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8
9 BEFORE THE
10 CALIFORNIA GAMBLING CONTROL COMMISSION
11

12
13 **In the Matter of the Accusation Against:**

14 **DAVID STEARNS, Sole Shareholder,**
15 **CENTRAL COAST CASINO – GROVER**
16 **BEACH, INC.,**
17 **CENTRAL COAST CASINO – GROVER**
18 **BEACH**
19 **359 Grand Avenue**
20 **Grover Beach, California**

21 **License Number GEGE-001029**

22 **Respondents.**

Case No. CGCC # _____

OAH No. _____

ACCUSATION

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23 Jacob A. Appelsmith, Complainant herein, alleges as follows:

24 **PARTIES**

25 1. Jacob A. Appelsmith (Complainant) brings this Accusation solely in his official
26 capacity as the Chief of the California Department of Justice, Bureau of Gambling Control
27 (Bureau).
28

1 3. Business and Professions Code section 19824 provides as follows:

2 The commission shall have all powers necessary and proper
3 to enable it fully and effectually to carry out the policies and
4 purposes of this chapter, including, without limitation, the power to
do all of the following:

5 * * *

6 (b) For any cause deemed reasonable by the commission,
7 deny any application for a license, permit, or approval provided for
8 in this chapter or regulations adopted pursuant to this chapter,
9 limit, condition, or restrict any license, permit, or approval, or
impose any fine upon any person licensed or approved.

10 (c) Approve or disapprove transactions, events, and
11 processes as provided in this chapter.

12 (d) Take actions deemed to be reasonable to ensure that no
13 ineligible, unqualified, disqualified, or unsuitable persons are
associated with controlled gambling activities.

14 4. Business and Professions Code section 19825 provides as follows:

15 The commission may require that any matter that the
16 commission is authorized or required to consider in a hearing or
17 meeting of an adjudicative nature regarding the denial . . . of a
18 license . . . , be heard and determined in accordance with Chapter 5
(commencing with section 11500) of Part I or Division 3 of Title 2
of the Government Code.

19 5. Business and Professions Code section 19826 provides as follows:

20 The department¹ shall have all of the following
21 responsibilities:

22 * * *

23 (b) To monitor the conduct of all licensees and other
24 persons having a material involvement, directly or indirectly, with
25 a gambling operation or its holding company, for the purpose of
ensuring that licenses are not issued or held by, and that there is no

26 ¹ The "department" referred to in the Gambling Control Act, Business and Professions
27 Code section 19800 et seq., is the Department of Justice (Bus. & Prof. Code, § 19805, subd. (h)).
28 The Bureau of Gambling Control is within the Department of Justice, Division of Law
Enforcement.

1 direct or indirect material involvement with, a gambling operation
2 or holding company by ineligible, unqualified, disqualified, or
3 unsuitable persons, or persons whose operations are conducted in a
manner that is inimical to the public health, safety, or welfare.

4 (c) To investigate suspected violations of this chapter or
5 laws of this state relating to gambling, including any activity
6 prohibited by Chapter 9 (commencing with Section 319) or
Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of
the Penal Code.

7 (d) To investigate complaints that are lodged against
8 licensees, or other persons associated with a gambling operation,
9 by members of the public.

10 (e) To initiate, where appropriate, disciplinary actions as
11 provided in this chapter. In connection with any disciplinary
12 action, the department may seek restriction, limitation, suspension,
or revocation of any license or approval, or the imposition of any
fine upon any person licensed or approved.

13
14 6. Business and Professions Code section 19930 provides as follows:

15 * * *

16 (b) If, after any investigation, the department is satisfied
17 that a license, permit, finding of suitability, or approval should be
18 suspended or revoked, it shall file an accusation with the
19 commission in accordance with Chapter 5 (commencing with
Section 11500) of Part 1 of Division 3 of Title 2 of the
Government Code.

20 (c) In addition to any action that the commission may take
21 against a license, permit, finding of suitability, or approval, the
22 commission may also require the payment of fines or penalties.
23 However, no fine imposed shall exceed twenty thousand dollars
(\$20,000) for each separate violation of any provision of this
chapter or any regulation adopted thereunder.

24 (d) In any case in which the administrative law judge
25 recommends that the commission revoke, suspend, or deny a
26 license, the administrative law judge may, upon presentation of
27 suitable proof, order the licensee or applicant for a license to pay
the department the reasonable costs of the investigation and
prosecution of the case.

1 (1) The costs assessed pursuant to this subdivision shall be
2 fixed by the administrative law judge and may not be increased by
3 the commission. When the commission does not adopt a proposed
4 decision and remands the case to the administrative law judge, the
5 administrative law judge may not increase the amount of any costs
6 assessed in the proposed decision.

7 (2) The department may enforce the order for payment in
8 the superior court in the county in which the administrative hearing
9 was held. The right of enforcement shall be in addition to any
10 other rights that the department may have as to any licensee
11 directed to pay costs.

12 (3) In any judicial action for the recovery of costs, proof of
13 the commission's decision shall be conclusive proof of the validity
14 of the order of payment and the terms for payment.

15 (e) Notwithstanding any other provision of law, all costs
16 recovered under this section shall be deposited in the fines and
17 penalties account, a special account described in subdivision (a) of
18 Section 19950.

19 (f) For purposes of this section, "costs" include costs
20 incurred for any of the following:

21 (1) The investigation of the case by the department.

22 (2) The preparation and prosecution of the case by the
23 Office of the Attorney General.

24 **SUMMARY OF CAUSES FOR DISCIPLINARY ACTION**

25 1. During the period May 2006 through July 2008, the Respondents repeatedly violated
26 the condition placed on the License to always have a shareholder or key employee in the
27 Cardroom during operating hours, as well as other gambling related violations. During this
28 period, despite the Bureau's warnings to the Respondents regarding observed violations, and the
Respondents' acknowledgement of the violations and their promises to correct the violations, the
Respondents continued to violate gambling-related laws, most notably violating the express
condition placed on the License. These violations are as described in paragraphs 2 through 32
below.

1 2. On or about May 24, 2006, Field Representative Dina Kenney and Special Agent
2 Supervisor David Vialpando of the Bureau of Gambling Control, Compliance and Enforcement
3 Section - South, conducted a compliance site inspection at the Cardroom and observed the
4 following:

- 5 a) the Cardroom's cage door was propped open with a box;
- 6 b) the box propping open the cage door had trays of chips stacked on it;
- 7 c) the table in play did not have the name of the game properly posted; and
- 8 d) the required signs regarding age limits and hours of operation were not posted.

9 3. On or about August 17, 2006, Special Agent Supervisor David Vialpando conducted
10 an inspection at the Cardroom and determined that Stearns was not present on site and games
11 were in progress. As of August 17, 2006, the Cardroom had no licensed key employee. Stearns
12 arrived during the inspection. The inspection revealed that the violations noted at the May 24,
13 2006, inspection continued: the cage door remained propped open, the table in play did not have
14 the name of the game properly posted, and the required age limits and hours of operation signs
15 were not posted.

16 4. On or about April 11, 2007, Field Representative Dina Kenney conducted a
17 compliance site inspection at the Cardroom. During this visit, it was observed that Stearns was
18 not on site while games were in progress. As of April 11, 2007, the Cardroom had no licensed
19 key employee. A Cardroom employee informed Field Representative Kenney that Stearns was in
20 Las Vegas, Nevada. The inspection also revealed that the cage door was propped open, and that
21 the table in play did not have the name of the game properly posted.

22 5. On or about May 29, 2007, the Bureau sent a letter (referred to as a "violation letter")
23 to Stearns as the Cardroom's designated agent, informing him of the three violations observed by
24 Bureau personnel on April 11, 2007:

- 25 (a) the absence of an owner or key employee from the premises while the premises were
26 open to the public;
- 27 (b) cage door improperly open; and
- 28 (c) improper signage posted regarding the game at play.

1 The violation letter required that the Cardroom respond within fifteen days and explain in detail
2 what corrective action had been taken to bring the Cardroom into compliance.

3 6. On or about June 14, 2007, Stearns responded, in writing, to the violation letter
4 described in paragraph 5, above, in which he:

- 5 (a) admitted that he was out of state at the time of the April 11, 2007, inspection;
- 6 (b) admitted that he had not been on the premises on other occasions;
- 7 (c) stated that he would apply for key employee licenses so that if he was not available in
8 the future, the Cardroom would not be without an owner or key employee again; and
- 9 (d) requested to be allowed to keep the cage door open for the convenience of the
10 Cardroom's employees.

11 7. On or about June 22, 2007, Stearns sent the Bureau an additional letter regarding the
12 April 11, 2007, inspection in which he:

- 13 (a) stated that he would apply for key employee licenses and would schedule the key
14 employees' hours so that either a key employee or an owner-licensee would be on
15 site at all times; and
- 16 (b) asked if installing a system that would close, but not lock, the cage door would be
17 sufficient as a security measure.

18 8. On or about July 16, 2007, Special Agent-in-Charge Frank Herbert responded to
19 Stearn's June 22, 2007, letter and stated that:

- 20 (a) until the key employee license applications were approved, an owner-licensee must
21 be on the premises during business hours; and
- 22 (b) that closed and locked cage doors were a minimum internal control measure.

23 9. On or about September 5, 2007, Field Representative Dina Kenney and Special
24 Agents Otto Garcia and Daniel Torres conducted a follow-up site inspection at the Cardroom. At
25 the beginning of this visit, Stearns was not on site while games were in progress. As of
26 September 5, 2007, the Cardroom had no licensed key employees. After an employee called
27 Stearns, he appeared on site. The inspection further revealed that the other violations noted at the
28 April 11, 2007 inspection continued:

- 1 (a) the cage door was propped open;
- 2 (b) the table in play did not have the name of the game properly posted; and
- 3 (c) the required age limits and hours of operation signs were not posted.

4 10. On or about September 6, 2007, Special Agents Otto Garcia and Daniel Torres
5 returned to the Cardroom, and observed that Stearns was not on the premises. The Cardroom had
6 no licensed key employee at this time.

7 11. During September 2007, the Grover Beach Police made several site visits to the
8 Cardroom. The Grover Beach Police visited the Cardroom during operating hours and found that
9 the Cardroom was in operation but Stearns was not on the premises on or about the following
10 dates: September 11, 2007, September 14, 2007, September 15, 2007, and September 19, 2007.

11 12. On or about February 21, 2008, Bureau Field Representatives Paige Porlier and Dina
12 Kenney conducted a site visit at the Cardroom. The Cardroom had approximately fifty patrons
13 signed up in preparation for a tournament, although the Cardroom was not approved to offer any
14 tournaments at that time. It was observed that the required signs and information regarding the
15 problem gambling program were not properly posted. It was also observed that the Cardroom's
16 cage door was open.

17 13. On or about March 4, 2008, the Bureau of Gambling Control sent a violation letter to
18 Stearns as the Cardroom's designated agent, informing him of three violations observed by
19 Bureau personnel during the February 21, 2008 site visit:

- 20 (a) the Cardroom was conducting an unauthorized tournament;
- 21 (b) the cage door was improperly open; and
- 22 (c) there were inadequate signs and information posted regarding the problem gambling
23 program.

24 The violation letter required that the Cardroom respond within fifteen days and explain in detail
25 what corrective action had been taken to bring the Cardroom into compliance.

26 14. On or about March 25, 2008, Stearns responded in writing to the violation letter
27 described in paragraph 13, above. In his response, Stearns stated that he:
28

- 1 (a) had corrected the problem regarding the proper information and signs for the problem
2 gambling program;
- 3 (b) noted that, subsequent to the inspection, on March 17, 2008 the Cardroom received
4 approval from the Bureau to conduct tournaments; and
- 5 (c) stated that the cage door being open was an exception and the employee responsible
6 had been warned.

7 15. On or about July 24, 2008, Field Representatives Paige Porlier and Dina Kenney
8 conducted a site visit at the Cardroom and found no owner or key employee on the premises
9 while the Cardroom was open to the public.

10 16. On or about July 25, 2008, the Bureau sent a violation letter to Stearns as the
11 Cardroom's designated agent, informing him of the violation observed by Bureau personnel on
12 July 24, 2008: there was no owner or key employee on premises while the Cardroom was open to
13 the public.

14 17. On or about August 7, 2008, Stearns responded in writing to the violation letter
15 described in paragraph 16. In his response, Stearns stated that: a) the key employee scheduled
16 for the day the Bureau visited the Cardroom, Richard Hobbs had not come in to work because he
17 was ill; and 2) Stearns had another key employee on the premises within twenty minutes after the
18 Bureau Field Representatives left the Cardroom. At the time of the July 24, 2008, inspection, the
19 Cardroom had only one licensed key employee, Richard Hobbs.

20 18. The Cardroom's reported annual gross revenue for the relevant time periods exceeded
21 \$200,000.00.

22 **STATUTORY PROVISIONS APPLICABLE TO RESPONDENTS**

23 19. The applicable statutory provisions include, but are not limited to, the following.

24 Business and Professions Code section 19850 provides:

25 Every person who, either as owner, lessee, or employee,
26 whether for hire or not, either solely or in conjunction with others,
27 deals, operates, carries on, conducts, maintains, or exposes for play
28 any controlled game in this state, or who receives, directly or
indirectly, any compensation or reward, or any percentage or share
of the money or property played, for keeping, running, or carrying
on any controlled game in this state, shall apply for and obtain

1 from the commission, and shall thereafter maintain, a valid state
2 gambling license, key employee license, or work permit, as
3 specified in this chapter. In any criminal prosecution for violation
of this section, the punishment shall be as provided in Section 337j
of the Penal Code.

4 20. Business and Professions Code section 19853, in relevant part, provides:

5 (a) The commission, by regulation or order, may require that
6 the following persons register with the commission, apply for a
7 finding of suitability as defined in subdivision (i) of 19805, or
apply for a gambling license:

8 (1) Any person who furnishes any services or any property to
9 a gambling enterprise under any arrangement whereby that person
receives payments based on earnings, profits, or receipts from
controlled gambling.

10 (2) Any person who owns an interest in the premises of a
11 licensed gambling establishment or in real property used by a
licensed gambling establishment.

12 21. Business and Professions Code section 19854 provides:

13 (a) Every key employee shall apply for and obtain a key
14 employee license.

15 (b) Licenses issued to key employees shall be for specified
16 positions only, and those positions shall be enumerated in the
endorsement described in subdivision (b) of Section 19851.

17 (c) No person may be issued a key employee license unless
18 the person would qualify for a state gambling license.

19 22. Business and Professions Code section 19855, in relevant part, provides:

20 Except as otherwise provided by statute or regulation, every
21 person who, by statute or regulation, is required to hold a state
22 license shall obtain the license prior to engaging in the activity or
occupying the position with respect to which the license is
required.

23 23. California Code of Regulations, title 11, section 2050, provides:

24 (a) A gambling establishment shall have on the premises, at
25 all times that the establishment is open to the public, an owner
26 licensee or a key employee who shall have the responsibility and
authority to ensure immediate compliance with the Act and these
regulations.

27 (b) Subdivision (a) notwithstanding, gambling
28 establishments with a reported gross revenue of less than
\$200,000 for the preceding fiscal year, upon written request by

1 the owner licensee, the Bureau, in its discretion, may approve a
2 written plan whereby the owner licensee or a designated
3 employee, who shall have the responsibility and authority to
4 ensure compliance with the Act and these regulations, shall be
5 promptly available by telephone. The plan shall identify each such
6 individual by name, title, and telephone contact number, as well
7 as identifying the days and hours available as the designated
8 contact.

9
10 24. California Code of Regulations, title 11, section 2070, in relevant part, provides:

11 It shall be an unsuitable method of operation for a gambling
12 establishment to:

13 * * *

14 (b) Offer for play any gaming activity which is not
15 authorized by the department pursuant to the Act and these
16 regulations for play at that gambling establishment;

17 (c) Fail to display at every table where a game is offered,
18 the specific name of the game, or the variation thereof, that is
19 then available for play at the table[.]

20
21 25. California Code of Regulations, title 4, section 12461, in relevant part, provides:

22 (a) Each licensee, by July 1, 2007, shall post or provide,
23 at patron gambling entrances or exits, and in conspicuous places
24 in or near gambling areas and any areas where cash or credit are
25 available to patrons, accessible written materials concerning the
26 nature and symptoms of problem gambling and the toll-free
27 telephone number approved by the Office of Problem Gambling
28 (or its successors) that provides information and referral
services for problem gamblers, currently "1-800-GAMBLER."

29 26. California Code of Regulations, title 4, section 12556, in relevant part, provides:

30 the Commission shall consider the following factors in mitigation
31 or aggravation of the penalty imposed:

32 (a) Violation of any previously imposed or agreed upon
33 condition, restriction or directive.

34 (b) Whether or not the conduct was knowing, willful,
35 reckless, or inadvertent.

36 * * *

37 (h) Disciplinary history of respondent, repeated offenses
38 of the same or similar nature, or evidence that the unlawful act

1 was part of a pattern or practice, including the frequency or
2 duration of any pattern or practice, which violates applicable
3 law.

4 27. Business and Professions Code section 19924, in relevant part, provides:

5 Each owner licensee shall maintain security controls over
6 the gambling premises and all operations therein related to
7 gambling

8 28. Business and Professions Code section 19922 provides:

9 No owner licensee shall operate a gambling enterprise in
10 violation of any provision of this chapter or any regulation adopted
11 pursuant to this chapter.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Unsuitable Operation: No Owner or Key Employee on Premises)**

14 29. Complainant incorporates by this reference each and every allegation contained in
15 paragraphs 1 through 28, inclusive, above, as though set forth here in full.

16 30. Business and Professions Code section 19922 prohibits a licensee from operating a
17 gambling establishment in violation of any regulation adopted pursuant to the Gambling Control
18 Act, Business and Professions Code section 19800, et seq.

19 31. The California Code of Regulations requires that "a gambling establishment shall
20 have on the premises, at all times that the establishment is open to the public, an owner licensee
21 or a key employee who shall have the responsibility and authority to ensure immediate
22 compliance with the Act and these regulations." (Cal. Code. Regs., tit. 11, § 2050, subd. (a).)
23 The Cardroom does not qualify for the alternate plan in subdivision (b) for gambling
24 establishments with reported gross revenue of less than \$200,000.

25 32. Respondents are subject to disciplinary action pursuant to Business and Professions
26 Code sections 19922, in that Respondents did not have an owner licensee or key employee on the
27 premises at all times as required by California Code of Regulations, title 11, section 2050,
28 subdivision (a). The circumstances are as follows:

1 On May 28, 2008, the Cardroom's first key employee's license was approved.² Until that
2 time, the Cardroom had no licensed key employees. Therefore, Stearns was required as owner-
3 licensee to be on the premises at all times during which the Cardroom was open to the public. On
4 seven occasions, however, as detailed in paragraphs 1 through 28 above, the Cardroom operated
5 without Stearns on the premises.

6 These violations occurred on or about the following dates:

7 August 17, 2006

8 April 11, 2007

9 September 5, 2007

10 September 6, 2007

11 September 11, 2007

12 September 14, 2007

13 September 15, 2007

14 September 19, 2007

15 After the Cardroom had a licensed key employee, the Cardroom operated on July 24, 2008
16 with neither Stearns nor a key employee on premises.

17 SECOND CAUSE FOR DISCIPLINE

18 (Unsuitable Method of Operation: Failure to Display Name of Played Game at Table)

19 33. Complainant incorporates by this reference each and every allegation contained in
20 paragraphs 1 through 32, inclusive, above, as though set forth here in full.

21 34. The California Code of Regulations requires that a gambling establishment display at
22 every table where a game is offered, the specific name of the game, or the variation thereof, that
23 is then available for play at the table. (Cal. Code. Regs., tit. 11, § 2070, subd. (c).)

24 35. Respondents are subject to disciplinary action pursuant to California Code of
25 Regulations, title 11, section 2070, subdivision (c), and Business and Professions Code section
26

27 ² The Cardroom's second key employee license was approved by the Commission on
28 September 10, 2008.

1 19922, because on the following occasions, Respondents did not have the required signs posted at
2 the table in play:

- 3 a. May 24, 2006
- 4 b. August 17, 2006.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Unsuitable Method of Operation: Conducting Unauthorized Tournament)**

7 36. Complainant incorporates by this reference each and every allegation contained in
8 paragraphs 1 through 32, inclusive, above, as though set forth here in full.

9 37. The California Code of Regulations prohibits the play of a tournament not authorized
10 by the Bureau. (Cal. Code. Regs., tit. 11, § 2070, subd. (b).)

11 38. Respondents are subject to disciplinary action pursuant to California Code of
12 Regulations, title 11, section 2070, subdivision (b), and Business and Professions Code section
13 19922, because on February 21, 2008, Respondents conducted a tournament that was not
14 authorized by the Bureau.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Failure to Post Required Problem Gambling Referral Information)**

17 39. Complainant incorporates by this reference each and every allegation contained in
18 paragraphs 1 through 32, inclusive, above, as though set forth here in full.

19 40. The California Code of Regulations requires gaming establishments to post materials
20 that provide information and referral services for problem gamblers. (Cal. Code. Regs., tit. 4, §
21 12461, subd. (a).)

22 41. Respondents are subject to disciplinary action pursuant to California Code of
23 Regulations, title 4, section 12461, subdivision (a), and Business and Professions Code section
24 19922, because on September 5, 2007 and February 21, 2008, Respondents did not have the
25 required problem gambling referral materials posted at the Cardroom.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Security Controls)**

3 42. Complainant incorporates by this reference each and every allegation contained in
4 paragraphs 1 through 32, inclusive, above, as though set forth here in full.

5 43. Business and Professions Code section 19924 requires a licensee to maintain security
6 controls over the gambling premises and all operations. Respondents are subject to disciplinary
7 action pursuant to Business and Professions Code sections 19924 and 19922, because on the
8 following occasions, the Respondents did not maintain security controls over the Cardroom's
9 premises because the cage door was open:

- 10 a. May 24, 2006
11 b. August 17, 2006
12 c. April 11, 2007
13 d. September 5, 2007
14 e. September 6, 2007
15 f. February 21, 2008

16 **FACTORS IN AGGRAVATION**

17 44. Complainant incorporates by this reference each and every allegation contained in
18 paragraphs 1 through 43, inclusive, above, as though set forth here in full.

19 45. Pursuant to California Code of Regulations, title 4, section 12556, the Commission
20 shall consider certain factors in aggravation of the penalty imposed. Violation of a previously
21 imposed condition is a factor in aggravation of penalty. (Cal. Code. Regs., tit. 4, § 12556, subd.
22 (a).) Whether the conduct was knowing or willful is a factor in aggravation of a penalty. (Cal.
23 Code. Regs., tit. 4, § 12556, subd. (b).) Repeated offenses of the same or similar nature are a
24 factor in aggravation of penalty. (Cal. Code. Regs., tit. 4, § 12556, subd. (h).)

25 46. During the licensing period, July 1, 2007 through June 30, 2008, the License
26 contained the following condition:

27 A shareholder or a key employee must be in the gambling establishment
28 during operation hours.

1 During that the time period, Respondents operated the Cardroom without a shareholder or key
2 employee in the Cardroom on six occasions, as described in paragraph 32.

3 47. When responding to the Bureau regarding the failure to secure the cage door, Stearns
4 admitted the violation, but stated it was for the convenience of the Cardroom workers.

5 48. Stearns leaving the state and allowing the Cardroom to operate on April 11, 2007
6 without an owner or key employee on premises was a knowing violation of Gambling Control
7 Act requirements.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Commission issue a decision:

- 11 1. Imposing a penalty on the Respondents under the foregoing applicable statutes and
12 regulations that may include a license suspension or revocation, and/or a monetary fine;
- 13 2. Pursuant to Business and Professions Code section 19930, requiring the Respondents
14 to pay all investigation and prosecution costs incurred by the Bureau with respect to this
15 Accusation; and
- 16 3. Taking such and further action as the Commission deems necessary and proper.

17
18 Dated: December 31, 2010

19 
20 _____
21 JACOB A. APPELSMITH, Chief
22 Bureau of Gambling Control
23 California Department of Justice

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Complainant