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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ALBERT CIANFICHI, Sole Proprietor
KELLY'S CARDROOM
408 "O" Street
Antioch, CA 94509
License Number 990002

Case No. DGC # 03-00130-01

OAH No. _____

FIRST AMENDED
ACCUSATION

Complainant alleges as follows:

PARTIES

1. Robert E. Lytle, Jr. ("Complainant") brings this Accusation solely in his official capacity as the Director of the California Department of Justice, Division of Gambling Control ("Division").

2. On or about February 28, 2001, the California Gambling Control Commission ("Commission") issued State Gambling License Number 990002 to Albert Cianfichi, Sole Proprietor of Kelly's Cardroom, 408 "O" Street, Antioch, California 94509 ("Respondent").

1 d. Business and Professions Code section 19920, in relevant part, states:

2 [T]he willful or persistent use or toleration of methods of operation
3 deemed unsuitable by the commission or by local government shall
4 constitute grounds for license revocation or other disciplinary
5 action

6 **STATUTORY PROVISIONS**

7 6. Pursuant to Business and Professions Code section 19823, subdivision (a)(1), it is the
8 Commission's responsibility to ensure "that licenses . . . are not . . . held by, unqualified or
9 disqualified persons, or by persons whose operations are conducted in a manner that is inimical
10 to the public health, safety, or welfare."

11 **(Unqualified Person)**

12 7. Business and Professions Code section 19823, subdivision (b), defines an "unqualified
13 person" for purposes of that section as "a person who is found to be unqualified pursuant to the
14 criteria set forth in Section 19857."

15 8. Pursuant to Business and Professions Code section 19857, subdivision (b), an
16 "unqualified person" includes:

17 A person whose prior activities, [or] criminal record
18 . . . enhance the dangers of unsuitable, unfair, or illegal
19 practices, methods, and activities in the conduct of
20 controlled gambling or in the carrying on of the business
21 and financial arrangements incidental thereto.

22 **(Disqualified Person)**

23 9. Business and Professions Code section 19823, subdivision (b), defines a "disqualified
24 person" for purposes of that section as "a person who is found to be disqualified pursuant to the
25 criteria set forth in Section 19859."

26 10. Pursuant to Business and Professions Code section 19859, subdivision (a), a
27 "disqualified person" includes an individual who has failed to "establish eligibility and
28 qualification in accordance with this chapter."

11. Pursuant to Business and Professions Code section 19859, subdivision (d), a
"disqualified person" includes an individual who has been convicted of "any misdemeanor

1 involving dishonesty or moral turpitude” within the ten-year period immediately preceding the
2 submission of the application for a gambling license.

3 **(Labor Code Violations)**

4 12. Labor Code section 3700.5, subdivision (a), in relevant part, states:

5 The failure to secure the payment of compensation as
6 required by this article by one who knew, or because of
7 his or her knowledge or experience should be reasonably
8 expected to have known, of the obligation to secure
9 payment of compensation, is a misdemeanor. . . .

10 13. Labor Code section 226.6, in relevant part, states: “[a]ny employer who knowingly and
11 intentionally violates the provisions of Section 226 . . . is guilty of a misdemeanor.”

12 14. Labor Code section 226, subdivision (a) requires an employer to furnish to his
13 employees an accurate itemized statement in writing showing, among other things, gross wages
14 earned and total hours worked.

15 **(Illegal and Unauthorized Gaming Activities)**

16 15. California Code of Regulations, title 11, section 2070, in relevant part, states:

17 It shall be an unsuitable method of operation for a gambling
18 establishment to:

19 (a) Offer for play any game that is prohibited or
20 made unlawful by statute, local ordinance, regulation or
21 final judgment by a competent court.

22 (b) Offer to play any gaming activity which is not
23 authorized by the Division pursuant to the [Gambling
24 Control] Act and these regulations for play at that
25 gambling establishment.

26 16. Penal Code section 337a generally prohibits pool selling and bookmaking in various
27 forms.

28 17. Pursuant to Penal Code section 337a, subdivision (a)(2), it is a crime if any person
engages in the following offense:

Whether for gain, hire, reward, or gratuitously, or
otherwise, keeps or occupies, for any period of time
whatsoever, any room, shed, tenement, tent, booth,
building, float, vessel, place, stand or enclosure, of any
kind, or any part thereof, with a book or books, paper or
papers, apparatus, device or paraphernalia, for the
purpose of recording or registering any bet or bets, . . .
any purported bet or bets, . . . wager or wagers, . . . any

1 purported wager or wagers, . . . selling pools, or
2 purported pools, upon the result, or purported result, of
3 any trial, . . . purported trial, . . . contest, or purported
4 contest, of skill, speed, or power of endurance of person
5 or animal, or between persons, animals, or mechanical
6 apparatus, or upon the result, of purported result of any
7 lot, chance, casualty, unknown or contingent event
8 whatsoever

9 18. Pursuant to Penal Code section 337a, subdivision (a)(3), it is a crime if any person
10 engages in the following offense:

11 Whether for gain, hire, reward, or gratuitously, or
12 otherwise, receives, holds, or forwards, or purports or
13 pretends to receive, hold, or forward, in any manner
14 whatsoever, any money, thing or consideration of value,
15 or the equivalent or memorandum thereof, staked,
16 pledged, bet or wagered, or to be staked, pledged, bet or
17 wagered, or offered for any purpose of being staked,
18 pledged, bet or wagered, upon the result, or purported
19 result, of any trial, or purported trial, or contest, or
20 purported contest, of skill, speed or power of endurance
21 of person or animal, or between persons, animals, or
22 mechanical apparatus, or upon the result, or purported
23 result, of any lot, chance, casualty, unknown or
24 contingent event whatsoever.

25 **(Employment of Gambling Employee Without Work Permit)**

26 19. Business and Professions Code section 19922 prohibits a licensee from operating a
27 gambling establishment in violation of any provision of the Gambling Control Act or any
28 regulation adopted pursuant to the Gambling Control Act.

29 20. Business and Professions Code section 19912, subdivision (a)(1) prohibits a licensee
30 from employing a gambling enterprise employee who does not have a valid work permit.

31 **(Violation of Local Work Permit Ordinance)**

32 21. Business and Professions Code section 19923 prohibits a licensee from operating a
33 gambling enterprise in violation of any governing local ordinance.

34 22. City of Antioch Municipal Code, Chapter 4, section 5-4.09 states:

35 No person shall work as a card room employee without
36 first obtaining a work permit from the Chief of Police,
37 nor shall any licensee of a card room employ any person

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as a card room employee who does not possess a valid work permit.

23. City of Antioch Municipal Code, Chapter 4, section 5-4.01 defines "Card Room Employee" as follows:

Any person directly connected with the operation of a cardroom as a supervisor or dealer of any game, but not a bartender, culinary worker, or other person not directly participating in the card room operation.

FIRST CAUSE FOR DISCIPLINE

(Unqualified)

24. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 19823, subdivision (b) and 19857, subdivision (b), in that Respondent's criminal record, which includes violations for knowingly failing to provide wage statements and to secure worker's compensation insurance, creates or enhance the dangers of unsuitable, unfair and illegal practices in the carrying on of the business and financial arrangements of the gambling enterprise known as Kelly's Cardroom. The circumstances are as follows:

- a. On June 14, 2004, Respondent pleaded no contest to a violation of Labor Code section 226.6.
- b. On June 14, 2004, Respondent also pleaded no contest to a violation of Labor Code section 3700.5.

SECOND CAUSE FOR DISCIPLINE

(Disqualified)

25. Respondent is subject to disciplinary action pursuant to Business and Professions Code sections 19823, subdivision (d) and 19859, subdivision (d) in that Respondent was convicted of two misdemeanors involving dishonesty and moral turpitude. The circumstances are as follows:

- a. On June 14, 2004, Respondent pleaded no contest to a violation of Labor Code section 226.6.

