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2016 OCT 27 PM 3:00
CALIFORNIA GAMBLING
CONTROL COMMISSION

8
9 **BEFORE THE**
10 **CALIFORNIA GAMBLING CONTROL COMMISSION**
11 **STATE OF CALIFORNIA**

13 **In the Matter of the Statement of Reasons for**
14 **Denial of Application for a Key Employee**
15 **License:**

BGC Case No. BGC-HQ2016-00008SL
CGCC Case No: CGCC-2016-0707-8A

16 **PHOUNGEUNE BORIHANH,**
17 **a.k.a.: NOY BORIHANH**

STATEMENT OF REASONS

18 [REDACTED]

19 **Respondent.**

20
21 Complainant alleges as follows:

22 **PARTIES**

23 1. Wayne J. Quint, Jr. (Complainant) brings this Statement of Reasons for a denial of an
24 application for a key employee license solely in his official capacity as the Chief of the California
25 Department of Justice, Bureau of Gambling Control (Bureau).

26 2. On July 9, 2014, the California Gambling Control Commission (Commission) issued
27 an interim key employee license, number GEKE-002013, to Phoungueune Borihanh, also known as:
28 Noy Borihanh (Respondent). This interim key employee license allowed for Respondent's

1 employment as a key employee at The Tavern at Stones Gambling Hall, a licensed gambling
2 establishment in Citrus Heights, California, while his application for an initial key employee
3 license was being processed.

4 3. On or about August 12, 2014, the Bureau received an Application for Gambling
5 Establishment Key Employee License, with attachments, as well as a Key Employee Supplemental
6 Background Investigation Information, with attached schedules, both dated August 4, 2014,
7 (collectively Application) from Respondent.

8 4. On or about May 3, 2016, the Bureau received an application from Respondent to
9 renew his interim key employee license.

10 5. On or about June 3, 2016, the Bureau submitted a Cardroom Key Employee
11 Background Investigation Report to the Commission recommending Respondent's Application be
12 denied.

13 6. On or about June 16, 2016, Respondent's interim key employee license was cancelled
14 by the Commission pursuant to California Code of Regulations, title 4, section 12354, subdivision
15 (e)(5),¹ because, as alleged above, the Bureau recommend denial of Respondent's Application.²

16 7. On July 7, 2016, the Commission voted to refer the question of Respondent's
17 suitability for licensure as a key employee to an evidentiary hearing pursuant to California Code of
18 Regulations, title 4, section 12054, subdivision (a), to be held under the provisions of California
19 Code of Regulations, title 4, section 12060.

20 8. On or about August 8, 2016, Respondent submitted a Notice of Defense, dated August
21 3, 2016.

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25 ¹ The statutes and regulations applicable to this Statement of Reasons are quoted in
pertinent part in Appendix A.

26 ² In a letter dated June 16, 2016, the Commission notified Respondent that
27 "[n]otwithstanding the cancellation of your Interim Key Employee License, the Commission will
28 consider your application for an Initial Key Employee License at the Commission meeting on July
7, 2016."

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(Misdemeanor Criminal Convictions)**

3 9. Respondent's application for a key employee license is subject to denial³ in that
4 Respondent has suffered the following misdemeanor criminal convictions:

5 a. On or about August 8, 2012, upon a plea of no contest, Respondent was convicted of
6 violating Vehicle Code section 23103.5, reckless driving (in lieu of driving under the influence), a
7 misdemeanor, in the case of *People v. Phoungune Borihanh* (Super. Ct. Sacramento County,
8 2012, No. 12T03162).

9 b. On or about April 10, 2002, upon a plea of no contest, Respondent was convicted of
10 violating Vehicle Code section 23152, driving under the influence, a misdemeanor, in the case of
11 *People v. Phoungune Borihanh* (Mun. Ct. Sacramento County, 2002, No. 02T01257).
12 (Bus. & Prof. Code, §§ 19854, subd. (b), & 19857, subds. (a) & (b); Cal. Code. Regs., tit. 4, §§
13 12355, subds. (a)(1) & (c), & 12568, subds. (c)(3) & (c)(4).)

14 **SECOND CAUSE FOR DENIAL OF APPLICATION**

15 **(Honesty, Integrity & Failure to Disclose)**

16 10. Respondent's application for a key employee license is subject to denial⁴ in that
17 Respondent failed to disclose and/or supplied misleading information material to his qualification
18 for licensure as follows:

19 a. In his Application, under penalty of perjury, Respondent affirmatively denied that he
20 had ever been convicted of a crime, despite having suffered the two criminal convictions alleged in
21 paragraph 9 above.⁵

22 _____
23 ³ Respondent's application is subject to mandatory denial if Respondent is found to be
24 unqualified or disqualified for licensure under any of the criteria found in Business and
25 Professions Code sections 19857, subds. (a) or (b), or 19859. (Cal. Code. Regs., tit. 4, § 12355,
subd. (a)(1); see also, Bus. & Prof. Code, § 19823, Cal. Code. Regs., tit. 4, § 12568, subds. (c)(3)
& (c)(4).)

26 ⁴ *Supra*, footnote 3.

27 ⁵ Section 6 of the Key Employee Supplemental Background Investigation Information
28 asks in pertinent part: "Have you ever been convicted of a crime or pled guilty, or pled nolo
contender (no contest) to a crime?" In response, Respondent declared "No."

1 b. In response to the Bureau's request for an explanation for why he had failed to
2 disclose his two criminal convictions, on or about April 26, 2016, Respondent dishonestly replied
3 that he had disclosed his 2012 conviction.⁶

4 c. In his Application, under penalty of perjury, Respondent failed to disclose the
5 following financial information:

6 i. That he has two outstanding federal student loans that as of about June 16, 2016,
7 totaled about \$14,700.15.

8 ii. That as of about June 16, 2016, he had four accounts in collection totaling
9 \$8,468.⁷

10 iii. That on or about July 28, 2005, National Credit Acceptance, Inc., obtained a
11 civil judgment against Respondent in Sacramento County Superior Court in the amount of
12 \$6,130. As of about June 16, 2016, that judgment was still outstanding.

13 iv. That on or about July 21, 2005, Heritage Credit Union obtained a civil judgment
14 against Respondent in Sacramento County Municipal Court in the amount of \$2,500. That
15 judgment was discharged on or about September 3, 2005, as part of a bankruptcy filing with
16 Respondent's father.

17 (Bus. & Prof. Code, §§ 19854, subd. (b), 19857, subds. (a) & (b), & 19859, subds. (a) & (b); Cal.
18 Code. Regs., tit. 4, §§ 12355, subds. (a)(1) & (c), & 12568, subds. (c)(3) & (c)(4).)

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25 ⁶ Respondent also stated that he did not disclose the 2002 criminal conviction because he
26 thought that the question only required disclosure of crimes less than 10 years old. However, there
is no such time limit in Section 6 of the Key Employee Supplemental Background Investigation
Information form, which clearly asks: "Have you *ever* been convicted of a crime or pled guilty, or
pled nolo contendere (no contest) to a crime?" (Emphasis added.)

27 ⁷ Respondent owes MidlandMCM \$5,882, Portfolio \$422, (2nd account) Portfolio \$1,175,
28 and Global Con \$989.

1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Negative Financial History)**

3 11. Respondent's application for a work permit is subject to denial⁸ in that Respondent
4 has an extensive, negative financial record. In addition to the two outstanding federal student
5 loans, the four accounts in collections and the two civil judgments alleged in paragraph 10 above,
6 Respondent's negative financial history includes:

7 a. On or about July 20, 2005, Respondent filed for Chapter 7 Bankruptcy in the United
8 States Bankruptcy Court, Eastern District of California. He discharged \$43,012 in liabilities.

9 b. In or about April 2010, property owned by Respondent in Sacramento, California, was
10 foreclosed upon.

11 (Bus. & Prof. Code, §§ 19854, subd. (b), & 19857, subds. (a) & (b); Cal. Code. Regs., tit, 4, §§
12 12355, subds. (a)(1) & (c), & 12568, subd. (c)(3) & (4).)

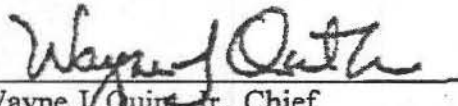
13 **PRAYER**

14 WHEREFORE, Complainant requests that following the hearing to be held on the matters
15 herein alleged, the Commission issue a decision:

16 1. Denying Respondent's Application for Gambling Establishment Key Employee
17 License; and

18 2. Taking such other and further action as the Commission may deem appropriate.

19
20 Dated: October 26, 2016.


Wayne J. Quint, Jr., Chief
Bureau of Gambling Control
California Department of Justice
Complainant

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28 ⁸ *Supra*, footnote 3.

APPENDIX A
JURISDICTION

- 1
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3 1. Business and Professions Code section 19811, subdivision (b), provides:

4 Jurisdiction, including jurisdiction over operation and
5 concentration, and supervision over gambling establishments in this
6 state and over all persons or things having to do with the operation of
7 gambling establishments is vested in the commission.

- 8 2. Business and Professions Code section 19823 provides:

9 (a) The responsibilities of the commission include, without
10 limitation, all of the following:

11 (1) Assuring that licenses, approvals, and permits
12 are not issued to, or held by, unqualified or disqualified
13 persons, or by persons whose operations are conducted in
14 a manner that is inimical to the public health, safety, or
15 welfare.

16 (2) Assuring that there is no material
17 involvement, directly or indirectly, with a licensed
18 gambling operation, or the ownership or management
19 thereof, by unqualified or disqualified persons, or by
20 persons whose operations are conducted in a manner that
21 is inimical to the public health, safety, or welfare.

22 (b) For the purposes of this section, "unqualified person"
23 means a person who is found to be unqualified pursuant to the
24 criteria set forth in Section 19857, and "disqualified person" means a
25 person who is found to be disqualified pursuant to the criteria set
26 forth in Section 19859.

- 27 3. Business and Professions Code section 19824 provides in part:

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

* * *

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

1 person licensed or approved. The commission may condition, restrict,
2 discipline, or take action against the license of an individual owner
3 endorsed on the license certificate of the gambling enterprise whether or
4 not the commission takes action against the license of the gambling
5 enterprise.

6 * * *

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

10 4. Business and Professions Code section 19854, subdivisions (a) and (b) provide:

11 (a) Every key employee shall apply for and obtain a key
12 employee license.

13 (b) No person may be issued a key employee license unless the
14 person would qualify for a state gambling license.

15 5. Business and Professions Code section 19870 provides:

16 (a) The commission, after considering the recommendation of
17 the chief and any other testimony and written comments as may be
18 presented at the meeting, or as may have been submitted in writing to
19 the commission prior to the meeting, may either deny the application or
20 grant a license to an applicant who it determines to be qualified to hold
21 the license.

22 (b) When the commission grants an application for a license or
23 approval, the commission may limit or place restrictions thereon as it
24 may deem necessary in the public interest, consistent with the policies
25 described in this chapter.

26 (c) When an application is denied, the commission shall prepare
27 and file a detailed statement of its reasons for the denial.

28 (d) All proceedings at a meeting of the commission relating to a
license application shall be recorded stenographically or by audio or
video recording.

(e) A decision of the commission denying a license or approval,
or imposing any condition or restriction on the grant of a license or
approval may be reviewed by petition pursuant to Section 1085 of the
Code of Civil Procedure. Section 1094.5 of the Code of Civil Procedure
shall not apply to any judicial proceeding described in the foregoing
sentence, and the court may grant the petition only if the court finds that

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

3 6. Business and Professions Code section 19871 provides:

4 (a) The commission meeting described in Section 19870 shall be
5 conducted in accordance with regulations of the commission and as
6 follows:

7 (1) Oral evidence shall be taken only upon oath or
8 affirmation.

9 (2) Each party shall have all of the following rights:

10 (A) To call and examine witnesses.

11 (B) To introduce exhibits relevant to the issues of the
12 case.

13 (C) To cross-examine opposing witnesses on any
14 matters relevant to the issues, even though the matter was
15 not covered on direct examination.

16 (D) To impeach any witness, regardless of which
17 party first called the witness to testify.

18 (E) To offer rebuttal evidence.

19 (3) If the applicant does not testify in his or her own
20 behalf, he or she may be called and examined as if under cross-
21 examination.

22 (4) The meeting need not be conducted according to
23 technical rules relating to evidence and witnesses. Any relevant
24 evidence may be considered, and is sufficient in itself to support a
25 finding, if it is the sort of evidence on which responsible persons
26 are accustomed to rely in the conduct of serious affairs, regardless
27 of the existence of any common law or statutory rule that might
28 make improper the admission of that evidence over objection in a
civil action.

(b) Nothing in this section confers upon an applicant a right to
discovery of the department's^[9] investigative reports or to require

⁹ Hereinafter, "department" refers to the Department of Justice, Bureau of Gambling Control. (Bus. & Prof. Code, § 19805, subd. (h).)

1 disclosure of any document or information the disclosure of which is
2 otherwise prohibited by any other provision of this chapter.

3 7. Business and Professions Code section 19912, provides in part:

4 (d) Application for a work permit for use in any jurisdiction
5 where a locally issued work permit is not required by the licensing
6 authority of a city, county, or city and county, shall be made to the
7 department, and may be granted or denied for any cause deemed
8 reasonable by the commission. . . .

8 **SPECIFIC STATUTORY AND REGULATORY PROVISIONS**

9 8. Business and Professions Code section 19856, subdivision (a) provides in part:

10 The burden of proving his or her qualifications to receive any license
11 is on the applicant.

12 9. Business and Professions Code section 19857 provides in part:

13 No gambling license shall be issued unless, based on all the
14 information and documents submitted, the commission is satisfied that
15 the applicant is all of the following:

16 (a) A person of good character, honesty and integrity.

17 (b) A person whose prior activities, criminal record, if any,
18 reputation, habits, and associations do not pose a threat to the public
19 interest of this state, or to the effective regulation and control of
20 controlled gambling, or create or enhance the dangers of unsuitable,
21 unfair, or illegal practices, methods, and activities in the conduct of
22 controlled gambling or in the carrying on of the business and financial
23 arrangements incidental thereto.

24 10. Business and Professions Code section 19859 provides in part:

25 The commission shall deny a license to any applicant who is
26 disqualified for any of the following reasons:

27 (a) Failure of the applicant to clearly establish eligibility and
28 qualification in accordance with this chapter.

(b) Failure of the applicant to provide information,
documentation, and assurances required by the chapter or requested by
the chief, or failure of the applicant to reveal any fact material to
qualification, or the supplying of information that is untrue or
misleading to a material fact pertaining to the qualification criteria.

1 11. California Code of Regulations, title 4, section 12054, subdivision (a), provides:

2 (a) At a non-evidentiary hearing meeting, the Commission may take,
3 but is not limited to taking, one of the following actions:

4 (1) Issue a license, temporary license, interim license,
5 registration, permit, finding of suitability, renewal or other
6 approval.

7 (2) Elect to hold an evidentiary hearing in accordance
8 with Section 12056 and, when for a renewal application, issue
9 an interim renewal license pursuant to Section 12035. The
10 Commission shall identify those issues for which it requires
11 additional information or consideration related to the
12 applicant's suitability.

13 (3) Table or continue an item for consideration at a
14 subsequent meeting, for any purpose, including obtaining new
15 or additional information from the applicant, Bureau or
16 Commission staff, provided however in the case of renewals,
17 the Commission must act on the application before the license
18 expires.

19 (4) Extend a license for up to 180 calendar days as
20 necessary, as provided in Business and Professions Code
21 section 19876, subdivision (c).

22 (5) Approve or deny a request for withdrawal pursuant
23 to Section 12015.

24 (6) Make a finding of abandonment pursuant to
25 subsection (c) of Section 12017.

26 (7) If the Bureau has filed an accusatory pleading with
27 the Commission pursuant to Business and Professions Code
28 section 19930 prior to Commission action on a renewal
application, the Commission shall issue an interim renewal
license pursuant to Section 12035.

12. California Code of Regulations, title 4, section 12060, provides:

(a) If the Executive Director determines it is appropriate, he or
she may set an application for consideration at a GCA hearing in
advance of a meeting pursuant to Section 12054. The Executive
Director shall give notice to the applicant, pursuant to paragraph (2)
subsection (c) of Section 12052, to the Office of the Attorney General,
and to the Bureau no later than 90 calendar days in advance of the GCA
hearing. The Executive Director's determination will be based on

1 information contained in the Bureau's report or other appropriate
2 sources including, without limitation, a request from the Bureau or
3 applicant as well as the Commission's operational considerations. The
4 Commission retains the authority to refer the matter to an APA hearing
pursuant to subsection (a) of Section 12056 or hear the matter at a
Section 12054 meeting if the Commission deems it appropriate.

5 (b) When the Commission has elected to hold a GCA hearing,
6 the Executive Director shall give notice to the applicant, pursuant to
7 paragraph (2) subsection (c) of Section 12052, to the Office of the
8 Attorney General, and to the Bureau no later than 60 calendar days in
advance of the GCA hearing.

9 (c) The presiding officer shall have no communication with the
10 Commission or Commission staff upon the merits, or upon information
11 or documents related to the application prior to the evidentiary hearing.
12 The Executive Director shall designate a presiding officer which shall
13 be:

- 14 (1) A member of the Commission's legal staff; or,
- 15 (2) An Administrative Law Judge.

16 (d) The applicant or the complainant, or the applicant and the
17 complainant, may request a continuance in writing to the Executive
18 Director stating the reason for the continuance and any proposed future
19 hearing dates. The Executive Director or Commission may approve the
20 request.

21 (e) The complainant shall provide to the applicant, at least 45
22 calendar days prior to the GCA hearing, and the applicant shall provide
23 to the complainant, at least 30 calendar days prior to the GCA hearing,
24 the following items:

- 25 (1) A list of potential witnesses with the general subject of
26 the testimony of each witness;
- 27 (2) Copies of all documentary evidence intended to be
28 introduced at the hearing and not previously provided;
- (3) Reports or statements of parties and witnesses, if
available; and
- (4) All other written comments or writings containing
relevant evidence.

(f) A presiding officer shall rule on the admissibility of evidence
and on any objections raised except for objections raised under
subsection (g). A ruling by the presiding officer shall be final.

1 (1) In advance of the GCA hearing, upon a motion of a
2 party or by order of the presiding officer, the presiding officer may
3 conduct a pre-hearing conference, either in person, via
4 teleconference, or by email exchange, subject to the presiding
5 officer's availability and shall issue a prehearing order if
6 appropriate or requested by either party. The prehearing
7 conference and order may address the following:

8 (A) Evidentiary issues;

9 (B) Witness and exhibit lists;

10 (C) Alterations in the Bureau recommendation;

11 (D) Stipulation for undisputed facts including the
12 admission of the Bureau's report; and

13 (E) Other issues that may be deemed appropriate to
14 promote the orderly and prompt conduct of the hearing.

15 (2) The GCA hearing need not be conducted according to
16 technical rules of evidence. Any relevant evidence may be
17 considered, and is sufficient in itself to support findings if it is the
18 sort of evidence on which reasonable persons are accustomed to
19 rely in the conduct of serious affairs, regardless of the existence of
20 any common law or statutory rule that might make improper the
21 admission of that evidence over objection in a civil action.

22 (g) The Commission may, at any time upon a showing of
23 prejudice by the objecting party:

24 (1) Prohibit the testimony of any witness or the
25 introduction of any documentary evidence that has not been
26 disclosed pursuant to subsection (e); or

27 (2) Continue any meeting or hearing as necessary to
28 mitigate any prejudice.

(h) The complainant shall present all facts and information in the
Bureau report, if any, and the results of the Bureau's background
investigation, and the basis for any recommendation, if the Bureau filed
one with the Commission according to Business and Professions Code
section 19868, to enable the Commission to make an informed decision
on whether the applicant has met his, her, or its burden of proof. The
complainant may but is not required to recommend or seek any
particular outcome during the evidentiary hearing, unless it so chooses.

1 (i) The burden of proof is on the applicant at all times to prove
2 his, her, or its qualifications to receive any license or other approval
under the Act.

3 (j) The applicant may choose to represent himself, herself, or
4 itself, or may retain an attorney or lay representative.

5 (k) Except as otherwise provided in subsection (g), the
6 complainant and applicant shall have the right to call and examine
7 witnesses under oath; to introduce relevant exhibits and documentary
8 evidence; to cross-examine opposing witnesses on any relevant matter,
9 even if the matter was not covered in direct examination; to impeach any
10 witness, regardless of which party first called the witness to testify; and
to offer rebuttal evidence. If the applicant does not testify on his, her or
its own behalf, the applicant may be called and examined, under oath, as
if under cross-examination.

11 (l) Oral evidence shall be taken upon oath or affirmation, which
12 may be administered by the Executive Director, a member of the
Commission, or the presiding officer, if an Administrative Law Judge.

13 (m) At the conclusion of the evidentiary hearing, the members of
14 the Commission shall take the matter under submission, may discuss the
15 matter in a closed session meeting, and may schedule future closed
session meetings for deliberation.

16 13. California Code of Regulations, title 4, section 12354, subdivision (e)(5), provides:

17 (e) With ten day's advance written notice to the interim key
18 employee and to the gambling enterprise, the Executive Director shall
cancel the interim key employee license based upon the following.

19 * * *

20 (5) A Bureau recommendation of denial of the
21 applicant's key employee application.

22 14. California Code of Regulations, title 4, § 12355, subds. (a)(1) & (c), provide:

23 (a) An application for a portable personal key employee license
24 shall be denied by the Commission if any of the following applies.

25 (1) The Commission finds that the applicant is
26 ineligible, unqualified, disqualified, or unsuitable pursuant to
27 the criteria set forth in the Act or other applicable law or that
28 granting the license would be inimical to public health, safety,
welfare, or would undermine the public trust that gambling
operations are free from criminal or dishonest elements.

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(c) The grounds for denial set forth in this section apply in addition to any grounds prescribed by statute or any grounds that would support revocation under chapter 10 of these regulations.

15. California Code of Regulations, title 4, § 12568, subds. (c)(3) & (c)(4), provide:

(c) A state gambling license, finding of suitability, or approval granted by the Commission, other than a work permit, and an owner license for a gambling establishment if the owner licensee has committed a separate violation from any violations committed by the gambling establishment shall be subject to revocation by the Commission on any of the following grounds:

* * *

(3) If the Commission finds the holder no longer meets any criterion for eligibility, qualification, suitability or continued operation, including those set forth in Business and Professions Code sections 19857, 19858, or 19880, as applicable, or

(4) If the Commission finds the holder currently meets any of the criteria for mandatory denial of an application set forth in Business and Professions Code sections 19859 or 19860.