

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for Approval
of Third-Party Proposition Player Services
Player License Regarding:

XIAOJUN CHEN

Applicant.

CGCC Case No. CGCC-2022-0623-7E

BGC Case No. BGC-HQ2022-00014SL

DECISION AND ORDER

Hearing Date: January 11, 2023
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, via Zoom video conference, on January 11, 2023.

Applicant Xiaojun Chen (Chen) appeared on his own behalf during the evidentiary hearing. Ann Wang appeared to provide interpretation services throughout the hearing.

Lisa L. Freund, Deputy Attorney General, State of California (DAG Freund), represented complainant Yolanda Morrow, solely in her official capacity as Director of the California Department of Justice, Bureau of Gambling Control (Bureau).

During the evidentiary hearing, Presiding Officer Russell Johnson (PO Johnson), took official notice of the following documents: the Commission’s Notice and Agenda of Commission Hearing; the Commission’s Conclusion of Prehearing Conference letter; the Commission’s Notice of Hearing with attachments (A) Chen’s application, and (B) the Bureau’s background investigation report; the Bureau’s Statement of Reasons; and Chen’s signed Notice of Defense.

During the evidentiary hearing, PO Johnson accepted into evidence Exhibits 1-3, Bates Nos. BGC 0001-0144, offered by the Bureau and identified on the Bureau’s Evidentiary Exhibit Index, pursuant to a stipulation between the parties.

PO Johnson closed the administrative record and the matter was submitted for decision on January 11, 2023.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FINDINGS OF FACT AND LEGAL CONCLUSIONS

Procedural History

1. In September 2021, Chen starting working as a third-party proposition player for Progressive Gaming, LLC, (Progressive), a licensed third-party provider of proposition player services.

2. On or about September 24, 2021, the Bureau received an initial Application for an Employee Category License, together with a Commission Work Permit or Third-Party Proposition Player Services Worker Supplemental Information form (collectively, Application) from Chen. The Application was to allow for his continued employment as a third-party worker for Progressive.

3. On or about October 14, 2021, the Commission issued third-party worker temporary license registration number TPWK-002354 to Chen for his employment as a third-party proposition player for Progressive.

4. In March 2022, the Commission received a Third-Party Worker Initial Background Investigation Report on Chen from the Bureau. In this report, the Bureau alleges that Chen was convicted of a misdemeanor offense and failed to disclose the conviction on his Application. Based on the foregoing, the Bureau recommends that the Commission deny Chen’s Application.

5. On June 23, 2022, the Commission voted to refer the consideration of Chen’s Application to a Gambling Control Act (Act) evidentiary hearing pursuant to CCR section 12060, subdivision (a).

6. On or about June 24, 2022, the Commission sent a letter, via regular and certified mail, to Chen notifying him that the Commission referred the consideration of his Application to an evidentiary hearing.

7. On July 19, 2022, the Commission received a signed Notice of Defense from Chen requesting an evidentiary hearing on the consideration of his Application.

8. On or about August 17, 2022, the Commission sent a Notice of Hearing, via e-mail, to Chen and DAG Freund. The hearing was set for January 11, 2023 at 10:00 a.m.

1 9. On October 3, 2022, the Bureau served a Statement of Reasons on Chen and the
2 Commission. In the Statement of Reasons, the Bureau alleges the Application should be denied
3 because Chen suffered, and failed to disclose on his Application, a June 7, 2021, conviction
4 (Conviction) for violating Penal Code section 242, battery, a misdemeanor, in the case of *People*
5 *of the State of California v. Xiaojun Chen* (Super. Ct. Los Angeles County, Case No.
6 9AM04699), and provided inaccurate and misleading information to the Bureau regarding the
7 Conviction. The act which led to the Conviction was committed on November 16, 2019.

8 10. On or about November 16, 2022, the noticed Prehearing Conference was held before
9 PO Johnson. Chen attended on his own behalf. Ann Wang appeared to provide interpretation
10 services throughout the Prehearing Conference. DAG Freund attended on behalf of the Bureau.

11 11. On or about November 16, 2022, PO Johnson sent a Conclusion of Prehearing
12 Conference letter, via e-mail, to Chen and DAG Freund.

13 12. The Commission heard this matter via Zoom video conference on January 11, 2023.
14 Ann Wang appeared to provide interpretation services, in Mandarin, throughout the hearing
15 because Chen has limited proficiency in the English language. PO Johnson closed the
16 administrative record on January 11, 2023.

17 **Chen's Employment History in Controlled Gambling**

18 13. Chen has worked as a third-party proposition player for Progressive from May 2021 to
19 the present. There was no evidence presented of any derogatory information relating to Chen's
20 work history for Progressive.

21 **Chen's Criminal History**

22 14. Chen's Conviction occurred because he punched his tenant for not paying rent and
23 damaging his car. The victim suffered a contusion to his right eye and needed two stitches.
24 Immediately following this incident, Chen took the victim to the hospital. He later apologized to
25 the victim and provided him food. His relationship with the victim since the altercation remains
26 cordial. In response to an inquiry by the police following the altercation, where he needed an
27 interpreter, Chen admitted he punched the victim and took responsibility for his action. Chen's
28 conduct vis-à-vis the victim, following his ill-advised punch, reflect well on his character.

1 15. As stated in the Statement of Reasons and its report, it was reasonable for the Bureau
2 to conclude that there was a discrepancy between Chen’s statements to the police regarding the
3 circumstances that led to the Conviction and the information he provided to the Bureau, because
4 Chen stated to the Bureau that the altercation stemmed from the victim owing Chen past due rent,
5 but in his statement to the police officer investigating the incident, Chen stated the altercation
6 occurred because the victim damaged Chen’s vehicle. During the hearing, Chen credibly
7 explained that the discrepancy is not significant because he punched the victim both because he
8 did not receive rent timely and due to the damage he believed the victim caused to his car.

9 16. The Conviction resulted in an initial superior court order against Chen to: complete a
10 one year probation term, pay a fine, attend a 26-week anger management program, and provide
11 100-hours of community service. The Court also ordered Chen to “appear on the next court date.”
12 On June 7, 2021, the Court set a subsequent hearing for October 21, 2021, so Chen could submit
13 proof of completion of certain probation terms and for “restitution hearing setting.” Ultimately,
14 after several continuances, the superior court also ordered the payment of restitution to the victim
15 following a restitution hearing on or about May 31, 2022. Chen was ordered to pay restitution in
16 the amount of \$18,135 in monthly installments of \$500. Chen is continuing to comply with the
17 terms of the restitution order.

18 17. Although the Conviction was final on June 7, 2021, Chen testified that his attorney
19 advised him that the matter was not concluded because the restitution amount payable to the
20 victim had yet to be determined. In fact, as noted above, on or about May 31, 2022, following a
21 restitution-hearing, Chen was ordered to pay restitution. Chen satisfactorily completed his
22 probation term, completed his anger management program and community service obligations,
23 paid all fines, and is current on payment of the restitution ordered. Chen’s timely compliance with
24 all of the superior court’s orders in connection with the Conviction reflect well on his character.

25 **Chen’s Application**

26 18. Chen’s Application consists of two parts. The first part is three pages and contains
27 four sections, including applicant information. Chen signed the first part of the Application on or
28 about September 30, 2021. Chen has limited proficiency in the English language, and required the

1 assistance of a translator to complete the Application.

2 19. The second part of the Application is the supplemental application, which is eight
3 pages and contains nine sections (Supplemental). The Supplemental requires that the applicant
4 disclose, among other things, their criminal history information.

5 20. Section (4) of the Supplemental required Chen to disclose his criminal history
6 information. The instructions under Section (4) state:

7 “**You are required to disclose any and all criminal convictions** regardless
8 of:

- 9 1) The date of the conviction, i.e. **it must be disclosed no matter how old**
10 the conviction is;
- 11 2) The degree of the conviction, i.e. **it must be disclosed whether it was a**
12 **felony or misdemeanor, which includes traffic violations** charged as
13 misdemeanors or felonies, including driving under the influence, driving
14 on a suspended license, etc.;
- 15 3) The status of the conviction, i.e. **it must be disclosed regardless of**
16 **whether you had the conviction reduced, dismissed, or expunged**, or
17 whether you are on or off probation . . .” (Emphasis in original.)

18 21. Chen checked the box marked “no” to Question A in Section 4 of the Supplemental,
19 which asked, “Have you **ever** been convicted or pled guilty or nolo contendere (no contest) to a
20 misdemeanor or felony?” (Emphasis in original.) Chen’s answer was inaccurate because he had
21 been convicted of a misdemeanor on June 7, 2021. An affirmative answer to Question A requires
22 the applicant to provide certain details regarding the conviction, including the approximate date
23 of the conviction, the arresting agency, the court location, the criminal conviction, and an
24 explanation of the factual circumstances that led to the conviction. Since Chen had been
25 convicted of a misdemeanor, Chen was required to provide details regarding his Conviction on
26 the Supplemental. However, by answering Question A in the negative, Chen did not provide any
27 details regarding his Conviction on the Supplemental. The fact of, and details regarding, Chen’s
28 criminal Conviction were discovered by the Bureau during its background investigation.

1 22. Section (9) of the Supplemental is a Declaration, signed by Chen on or about
2 September 21, 2021, in which Chen declared under penalty of perjury that the information
3 provided in the Supplemental was “true, accurate, and complete.” However, the Supplemental
4 contained information that was not true or correct because Chen had inaccurately stated that he
5 had not been convicted of a misdemeanor. Additionally, the Supplemental was not complete
6 because Chen failed to provide the details regarding his misdemeanor Conviction on the
7 Supplemental.

8 **Chen’s Communications with the Bureau and his Testimony before the Commission**

9 23. Although Chen responded in English to all inquiries of the Bureau made during its
10 background investigation, he copied the responses verbatim after they were provided by a
11 translator. At least one copy of the letter requesting additional information from the Bureau to
12 Chen’s designated agent includes a copy of the letter translated into Mandarin. On or about
13 January 6, 2022, in response to a Bureau inquiry for additional information about the reason he
14 failed to disclose his Conviction on the Supplemental, Chen provided a written response. Chen
15 stated that his case was still “open” and there was “no final result yet.”

16 24. On or about January 13, 2022, regarding his failure to disclose the Conviction, Chen
17 further explained that he: “was going to go back to complete” the criminal history portion of the
18 Application “but forgot. I needed help to explain in [E]nglish so I was waiting but I forgot to go
19 back to this section.” During the hearing, Chen, credibly explained that initially he marked “no”
20 to Question A in Section 4 of the Supplemental because he saw that other applicants had marked
21 “no” even though he did not understand whether or not a pending matter was required to be
22 provided under the criminal history portion of the Application. He later decided to ask an
23 employee of Progressive who was tasked with helping him and others complete the Application
24 about his response to Question A. Following his discussion with Progressive’s employee, Chen
25 came to believe that since his restitution hearing had not concluded he did not need to go back to
26 correct his negative response to Question A under the criminal history portion of the Application.
27 Also, during the hearing, consistent with his prior belief which was communicated to the
28 employee of Progressive who was tasked with helping him fill out the Application, and to the

1 Bureau, Chen credibly explained to the Commission that he believed the Conviction was not final
2 because restitution had yet to be ordered.

3 APPLICABLE STATUTORY AND REGULATORY PROVISIONS

4 1. Division 1.5 of the Business and Professions Code, the provisions of which govern the
5 denial of licenses on various grounds, does not apply to licensure decisions made by the
6 Commission under the Gambling Control Act. (Bus. & Prof. Code, § 476, subd. (a).)

7 2. The Act is an exercise of the police power of the state for the protection of the health,
8 safety, and welfare of the people of the State of California, and shall be liberally construed to
9 effectuate those purposes. (Bus. & Prof. Code, § 19971.)

10 3. Public trust that permissible gambling will not endanger public health, safety, or
11 welfare requires that comprehensive measures be enacted to ensure that gambling is free from
12 criminal and corruptive elements, that it is conducted honestly and competitively, and that it is
13 conducted in suitable locations. (Bus. & Prof. Code, § 19801, subd. (g).)

14 4. Public trust and confidence can only be maintained by strict and comprehensive
15 regulation of all persons, locations, practices, associations, and activities related to the operation
16 of lawful gambling establishments. (Bus. & Prof. Code, § 19801, subd. (h).)

17 5. The Commission has the responsibility of assuring that licenses, approvals, and
18 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose
19 operations are conducted in a manner that is inimical to the public health, safety, or welfare. (Bus.
20 & Prof. Code, § 19823, subd. (a)(1).)

21 6. An “unqualified person” means a person who is found to be unqualified pursuant to
22 the criteria set forth in Section 19857, and “disqualified person” means a person who is found to
23 be disqualified pursuant to the criteria set forth in Section 19859. (Bus. & Prof. Code, §
24 19823, subd. (b).)

25 7. The Commission shall have all powers necessary and proper to enable it fully and
26 effectually to carry out the policies and purposes of this chapter. (Bus. & Prof. Code, § 19824.)

27 8. The Commission has the power to deny any application for a license, permit, or
28 approval for any cause deemed reasonable by the Commission. (Bus. & Prof. Code, § 19824,

1 subd. (b).)

2 9. The Commission has the power to take actions deemed to be reasonable to ensure that
3 no ineligible, unqualified, disqualified, or unsuitable persons are associated with controlled
4 gambling activities. (Bus. & Prof. Code, § 19824, subd. (d).)

5 10. The burden of proving his or her qualifications to receive any license from the
6 Commission is on the applicant. (Bus. & Prof. Code, § 19856, subd. (a).)

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

10 12. In reviewing an application for any license, the commission shall consider whether
11 issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the
12 license will undermine public trust that the gambling operations with respect to which the license
13 would be issued are free from criminal and dishonest elements and would be conducted honestly.
14 (Bus. & Prof. Code, § 19856, subd. (c).)

15 13. The burden of proof is always on the applicant to prove his, her, or its
16 qualifications to receive any license or other approval under the Gambling Control Act. (CCR, §
17 12060, subd. (j).)

18 14. No gambling license shall be issued unless, based on all of the information and
19 documents submitted, the Commission is satisfied that the applicant is a person of good character,
20 honesty, and integrity. (Bus. & Prof. Code, § 19857, subd. (a).)

21 15. No gambling license shall be issued unless, based on all of the information and
22 documents submitted, the Commission is satisfied that the applicant is a person whose prior
23 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the
24 public interest of this state, or to the effective regulation and control of controlled gambling, or
25 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
26 the conduct of controlled gambling or in the carrying on of the business and financial
27 arrangements incidental thereto. (Bus. & Prof. Code, § 19857, subd. (b).)

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

1 documents submitted, the Commission is satisfied that the applicant is a person that is in all other
2 respects qualified to be licensed as provided in this chapter. (Bus. & Prof. Code, § 19857, subd.
3 (c).)

4 17. The Commission shall deny a license to any applicant who is disqualified for failure of
5 the applicant to provide information, documentation, and assurances required by this chapter or
6 requested by the chief, or failure of the applicant to reveal any fact material to qualification, or the
7 supplying of information that is untrue or misleading as to a material fact pertaining to the
8 qualification criteria. (Bus. & Prof. Code, § 19859, subd. (b).)

9 18. An application will be denied if the Commission finds that any of the provisions of
10 Business and Professions Code section 19859 apply to the applicant. (CCR, § 12040, subd.
11 (a)(2).)

12 19. The hearing need not be conducted according to technical rules relating to evidence
13 and witnesses. Any relevant evidence may be considered, and is sufficient in itself to support a
14 finding, if it is the sort of evidence upon which reasonable persons are accustomed to rely upon in
15 the conduct of serious affairs, regardless of the existence of any common law or statutory rule that
16 might make improper the admission of the evidence over objection in a civil action. (Bus. & Prof.
17 Code, § 19871, subd. (a)(4); CCR, § 12060, subd. (g)(2).)

18 20. An applicant for licensing or for any approval or consent required by this chapter,
19 shall make full and true disclosure of all information to the department and the commission as
20 necessary to carry out the policies of this state relating to licensing, registration, and control of
21 gambling. (Bus. & Prof. Code, § 19866.)

22 21. The Bureau relies, in large part, on the applicant's disclosures while conducting a
23 background investigation. The failure to honestly, accurately, and completely disclose
24 information on an application subverts the Bureau's efforts to conduct a thorough and complete
25 investigation. (Bus. & Prof. Code, §§ 19826, subd. (a) and 19866.)

26 22. Both the substance of an applicant's disclosures, and the truthfulness and
27 thoroughness of an applicant's disclosures, are considered by the Bureau in making a
28 recommendation as to the applicant's suitability for licensure, and by the Commission in making

1 a determination whether to approve or deny a license application. (Bus. & Prof. Code, §§ 19824,
2 subs. (a), (d), 19826, subd. (a), and 19866.)

3 **Assessment of Chen’s Suitability for Licensure**

4 23. The Commission finds that Chen’s Application should be approved because he has
5 met his burden of proving that he is qualified under Business and Professions Code section 19857
6 and not disqualified under section 19859.

7 24. All of the information requested on the Application has been considered through the
8 legislative and regulatory processes and determined necessary in order for the Commission to
9 discharge its duties properly. An applicant is neither expected, nor permitted, to determine the
10 importance of the information requested, and instead is required to provide true, accurate, and
11 complete information as requested.

12 25. Generally, an applicant may not avoid the adverse consequences of responses given on
13 a licensing application because the applicant has limited proficiency in the English language. If an
14 applicant does not speak or understand English sufficiently to comprehend the licensing
15 application in English, it is incumbent upon the applicant to have it read or explained to him or
16 her. Contract law is similar, and as a general rule, “a party is bound by contract provisions and
17 cannot complain of unfamiliarity of the language of a contract.” (*Fields v. Blue Shield of*
18 *California* (1985) 163 Cal.App.3d 570, 578.)

19 26. However, although Chen was required to disclose the Conviction in Section (4) of the
20 Application when he filled it out in September 2021, under the totality of the circumstances,
21 Chen’s subjective belief that he was not required to disclose the Conviction on the Application
22 was reasonable. The following facts favor granting Chen’s Application: he consulted an employee
23 of Progressive before filling out the Application; on the date Chen suffered the Conviction, the
24 Court advised that a restitution hearing will be set; the Court set a restitution hearing for May
25 2022 after multiple continuances; consistent with the Court’s actions, the attorney handling the
26 criminal case and the related restitution hearing advised that the case was not final due to a
27 pending restitution hearing; Chen consulted Progressive’s employee about the requirement to
28 disclose, in his view, a pending case before filling out the Application; Chen has limited

1 proficiency in the English language and required the assistance of a translator to complete the
2 Application; Chen’s consistently held belief throughout the Bureau’s background investigation
3 process that his criminal case was not final until restitution was ordered; and, the fact that the
4 final order regarding restitution stemming from the Conviction was not issued until May 2022.

5 27. Overall, this decision would not have been in Chen’s favor without the totality of the
6 circumstances described in the paragraph above.

7 28. For the foregoing reasons, the Commission finds that although objectively inaccurate,
8 Chen’s subjective belief that his Conviction was not final until the restitution was ordered in May
9 2022 was reasonable. In failing to disclose the Conviction and provide any details about the
10 Conviction on his Application Chen did not intend to omit information required by the Act.
11 Chen’s credible explanations during the hearing are sufficient to excuse his failure to disclose his
12 Conviction and provide details regarding the Conviction on his Application.

13 29. All documentary and testimonial evidence submitted by the parties that is not
14 specifically addressed in this Decision and Order was considered but not used by the Commission
15 in making its determination on Chen’s Application.

16 ///

17 ///

18 ///

19

20

21

22

23

24

25

26

27

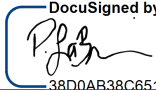
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

- 1. Xiaojun Chen’s Application for Third-Party Proposition Player Services Player License is APPROVED.
- 2. No costs are awarded.
- 3. Each side to pay its own attorneys’ fees.

This Order is effective on March 13, 2023.

Dated: 2/9/2023 Signature: 
38D0AB38C651466
Paula LaBrie, Chair

Dated: 2/9/2023 Signature: 
3D1DB886F9274AA...
Cathleen Galgiani, Commissioner

Dated: 2/9/2023 Signature: 
2B4CE9520F8845C...
Eric Heins, Commissioner

Dated: 2/9/2023 Signature: 
7722F4571120449...
William Liu, Commissioner

Dated: 2/9/2023 Signature: 
14B4AD3B90E8462
Edward Yee, Commissioner