent's application for a
5 gambling license to own and operate a cardroom.

6 2. On July 10, 2007, the California Gambling Control Commission (Commission)
7 issued an order adopting the ALJ's proposed decision as its final administrative decision in this
8 matter.

9 3. On or about August 8, 2007, Respondent filed a request for reconsideration on the
10 ground that there existed new evidence supporting a remand of the matter to OAH.

11 4. On August 13, 2007, the Commission granted Respondent's request for
12 reconsideration, ordering a remand of the matter to OAH for review on limited issues and staying
13 its final administrative decision pending that review.

14 5. The parties then scheduled an administrative hearing on reconsideration before an
15 ALJ on the limited issues set forth in the Commission's order granting reconsideration.

16 6. Respondent has now determined not to proceed at the administrative hearing on
17 reconsideration.

18 7. Should the Commission, as requested below, vacate its order granting
19 reconsideration and issue a new order adopting the ALJ's original proposed decision as its final
20 administrative decision, Respondent agrees and stipulates not to request reconsideration of any
21 issue that could have been raised by request for reconsideration following the Commission's July
22 10, 2007 order. Respondent further agrees and stipulates that his right to reconsideration, petition
23 for writ of mandate, or appeal of any issue upon which the Commission granted reconsideration
24 in its August 13, 2007 order is unequivocally waived. Respondent does not waive any right to
25 petition for writ of mandate or appeal any issue in the ALJ's original proposed decision which the
26 parties are herein requesting the Commission to adopt as its final administrative decision.

27 8. Accordingly, the parties jointly request that the Commission, at its next regularly
28 scheduled public meeting, or as soon thereafter as the Commission may consider the matter,

1 vacate its August 13, 2007 order granting reconsideration and enter a new decision and order
2 adopting the ALJ's original proposed decision as its final administrative decision in this matter, as
3 set forth below.

4 9. This Stipulation and Proposed Decision and Order have been fully discussed
5 between Respondent Timothy Eugene Stroud and his attorney, Steven L. Simas, and Stroud has
6 been fully advised of the effect of this Stipulation and Proposed Decision and Order upon his
7 pending administrative hearing on reconsideration, and any judicial challenge to the decision of
8 the Commission adopted in this matter. Stroud enters into this Stipulation voluntarily,
9 knowingly, and intelligently, and agrees to be bound by this Stipulation and the terms of the
10 Proposed Decision and Order resulting upon adoption by the Commission.

11 10. This Stipulation and Proposed Decision and Order are subject to approval and
12 action by the Commission. In the event the Commission does not adopt the Proposed Decision
13 and Order, and a hearing on reconsideration before an ALJ and/or the Commission becomes
14 necessary, neither any member of the Commission, nor the Executive Director of the
15 Commission, shall be disqualified because of prior consideration of this Stipulation and Proposed
16 Decision and Order. Stroud also specifically agrees that counsel for the Bureau and Bureau staff
17 may communicate directly with the Commission or its staff regarding this Stipulation and
18 Proposed Decision and Order prior to Commission action thereon, without notice to, or
19 participation by, Stroud or his counsel, and that no such communications shall be deemed a
20 prohibited ex parte communication.

21 NOW, THEREFORE, the parties to the above-captioned proceeding hereby agree and
22 stipulate that an order of the California Gambling Control Commission may enter to the following
23 effect and in substantially the following form:

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[PROPOSED] DECISION AND ORDER

In the Matter of the Statement of Issues against Timothy Eugene Stroud, Application for Gambling License DC No. 1059, OAH No. 2006110055, the California Gambling Control Commission having duly considered the parties' Stipulation and Proposed Decision and Order, it is hereby ordered that:

1. The Order of the Commission dated August 13, 2007 granting reconsideration be and the same is hereby vacated;

2. The proposed decision adopted by the Commission on July 10, 2007, be and the same is hereby adopted as the final decision of the Commission in this matter; and,

3. This Decision and Order shall be effective on the date of its execution.

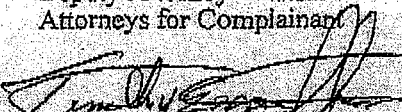
IT IS SO AGREED AND STIPULATED:

EDMUND G. BROWN JR.
Attorney General of California

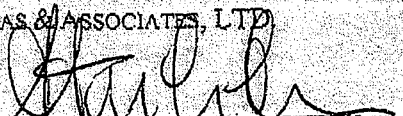
Dated: 12-7-09, 2009

By: 
T. MICHELLE LAIRD
Deputy Attorney General
Attorneys for Complainant

Dated: 11-26-09, 2009


TIMOTHY EUGENE STROUD
Respondent

Dated: 11/30/09, 2009

SIMAS & ASSOCIATES, LTD.
By: 
STEVEN L. SIMAS
Attorneys for Respondent

DECISION AND ORDER

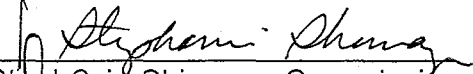
The foregoing Stipulation and Proposed Decision and Order "In the Matter of the Statement of Issues Against Timothy Eugene Stroud, OAH Case No. 2006110055, DC No. 1059, is hereby adopted as the final Decision and Order of the California Gambling Control Commission, and is effective upon execution below by the Commission members.

IT IS SO ORDERED

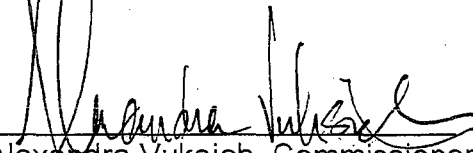
Dated: 1-14-10

Signature: 
Dean Shelton, Commission Chair

Dated: 1-14-10

Signature: 
Stephanie Shimazu, Commissioner

Dated: 1/14/2010

Signature: 
Alexandra Vuksich, Commissioner