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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

In the Matter of the Statement of Reasons for
Denial of Application for a Third-Party
Proposition Player Services License for:

BGC Case No. BGC-HQ2019-00020SL
CGCC Case No: CGCC-2019-0613-6Cii

JUNLY PHON


STATEMENT OF REASONS

Respondent.

Complainant alleges as follows:

PARTIES

1. Stephanie K. Shimazu (Complainant) brings this Statement of Reasons solely in her official capacity as Director of the California Department of Justice, Bureau of Gambling Control (Bureau).

2. On or about May 22, 2017, the Bureau received an Application for Third-Party Proposition Player Services License for Supervisor, Player or Other Employee and a Level I

1 Supplemental Information Form, both signed on May 10, 2017 (collectively, Application), from
2 Junly Phon (Respondent) to allow for her continued employment as a third-party proposition
3 player (prop-player) for Blackstone Gaming, LLC (Blackstone), a registered third-party
4 proposition player services provider, registration number TPPP-000119.¹

5 3. Blackstone has employed Respondent as a prop-player since November 2013. On or
6 about December 1, 2016, the California Gambling Control Commission (Commission) issued
7 Respondent a registration, number TPPL-012862, as a prop-player for this employment.
8 Respondent's registration is currently scheduled to expire on December 31, 2019.

9 4. On or about February 22, 2019, the Bureau submitted to the Commission a Third-
10 Party Player Background Investigation Report, recommending that Respondent's Application be
11 denied.

12 5. At its June 13, 2019 meeting, the Commission referred consideration of Respondent's
13 Application to an evidentiary hearing to be held pursuant to California Code of Regulations, title
14 4, section 12060.²

15 6. On or about July 8, 2019, Respondent submitted a Notice of Defense.

16 **BURDEN OF PROOF**

17 7. Respondent has the burden of proving that she is qualified to receive a license.
18 (Bus. & Prof. Code, § 19856, subd. (a).)

19 **FIRST CAUSE FOR DENIAL**

20 **(Non-Disclosure of Derogatory Employment History)**

21 8. Respondent's Application is subject to denial and her registration subject to
22 revocation or cancellation in that on her Application, which was submitted under penalty of
23 perjury, she wrote "N/A" as her reason for leaving a former employer.

24 _____
25 ¹ Respondent is required to convert her registration to a license and submit an application
26 for such licensure pursuant to California Code of Regulations, title 4, sections 12205.1 and
27 12218, because Blackstone was summoned on April 20, 2017, to submit an application to convert
28 its registration to a license.

² The statutes and regulations applicable to this Statement of Reasons are quoted in
pertinent part in Appendix A.

1 condition, restrict, discipline, or take action against the license of an
2 individual owner endorsed on the license certificate of the gambling
enterprise whether or not the commission takes action against the
license of the gambling enterprise.

3 * * *

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

- 6
7 4. Business and Professions Code, section 19853, subdivision (a), provides in part:

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

10 * * *

11 (3) Any person who does business on the premises of a
12 licensed gambling establishment.

- 13 5. Business and Professions Code, section 19870 provides:

14 (a) The commission, after considering the recommendation of the
15 chief⁴ and any other testimony and written comments as may be
presented at the meeting, or as may have been submitted in writing to
16 the commission prior to the meeting, may either deny the application
or grant a license to an applicant who it determines to be qualified to
hold the license.

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

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

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

23 (e) A decision of the commission denying a license or approval,
24 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
25 Code of Civil Procedure. Section 1094.5 of the Code of Civil
26 Procedure shall not apply to any judicial proceeding described in the
foregoing sentence, and the court may grant the petition only if the

27
28 ⁴ "Chief" refers to the Director of the Bureau. (Bus. & Prof. Code, § 19805, subd. (d).)

1 court finds that the action of the commission was arbitrary and
2 capricious, or that the 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
12 of the case.

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

16 (D) To impeach any witness, regardless of
17 which 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 behalf,
20 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's⁵ investigative reports or to require
disclosure of any document or information the disclosure of which is
otherwise prohibited by any other provision of this chapter.

27 ⁵ "Department" refers to the Department of Justice. (Bus. & Prof. Code, § 19805, subd.
28 (h).)

1 7. Business and Professions Code section 19984, subdivision (b), provides, in part:

2 The commission shall establish reasonable criteria for, and require
3 the licensure and registration of, any person or entity that provides
4 proposition player services to gambling establishments pursuant to this
5 section, including owners, supervisors, and players The
6 commission may impose licensing requirements, disclosures,
7 approvals, conditions, or limitations as it deems necessary to protect
8 the integrity of controlled gambling in this state

9 8. California Code of Regulations, title 4, section 12056, subdivision (a) provides, in
10 part:

11 If the Commission elects to hold an evidentiary hearing, the
12 hearing will be conducted as a GCA hearing under Section 12060,
13 unless the Executive Director or the Commission determines the
14 hearing should be conducted as an APA hearing under Section
15 12058

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

17 (a) If the Executive Director determines it is appropriate, he or
18 she may set an application for consideration at a GCA hearing in
19 advance of a meeting pursuant to Section 12054. The Executive
20 Director shall give notice to the applicant, pursuant to paragraph (2)
21 subsection (c) of Section 12052, to the Office of the Attorney General,
22 and to the Bureau no later than 90 calendar days in advance of the
23 GCA hearing. The Executive Director's determination will be based on
24 information contained in the Bureau's report or other appropriate
25 sources including, without limitation, a request from the Bureau or
26 applicant as well as the Commission's operational considerations. The
27 Commission retains the authority to refer the matter to an APA
28 hearing pursuant to subsection (a) of Section 12056 or hear the matter
at a Section 12054 meeting if the Commission deems it appropriate.

(b) When the Commission has elected to hold a GCA hearing, 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 60 calendar days in
advance of the GCA hearing.

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

(1) A member of the Commission's legal staff; or,

(2) An Administrative Law Judge.

(d) The applicant or the complainant, or the applicant and the
complainant, may request a continuance in writing to the Executive
Director stating the reason for the continuance and any proposed

1 future hearing dates. The Executive Director or Commission may
2 approve the request.

3 (e) The complainant shall provide to the applicant, at least 45
4 calendar days prior to the GCA hearing, and the applicant shall
5 provide to the complainant, at least 30 calendar days prior to the GCA
6 hearing, the following items:

7 (1) A list of potential witnesses with the general subject of
8 the testimony of each witness;

9 (2) Copies of all documentary evidence intended to be
10 introduced at the hearing and not previously provided;

11 (3) Reports or statements of parties and witnesses, if
12 available; and

13 (4) All other written comments or writings containing
14 relevant evidence.

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

18 (1) In advance of the GCA hearing, upon a motion of a party
19 or by order of the presiding officer, the presiding officer may
20 conduct a pre-hearing conference, either in person, via
21 teleconference, or by email exchange, subject to the presiding
22 officer's availability and shall issue a pre-hearing order if
23 appropriate or requested by either party. The pre-hearing
24 conference and order may address the following:

25 (A) Evidentiary issues;

26 (B) Witness and exhibit lists;

27 (C) Alterations in the Bureau recommendation;

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

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

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

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

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

4 (2) Continue any meeting or hearing as necessary to mitigate
5 any prejudice.

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

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

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

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

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

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

10. California Code of Regulations, title 4, section 12200.3, subdivision (g), provides:

Registrations, licenses, and badges are specific to the primary
owner. Third party proposition player services cannot be provided
without first applying for and obtaining a registration, license, or
badge.

1 11. California Code of Regulations, title 4, section 12205 provides:

2 (a) Any regular registration issued in accordance with this
3 chapter⁶ shall be subject to cancellation pursuant to this section. A
4 registration shall be cancelled if the Commission determines after a
5 noticed hearing that the registrant is ineligible for registration, has
6 failed in the application for registration to reveal any fact material to
7 the holder's qualification for registration, or has supplied information
8 in the registration application that is untrue or misleading as to a
9 material fact pertaining to the criteria for issuance of registration.

7 (b) If the Commission finds that any of the circumstances set
8 forth in subsection (a) apply, then the Executive Director shall
9 immediately do all of the following:

9 (1) Provide written notice to the registrant and the Bureau of
10 the cancellation of the registration and the grounds thereof, and
11 provide written notice of the cancellation to the owner, if the
12 registrant is a supervisor, player, or other employee and to any
13 gambling establishment in which the registrant provides
14 proposition player services.

12 (2) Notify the registrant, if an individual, that he or she is
13 required to surrender the registrant's badge to the Commission not
14 more than ten days following the date that the notice of the
15 cancellation was mailed or such greater time as is authorized by
16 the Executive Director.

16 12. California Code of Regulations, title 4, section 12205.1, provides:

17 (a) As expeditiously as possible in light of available program
18 resources, the Bureau shall summon persons registered as primary
19 owners, owners, supervisors, players, and other employees for the
20 purpose of applying for licenses under this chapter. The registration of
21 any registrant that fails or refuses to submit the applicable Application
22 for Third Party Proposition Player Services License for Business
23 Entities and Owners (BGC-433 (Rev. 10/17)) or Application for
24 Third-Party Proposition Player Services License for Supervisors,
25 Players or Other Employees (BGC-434 (Rev. 10/17)), which are
26 hereby incorporated by reference, including any fees to the Bureau
27 within 30 days of receiving a summons shall expire by operation of
28 law on the following day. Prior to and during review of a request to
convert a registration to a license, a registration shall remain valid and
may be renewed by the registrant as necessary, upon application and
approval of renewal of registration as provided in Section 12203A.

(b) Any person who became affiliated with a primary owner
following receipt of a summons from the Bureau shall apply for

27 ⁶ "Chapter" refers to California Code of Regulations, title 4, division 18, chapter 2.1,
28 section 12200 et seq.

1 registration pursuant to this chapter and shall be called forward by the
2 Bureau expeditiously.

3 (c) If the registration expires by operation of law, the former
4 registrant shall submit a new Application for Third Party Proposition
5 Player Services License for Business Entities and Owners (BGC-433)
6 or Application for Third-Party Proposition Player Services License for
7 Supervisors, Players or Other Employees (BGC-434), which are
8 referenced in subsection (a), and a new nonrefundable application fee
9 as specified in paragraph (1), and the applicable additional fee
10 as specified in paragraph (3), (4), or (5) of subsection (d) of Section
11 12008.

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13. California Code of Regulations, title 4, section 12218 provides:

(a) A request to convert a registration to a license shall be submitted to the Bureau only in response to a written summons to a primary owner pursuant to Section 12205.1. Each primary owner's request shall be accompanied by the requests of all affiliated owners, supervisors, players, and other employees.

(b) The request to convert a registration to a license shall designate whether the license is requested as a primary owner, owner, supervisor, player, or other employee. The request shall be signed by the individual requester or, if the requester is a business entity, by the chief executive officer or other designated officer of the business entity.

(c) The request to convert a registration to a license shall include all of the following:

(1) A completed Application for Third Party Proposition Player Services License for Business Entities and Owners (BGC-433) or Application for Third-Party Proposition Player Services License for Supervisors, Players or Other Employees (BGC-434), referenced in Section 12205.1.

(2) If applicable, the Trust Supplemental Background Investigation Information, BGC-APP-143 (Rev. 05/08), referenced in Section 12342 of this division.

(3) The applicable nonrefundable application fee in the amount specified in subsection (d) of Section 12008.

(4) Two 2x2 inch color passport-style photographs of a requester that is an individual taken no more than one year before submission of the request to the Bureau.

(5) The supplemental information package as defined in Section 12200(b).

(6) A sum of money that, in the judgment of the Chief of the Bureau, will be adequate to pay the anticipated investigation and

1 processing costs, in accordance with Business and Professions
2 Code sections 19867 and 19984(c).

3 (7) A copy of the summons issued by the Bureau.

4 (d) Nothing in this chapter shall require the Commission or
5 Bureau to divulge to the requester any confidential information
6 received from any law enforcement agency or any information
7 received from any person with assurances that the information would
8 be maintained as confidential. Nothing in this chapter shall require the
9 Commission or Bureau to divulge any information that might reveal
10 the identity of any source of information or jeopardize the safety of
11 any person.

12 SPECIFIC STATUTORY AND REGULATORY PROVISIONS

13 14. Business and Professions Code section 19856 provides, in part:

14 (a) Any person who the commission determines is qualified to receive a
15 state license, having due consideration for the proper protection of the health,
16 safety, and general welfare of the residents of the State of California and the
17 declared policy of this state, may be issued a license. The burden of proving
18 his or her qualifications to receive any license is on the applicant.

19 (b) An application to receive a license constitutes a request for a
20 determination of the applicant's general character, integrity, and ability to
21 participate in, engage in, or be associated with, controlled gambling.

22 (c) In reviewing an application for any license, the commission
23 shall consider whether issuance of the license is inimical to public
24 health, safety, or welfare, and whether issuance of the license will
25 undermine public trust that the gambling operations with respect to
26 which the license would be issued are free from criminal and
27 dishonest elements and would be conducted honestly. The burden of
28 proving his or her qualifications to receive any license is on the
applicant.

15. Business and Professions Code, section 19857 provides:

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

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

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

1 (c) A person that is in all other respects qualified to be licensed
2 as provided in this chapter.

3 16. Business and Professions Code section 19859 provides, in part:

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

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

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

13 17. Business and Professions Code section 19866 provides:

14 An applicant for licensing or for any approval or consent required
15 by this chapter, shall make full and true disclosure of all information
16 to the department and the commission as necessary to carry out the
17 policies of this state relating to licensing, registration, and control of
18 gambling.

19 18. California Code of Regulations, title 4, section 12200.18, provides, in part:

20 The Commission may revoke a registration or license, upon any of
21 the following grounds, after a hearing conducted pursuant to the same
22 procedures applicable to the revocation of a gambling establishment
23 license:

24 (a) The registrant or licensee committed, attempted to commit,
25 or conspired to commit any acts prohibited by the Act^[7] or this
26 chapter.

27 (b) Any act or omission by the registrant that would disqualify
28 the registrant from obtaining registration under this chapter. Any act
or omission by the licensee that would disqualify the licensee from
obtaining licensing under this chapter.

* * *

(f) The registrant or licensee concealed or refused to disclose
any material fact in any inquiry by the Bureau or the Commission.

⁷ "Act" refers to the "Gambling Control Act." (Bus. & Prof. Code, § 19800 et seq.)

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19. California Code of Regulations, title 4, section 12218.11, provides, in part:

A requester shall be ineligible for licensing for any of the following causes:

* * *

(e) The requester has failed to meet the requirements of Business and Professions Code sections 19856 or 19857.

(f) The requester would be ineligible for a state gambling license under any of the criteria set forth in Business and Professions Code sections 19859, subdivisions (b), (e), or (f).