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BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

In the Matter of the Accusation and Statement
of Issues Against:

GARDEN CITY, INC., doing business as
CASINO M8TRIX (GEGE-000410);

ERIC G. SWALLOW (GEOW-001330);

PETER V. LUNARDI III (GEOW-001331);

JEANINE LYNN LUNARDI (GEOW-
003119); and

THE LUNARDI FAMILY LIVING TRUST,
dated August 27, 2008 (GEOW-003259).

1887 Matrix Boulevard
San Jose, CA 95110

OAH No. 2014060129

BGC Case No. HQ2014-00001AL

**DECISION AND ORDER AFTER
NONADOPTION**

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DECISION

1. Mary-Margaret Anderson, Administrative Law Judge (ALJ), from the State of California, Office of Administrative Hearings (OAH), heard this matter on August 10 through 13, and 17 through 19, 2015. Deputy Attorney General William P. Torngren represented Wayne J. Quint, Jr., Chief, California Department of Justice, Bureau of Gambling Control (Bureau). Allen Ruby, Attorney at Law, and William J. Casey, Attorney at Law, Skadden, Arps, Meagher & Flom LLP, represented Respondent Eric G. Swallow (Respondent).¹ The record was left open for the receipt of closing briefs, which were timely received and marked for identification as follows:

- a) Complainant's Closing Brief, Exhibit 57 and Complainant's Reply Brief,
Exhibit 58

¹ The matter proceeded only against Respondent Eric G. Swallow because a settlement was reached between the California Gambling Control Commission (Commission) and the other Respondents: Garden City, Inc., Jeanine Lunardi, Peter Lunardi, and the Lunardi Family Living Trust.

- 1 b) Respondent’s Closing Brief, Exhibit HL
- 2 2. The record closed on October 9, 2015
- 3 3. The ALJ issued a Proposed Decision (PD) on December 10, 2015.
- 4 4. The Commission issued an Order of Nonadoption and Fixing Date for Receipt of
- 5 Written Argument on February 25, 2016.
- 6 5. The Commission received written argument from each party on March 22, 2016
- 7 and reply argument on March 29, 2016 which were marked for identification as follows:
- 8 a) Complainant’s Argument Following Nonadoption, Exhibit 59 and Reply
- 9 Argument Exhibit 60.
- 10 b) Respondent’s Argument Following Nonadoption, Exhibit HM, and Reply
- 11 Argument HN.
- 12 6. The time for filing written argument in this matter having expired, written
- 13 argument having been filed by both parties and such written argument, together with the entire
- 14 record, including the transcript of said hearing, having been read and considered, pursuant to
- 15 Government Code Section 11517, the Commission issues the following decision.

Factual Findings

- 17 7. This action was presented to the Commission by Complainant Wayne J. Quint, Jr.,
- 18 solely in his official capacity as Chief of the Bureau in the California Department of Justice.
- 19 8. The operative pleading is the First Amended Accusation and Statement of Issues
- 20 filed on July 22, 2015, (ASI) subsequent to the settlement of the matter as regards to all parties
- 21 except Respondent. In sum, it alleged that Respondent is unsuitable for continued licensure under
- 22 the California Gambling Control Act (GCA) and Commission Regulations,² and seeks to revoke
- 23 or suspend and prevent the renewal of his license, and to fine Respondent.

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27 ² Business and Professions Code section 19800 et seq., and California Code of Regulations, title 4, section
28 12002 et seq.

1 *Legal Background*

2 9. The GCA places strict licensing requirements on all persons connected to
3 gambling operations. Business and Professions Code³ section 19801, subdivision (i), provides:

4
5 All gambling operations, all persons having a significant involvement in gambling
6 operations, all establishments where gambling is conducted, and all
7 manufacturers, sellers, and distributors of gambling equipment must be licensed
8 and regulated....

9
10 10. Section 19850 further mandates which “persons” are subject to
11 Commission review and approval when it states:

12
13 Every person who, either as owner, lessee, or employee, whether for hire or not,
14 either solely or in conjunction with others, deals, operates, carries on, conducts,
15 maintains, or exposes for play any controlled game in this state, or who receives,
16 directly or indirectly, any compensation or reward, or any percentage or share of
17 the money or property played, for keeping, running, or carrying on any controlled
18 game in this state, shall apply for and obtain from the commission, and shall
19 thereafter maintain, a valid state gambling license, key employee license, or work
20 permit, as specified in this chapter. In any criminal prosecution for violation of
21 this section, the punishment shall be as provided in Section 337j of the Penal
22 Code. [Emphasis added.]

23
24 11. The legislature further defined who must be licensed when these “persons” are not
25 natural persons under Section 19852 which states in pertinent part:

26
27
28 ³ All section references are to the Business and Professions Code under the GCA, unless stated otherwise.

1 Except as provided in Section 19852.2, an owner of a gambling enterprise that is
2 not a natural person shall not be eligible for a state gambling license unless each
3 of the following persons individually applies for and obtains a state gambling
4 license:

5 (a) If the owner is a corporation, then each officer, director, and
6 shareholder, other than a holding or intermediary company, of the owner.

7 The foregoing does not apply to an owner that is either a publicly traded
8 racing association or a qualified racing association.

9 ...

10 (e) If the owner is a trust, then the trustee and, in the discretion of the
11 commission, any beneficiary and the trustor of the trust.

12 (f) If the owner is a limited liability company, every officer, manager,
13 member, or owner.

14 (g) If the owner is a business organization other than a corporation,
15 partnership, trust, or limited liability company, then all those persons as
16 the commission may require, consistent with this chapter.

17 (h) Each person who receives, or is to receive, any percentage share of the
18 revenue earned by the owner from gambling activities.

19 (i) Every employee, agent, guardian, personal representative, lender, or
20 holder of indebtedness of the owner who, in the judgment of the
21 commission, has the power to exercise a significant influence over the
22 gambling operation. [Emphasis added.]

23
24 12. In reviewing these persons, the GCA grants the Commission broad
25 authority in deciding when and to whom to issue all types of licenses. The Complainant
26 is a partner to the Commission under the GCA and possesses investigatory and
27 enforcement responsibilities. Among other duties, the Complainant conducts background
28

1 checks and other forms of investigation and recommends to the Commission whether a
2 license should be issued or renewed, with or without conditions.

3 13. The GCA guides the Complainant in investigating and the Commission in
4 reviewing applicants' qualifications for licensure. Section 19857, subdivisions (a) and (b),
5 require licensees be "of good character, honesty and integrity" and be people,

6
7 Whose prior activities, criminal record, ... reputation, habits, and associations do
8 not pose a threat to the public interest of this state, or to the effective regulation
9 and control of controlled gambling, or create or enhance the dangers of
10 unsuitable, unfair, or illegal practices...in the conduct of controlled gambling or
11 in the carrying on of the business and financial arrangements incidental thereto.

12
13 14. The GCA bars licensure in certain instances under Section 19859, subdivisions (a)
14 and (b), which states:

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

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

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

24
25 15. Additionally, applicants during the licensing process in particular under Section
26 19866, "shall make full and true disclosure of all information to the department and the
27
28

1 commission as necessary to carry out the policies of this state relating to licensing, registration,
2 and control of gambling.”

3 16. Generally, applications are considered at Commission meetings or evidentiary
4 hearings that comply with GCA Sections 19870 and 19871. However, the Commission is further
5 authorized to send these matters to an Administrative Procedures Act (APA) evidentiary hearing
6 under GCA Section 19825 which states:

7
8 The commission may require that any matter that the commission is authorized or
9 required to consider in a hearing or meeting of an adjudicative nature regarding
10 the denial, suspension, or revocation of a license, permit, or a finding of
11 suitability, be heard and determined in accordance with Chapter 5 (commencing
12 with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

13
14 17. After the Commission has approved a license, the Complainant may seek to revoke
15 the license by filing an accusation with the Commission. The GCA states under Section
16 19930(b):

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

22
23 18. Evidentiary hearings that are conducted pursuant to Section(s) 19825 and 19930
24 are conducted under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
25 2 of the Government Code and are referred to as APA hearings and heard by an administrative
26 law judge with OAH. This hearing is governed procedurally by the APA and the regulations
27 adopted by OAH. Unless the Commission has elected to sit with the administrative law judge, the
28

1 Commission has no control over a hearing's schedule, the appointment of judges hearing a matter,
2 issues raised during a hearing, or the issuance of proposed decisions. The Commission merely
3 receives a proposed decision prepared by the administrative law judge which the Commission
4 must act on as prescribed under Government Code 11517.

5 19. Furthermore, it is also important to note that in addition to the GCA, the Penal
6 Code guides the Complainant and Commission on gambling matters. Penal Code Section 337j(a)
7 in particular states:

8
9 (a) It is unlawful for any person, as owner, lessee, or employee, whether for hire
10 or not, either solely or in conjunction with others, to do any of the following
11 without having first procured and thereafter maintained in effect all federal, state,
12 and local licenses required by law:

13 (1) To deal, operate, carry on, conduct, maintain, or expose for play in this
14 state any controlled game.

15 (2) To receive, directly or indirectly, any compensation or reward or any
16 percentage or share of the revenue, for keeping, running, or carrying on
17 any controlled game. [Emphasis added.]

18
19 *Procedural Background*

20 20. Garden City, Inc., is a licensed gambling enterprise, holding California state
21 gambling license number GEGE-000410 (Garden City). Garden City now does business as
22 Casino M8trix, a 49-table card room located at 1887 Matrix Boulevard in San Jose. Pursuant to
23 Section 19850 and 19852, Garden City is licensed as a non-natural person, and is owned equally
24 by the Lunardi Family Trust and Respondent as shareholder owners, who are endorsed on Garden
25 City's license. The Lunardi Family Trust holds license number GEOW-003259, Peter V. Lunardi
26 III holds license number GEOW-001331, Jeanine Lynn Lunardi holds license number GEOW-
27 003119, and Respondent holds license number GEOW-001330.

1 21. Respondent’s license was first issued in 2007 and continuously renewed through
2 February 18, 2014 and then extended 90 days to May 31, 2014. Applicants’ state gambling
3 licenses are valid for two years from issuance or renewal. If renewal is desired, a licensee must
4 apply 120 days prior to the expiration date under Section 19876(b). Respondent’s license was
5 scheduled to expire on May 31, 2014, and he filed a renewal application with the Commission on
6 September 16, 2013.

7 22. The Complainant undertook a background check investigation regarding
8 Respondent’s 2013 renewal application. In the meantime, Complainant had been investigating
9 Respondent in regards to another application he filed for licensure in connection with Hollywood
10 Park/LAX, an establishment in southern California. In a letter to Respondent’s agent Bob Lytle
11 dated July 16, 2013 (July 2013 request), the Complainant requested “additional clarifying
12 information and/or documentation...” The letter contained 100 questions, requests, or both, for
13 information and required a response not later than August 7, 2013. It also stated that no extension
14 of time to respond will be granted. Respondent submitted answers and supporting documentation
15 within the time frame required. The submission contained 589 pages.

16 23. The Complainant found reasons to question Respondent’s suitability for licensure.
17 In late 2013 or early 2014, the Complainant recommended denial of the renewal application. In
18 addition, on May 5, 2014, the Complainant sent the Commission an accusation against
19 Respondent, alleging grounds to revoke his license. Following a meeting on May 29, 2014, the
20 Commission decided to refer the application for renewal of Respondent’s license to an APA
21 evidentiary hearing with OAH pursuant to Section 19825 and to be consolidated with the
22 accusation. (Respondent has since withdrawn his application for licensure for Hollywood
23 Park/LAX). Former Assistant Bureau Chief Stacy Luna Baxter⁴ described Respondent’s license
24 as having been “stayed” by the Commission. She explained that “stayed” meant that his license
25 was “frozen in time,” until it was decided to revoke it or that it could be renewed. Until that time,

26 _____
27 ⁴ Subsequent to the OAH APA evidentiary hearing Ms. Luna Baxter left the Bureau to
28 begin work as the Commission’s Executive Director. She has been segregated from this matter
and has not participated in its consideration or in the preparation of this decision.

1 Respondent's license would not expire and would remain active and valid. When the hearing was
2 over, Ms. Luna Baxter stated the license would be either revoked effective May 31, 2014, or
3 renewed as of that date.⁵

4 24. Complainant filed and served a combined Accusation and Statement of Issues
5 (regarding the renewal application), referred to above as the ASI. Respondent filed a Notice of
6 Defense and this hearing followed.

7
8 *Burden of Proof*

9 25. Generally, during an APA evidentiary hearing, the burden of proof is with the
10 complainant in a proceeding on an accusation, and with the respondent on a statement of issues.
11 The Complainant stipulated, however, that it would bear the burden of proof as to both the
12 accusation and the statement of issues combined in the ASI.

13 26. Section 19856 addresses in pertinent part who holds the burden regarding
14 applications pending Commission consideration:

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

21
22 27. In contrast, after a license has been approved, Section 19930 states in pertinent
23 part:

24
25 (b) If, after any investigation, the department is satisfied that a license, permit,
26 finding of suitability, or approval should be suspended or revoked, it shall file an

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28 _____
⁵ Ultimately, the timing is a matter left up to the Commissioners' discretion.

1 accusation with the commission in accordance with Chapter 5 (commencing with
2 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

3 [Emphasis added.]
4

5 28. Therefore, the Complainant has the burden of proof for the claims related
6 to the suspension or revocation of Respondent’s license, whereas the Respondent
7 maintains the burden to prove he is qualified to receive a license. The ASI presents a
8 unique combination of what otherwise would be a separate statement of issues and
9 accusation with corresponding separate hearings and burdens. The standard of proof for
10 the accusation is preponderance of the evidence. (Cal. Code Regs., tit. 4 section 12554,
11 subd. (c).)

12 29. While the Complainant may have “stipulated” to the burden on the
13 renewal application, Section 19856 does not allow the Commission to consider applicants
14 differently. As a result, the Complainant’s stipulation, along with the ALJ’s acceptance
15 of it was in error. In closing briefing, Respondent has argued that to apply the burden of
16 proof to him for the licensing renewal application would be a violation of due process.
17 This matter appears to be moot however as even if the Complainant held the burden of
18 proof and the standard of proof for both matters were identical; the Complainant met the
19 “stipulated” burden as discussed below.
20

21 *Credibility determinations*

22 30. In evidence (admitted as administrative hearsay) is a declaration signed by Bryan
23 Roberts, a former employee of Garden City who resides in Texas, on July 9, 2015. The reliability
24 of the declaration for any purpose was questioned by Respondent based on the methods used to
25 acquire it. Roberts was an independent contractor who was paid \$12,000 per month for
26 information technology-related services to Garden City. Roberts’ contract was terminated in
27 approximately August 2014. At that time, Garden City owed him approximately \$18,000.
28

1 31. The Complainant desired to interview Roberts, who was experiencing serious
2 financial difficulties and was desperate to be paid. An Emergency Order was in effect at the time
3 regarding certain Garden City operations that included placement of a consultant with financial
4 authority and oversight instructions. The Complainant directed the consultant and Lunardi not to
5 pay Roberts until he submitted to an interview. Peter Lunardi paid Roberts' travel costs to
6 California and was not reimbursed by the Complainant. Roberts was interviewed in San Jose by
7 Complainant representatives, and other interested parties were present. The tape-recorded
8 statement was reduced to writing, and Roberts signed the statement. Garden City then paid the
9 money Bryan Roberts was owed.

10 32. Roberts' presence for the interview was characterized as being purchased by the
11 Complainant with Lunardi's assistance. The evidence established that Roberts was not paid
12 monies owed him for over one year and told he would not be paid unless and until he submitted to
13 an interview. However, nothing offered by the Respondent or in the declaration itself states that
14 Roberts' testimony was coerced or that he was forced to say anything he did not wish to say.
15 Respondent's impeachment of the declaration was also unpersuasive. Therefore, Roberts'
16 declaration will be considered as part of the record but afforded less weight in making the factual
17 findings herein.

18 33. Lunardi's testimony was accorded less weight because of his perceived self-
19 interest in the proceedings. Lunardi testified that he was interested in what would become of
20 Respondent's share of the money earned by Garden City since the emergency order was issued.
21 Lunardi settled his case with the Commission, and withdrew \$7.1 million from Garden City. He
22 testified that he asked Complainant's representatives what would become of Respondent's share
23 if Respondent lost his license, and was advised that this was "to be determined."⁶ Lunardi is
24 interested in receiving Respondent's share of withheld distributions. In addition, the credibility of
25

26
27 ⁶ It is not clear who provided this guidance as Section 19882 controls any denial or revocation of license for
28 a shareholder in a corporation. Lunardi does not stand to receive any withheld distributions and Respondent's shares
would be subject to sale; not automatic transfer to remaining shareholders.

1 his testimony was negatively affected by evasive and disingenuous answers. Lunardi's testimony
2 however was supported by documentary evidence and other witnesses.

3
4 *Respondent's relationship to Garden City and creation of affiliated companies*

5 34. Garden City operated a card room in San Jose. In 1998, Garden City entered
6 bankruptcy, and operated under a court appointed trustee beginning in 2000. In 2007,
7 Respondent and Peter and Jeanine Lunardi (collectively, the Lunardis; Lunardi refers to Peter
8 Lunardi) purchased it for approximately \$22 million, with financing provided by Comerica Bank.
9 Respondent owns 50 percent of the stock, and the Lunardi Trust owns 50 percent. Peter Lunardi
10 has always been President, and the Board of Directors is comprised of Peter and Jeanine Lunardi
11 and Respondent.

12 35. Respondent and the Lunardis commenced operating the card room on March 1,
13 2007, and made many changes in the operation. In the year ending June 30, 2007, Garden City
14 showed a loss of \$2.6 million; in the six months ending December 31, 2008, it showed a profit of
15 \$9.7 million. During the same time frame, the gaming operation appeared to be successful with
16 gaming revenue increasing from \$37 million to approximately \$49 million.

17 36. Jerome Bellotti is a certified public accountant and he began working as an
18 accountant for Respondent, the Lunardis, and Garden City, in 2007. In late 2014, he stopped
19 providing accounting services to Garden City. In 2008, Respondent and Lunardi met with
20 Bellotti to discuss ways to minimize their tax liability. Bellotti was informed by Respondent that
21 intellectual property was involved, including software and games that had led to the gross
22 revenues. Bellotti recalls that, at the time, both families were considering moving to Nevada,
23 which has no personal income tax. Lunardi attests that it was only Respondent who was
24 considering a move.

25 37. In any event it was decided to establish limited liability companies in Nevada that
26 would receive payments from Garden City pursuant to, software licenses, royalty or services
27 agreements. The payments would be "a way to get money out to the owners through services
28

1 rendered.” Bellotti stated that they were not intended to be distributions of earnings. Bellotti
2 defines a distribution as a payment to a stockholder of current or prior earnings. His
3 understanding was that the software was designed by Respondent and the games were designed
4 by the Lunardis and Respondent. Lunardi in contrast testified that the LLCs were a way of taking
5 distributions from Garden City and he did not participate in any software development.

6 38. The affiliated entities were formed in late 2008. Profitable Casino, LLC, was
7 solely owned by Respondent, and Belotti and Respondent testified it was intended to receive
8 payments for licenses for casino operating software. Potere, LLC, was solely owned by Lunardi,
9 and was intended to receive payments for consulting services provided by Lunardi. Dolchee,
10 LLC, was originally owned jointly by the Lunardi Trust and the Swallow Trust, and would
11 receive payments for gaming royalties. In 2011, the Swallow Trust’s share was transferred to
12 Respondent as an individual. The fees were income to the entities, and taxable.

13 39. Each of the three entities contracted with Garden City to receive \$400,000 or more
14 per month, ostensibly for services rendered.

15 40. The amounts received were as follows:

Year	Dolchee	Profitable Casino	Potere
2009	\$7,880,000	\$5,000,000	\$5,000,000
2010	\$7,182,000	\$2,775,000	\$2,775,000
2011	\$11,400,000	\$2,850,000	\$2,850,000
2012	\$11,900,000	\$3,325,000	\$3,325,000
2013	\$8,900,000	\$3,300,000	\$3,300,000
Totals	\$47,262,000	\$17,250,000	\$17,250,000

23
24 41. The amounts paid to the three entities were not dependent upon invoices or written
25 documentation; they were based on available cash flow. The amounts paid were decided upon by
26 Respondent and Lunardi, following a discussion of how much money they thought should be
27
28

1 taken out of Garden City and given to them. None of the three LLCs has ever applied for or held
2 a state gambling license.

3 42. Garden City and the three LLCs have been subject to separate tax audits. The
4 internal Revenue Service (IRS) audited Garden City's 2009 return, including payments from
5 Garden City to the related entities. The IRS also audited Dolchee's 2011 return. The California
6 Franchise Tax Board (FTB) audited the 2009 and 2010 tax returns of Respondent and Deborah
7 Swallow. Following each audit, the IRS and FTB issued "no change" letters, indicating that no
8 errors were found and that no changes to the returns needed to be made. Nothing in the record
9 indicates Garden City, Profitable Casino, Dolchee, or Potere were audited for compliance with
10 the GCA.

11 43. Two additional companies were created by Respondent and the Lunardis in
12 connection with their operation of Garden City and the move to its current location. Airport
13 Opportunity Fund, LLC, was originally owned by the Lunardi Trust and the Swallow Trust. In
14 2011, Respondent as an individual replaced the Swallow Trust. Airport Parkway Two, LLC, is
15 solely owned by Airport Opportunity Fund.

16 44. Airport Parkway purchased the land at 1887 Matrix Boulevard in San Jose, where
17 Casino M8trix now operates. Dolchee, Potere, and Profitable Casino contributed a total of
18 \$2,050,000 towards the purchase. Comerica Bank provided construction loans, and Garden City
19 guaranteed the loans. Garden City leases the property from Airport Parkway.

20
21 *Causes for denial/discipline*

22 45. Complainant alleges five causes to discipline Respondent's license and to deny
23 license renewal. In general, the allegations allege facts to support the argument that Respondent
24 is not a person of good character, honesty, and integrity, and that his prior activities and business
25 practices pose a threat to the effective regulation of controlled gambling.

1 FIRST CAUSE: PROHIBITED INTEREST IN THE FUNDS WAGERED, LOST OR WON BY
2 A THIRD-PARTY PROVIDER.

3
4 Paragraph 45

5
6 46. Pursuant to Section 19984, a licensed gambling enterprise may contract with a
7 third party provider of proposition player services (TPPPS) to provide proposition player services.
8 TPPPS provide services to the gambling enterprise, including playing as a participant in any
9 controlled game that has a rotating player-dealer position. Pursuant to Commission regulations,
10 the contract must be approved in advance by the Complainant. The gambling enterprise however
11 may not receive any interest, direct or indirect, in any funds wagered, lost, or won pursuant
12 Section 19984.

13 47. Garden City contracted with Team View Player Services LLC (TV Services) to
14 provide TPPPS to Garden City. TV Services, owned by Timothy Gustin, paid Garden City
15 pursuant to the contract. This contract was approved by the Complainant pursuant to
16 Commission regulations. Team View Player Associates LLC (TV Associates) is another
17 company owned by Gustin and had no assets other than its contracts with TV Services. In 2010,
18 2011, and 2012, TV Services paid TV Associates approximately \$4.8 million.

19 48. TV Associates paid approximately \$3.6 million to Secure Stone LLC, a Delaware
20 company. Respondent's wife, Deborah Swallow, is the sole member of Secure Stone.
21 Respondent testified that he and Gustin simply agreed on a price based upon what Gustin
22 believed he could obtain from other sources. The record does not establish whether TV Services
23 had any other TPPPS contracts, and while Gustin stated he wanted TV Associates to be able to
24 provide support services to other TPPPS providers, there was no evidence provided that it ever
25 did. Thus, monies earned by TV Services pursuant to its contract with Garden City – monies
26 earned by a third-party provider – may have gone to Secure Stone.

1 49. As Deborah Swallow’s husband, Respondent had a community property interest in
2 Secure Stone. In addition, the record is replete with credible evidence that Secure Stone was
3 operated and controlled by Respondent, including his testimony that he considered it his
4 company. It also establishes that Respondent undertook efforts to conceal this relationship from
5 the Complainant and the Commission with Maloney’s letter discussed below. Roberts’
6 declaration further supports the allegation that Respondent attempted to conceal Secure Stone’s
7 relationship with TV Services, TV Associates, and ultimately Garden City.

8 50. There were three payments in 2011 and five payments in 2012, for a total of eight
9 payments between TV Associates and Secure Stone. This cause of action turns entirely on
10 whether the Complainant established by a preponderance of the evidence that Respondent
11 indirectly or directly, received an interest in funds “wagered, lost or won” by a TPPPS company
12 by virtue of Secure Stone’s receipt of funds from TV Services through payments from TV
13 Associates through these eight payments.⁷ The Complainant both pled and argued before the ALJ
14 that the flow of money from a TPPPS to the house, by itself, was sufficient to establish a violation
15 of Section 19984(a). This interpretation is not consistent with current laws and regulations as
16 Section 19984(a) and Commission regulation Section 12200.7 clearly authorizes payments from
17 the TPPPS to the house pursuant to an approved contract.

18 51. Paragraph 45 was not proven.

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27 ⁷ It is important to note that this cause of action does not turn on whether Respondent’s
28 egregious conduct violated Commission TPPPS contract regulations under Section 12200.7 et.
seq. or other regulations adopted pursuant to the Act as those were not plead by the Complainant
in this cause of action or more appropriately as separate and additional causes of action.

1 SECOND CAUSE: PROVIDING FALSE OR MISLEADING INFORMATION TO THE
2 BUREAU

3
4 Paragraph 46(a): Misrepresentation about the Existence of a Written Accountant's
5 Valuation Opinion.

6
7 52. Complainant alleges that Respondent supplied false or misleading information to
8 the Commission regarding the existence of a written accountant's opinion, based upon his
9 testimony at a Commission meeting.

10 53. On February 21, 2013, Respondent appeared before the Commission in relation to
11 his application for licenses for LAX and Hollywood Park. The focus of the Commission at that
12 time appeared to be on the status of the over 600 employees, and there was extensive questioning
13 about whether they would be hired by Respondent should he be licensed as the new operator. He
14 was also asked some detailed questions about his finances and Garden City matters.

15 54. At the time, Respondent was residing in Nevada. Commissioner Schuetz noted
16 that Profitable Casino was wholly owned by Respondent, that it was a Nevada LLC, and that
17 Garden City (referred to as Matrix in the transcript) paid Profitable Casino pursuant to a licensing
18 agreement. Commissioner Schuetz asked Respondent what Profitable Casino does. Respondent
19 replied that Profitable Casino is a software firm that he developed that helps operate Garden City
20 and that he planned to use to help operate LAX. Commissioner Schuetz asked how the values
21 were obtained that formed the basis for the payments by Garden City to the affiliated companies.
22 He appeared to be concerned that profits from Garden City were flowing to a Nevada company
23 owned by Respondent, thus avoiding the payment of California taxes. The following is the
24 relevant exchange.

25
26 Commissioner Schuetz: So how did you come up with the value that you pay yourself?

27 Respondent: My CPA firm did that for me.
28

1	Commissioner Schuetz:	And do you have a written opinion to that, or a written opinion
2		with regards to ---
3	Respondent:	Yes. Yes.
4	Commissioner Schuetz:	And is it a qualified or an unqualified opinion?
5	Respondent:	It is a CPA qualified opinion.
6	Commissioner Schuetz:	It's a qualified opinion. So he had absolutely no reason to
7		question that decision.
8	Respondent:	I'm sorry ---
9	Commissioner Schuetz:	That's what a qualified opinion is. Is it qualified or
10		unqualified?
11	Respondent:	You know, I don't know how to answer that. I'm not qualified
12		to answer that today.
13	Commissioner Schuetz:	Well, if it's qualified, that means, yea, I agree, but I've got
14		some issues and he's going to write what those issues are on
15		that. Could you provide for sure, and our friends at the Bureau
16		make sure that we get it, the accountant's qualified or
17		unqualified opinion as to the pricing model that was used in this
18		software license?
19	Respondent:	Sure.
20		

21

22 55. It is unclear what Respondent was saying “yes, yes” in response to, as the

23 Commissioner’s question was either not finished or not fully transcribed. But it is clear from the

24 rest of the exchange that Respondent either did not know what he was being asked or did not

25 know the answer. He said he did not know the answer and that he was “not qualified to answer

26 that today.”

27

28

1 56. Respondent testified at hearing that he thought the question referred to the section
2 of the audited financial statements that his accountant Jerry Bellotti prepared that concerned
3 related-party payments. And those statements had already been provided to the Complainant.

4 57. Paragraph 46(a) was not proven.

5
6 Paragraph 46(b): Misrepresentations about His Marital Status
7

8 58. Complainant alleges that Respondent informed the Complainant that he was
9 separated from his wife Deborah Swallow when he was not, and was thus untruthful about his
10 marital status.

11 59. On January 18, 2012, Respondent filed an application with the Complainant
12 stating he was married. On February 13, 2012, he signed an application from the City of San Jose
13 stating he was married. In August 2012, he filed an application with the Complainant stating he
14 was separated. A letter from his attorney dated July 10, 2013, states that he and Deborah
15 Swallow had been separated “since approximately 2009.” It also stated that they have not
16 obtained a legal separation or begun formal divorce proceedings. In a response to the
17 Complainant’s July 2013 request for information (See Finding 7), Respondent wrote that he and
18 his wife considered “themselves separated effective approximately January of 2010,” but that
19 there was “no formal, executed legal separation documents between [the couple] as of yet.”

20 60. In October and December of 2013, both Deborah Swallow and Respondent filed
21 documents in a dissolution proceeding in the Los Angeles County Superior Court that identify
22 their separation date as October 8, 2013. No dissolution had been finalized as of the date of the
23 hearing; they were still married.

24 61. The evidence was insufficient to establish that Respondent was untruthful in 2012
25 and 2013 about his marital status. A couple can be separated, and still married, and that was true
26 for Respondent and his wife and remains true. It is the legal separation date that determines the
27 characterization of property as community or separate. There is no evidence that Respondent
28

1 advised the Complainant that he and his wife were legally separated when they were not; in fact,
2 on one occasion, Respondent elaborated that there was not yet a legal separation. It is unclear
3 what Respondent meant by his statement that the couple “considered themselves separated,” but
4 this statement does not rise to the level of a lie about his marital status. Couples who are
5 struggling with their marriage often “separate” and get back together over the course of the
6 marriage. Respondent testified consistently with this observation, stating that he and his wife
7 lived in different portions of a large house for a time in 2010, that the separation was “on and off”
8 over time, and that they needed to pick a separation date when they decided to divorce, and chose
9 October 8, 2013.

10 62. Paragraph 46(b) was not proven.

11
12 Paragraph 46(c): Misrepresentations by an Agent of Respondent That \$1.4 Million
13 Received By His Wife from Secure Stone Related to the Sale of Her Dental Practice

14
15 63. In November and December of 2012, Deven Kumar was the Chief Financial
16 Officer (CFO) of Casino M8trix. David Carrillo was an Investigative Auditor with the
17 Complainant. He wrote two letters of request to Bob Lytle, who was Respondent’s designated
18 agent. Lytle referred the letters to Kumar. Carrillo sought information about the source of
19 income on Deborah Swallow’s 2011 federal income tax return. He noted that her Schedule E
20 included \$1,443,082 from Secure Stone, LLC, as royalty income.

21 64. A memo authorized by Carrillo dated September 10, 2013, to Carlos Soler, Senior
22 Management Auditor, states that Kumar told him verbally that “the \$1.4 million of royalty
23 income is from the sale of Deborah Swallow’s dental practice called Secure Stone, LLC,
24 incorporated under her name. Mrs. Swallow is a licensed dentist.” It is undisputed that this
25 assertion is untrue; Secure Stone did not receive the funds from the sale of a dental practice.

26 65. Carrillo did not testify; he is retired and no longer works for the Complainant. His
27 written statement is hearsay, offered for its truth. Robert Burge is a Senior Management Auditor.

28

1 He testified that he reviewed the memo, and he thinks that he discussed it with Carrillo. No
2 witness testified that Kumar made the statement. Further, Kumar was subsequently interviewed,
3 and denied making the statement. The Complainant's claim is also undercut by Roberts'
4 declaration. Although hearsay is admissible in administrative hearings, in order to support a
5 factual finding, it must be corroborated by direct evidence. (Gov. Code, section 11513, subd.
6 (d).) Accordingly, there is insufficient evidence to establish that Respondent's agent made a
7 misrepresentation to the Complainant concerning the \$1.4 million royalty income

8 66. Paragraph 46(c) was not proven.

9
10 Paragraph 46(d): Misrepresentation by an Agent of Respondent That Deborah Stone Had
11 No Interest in Casino M8trix and That Her Business Affairs Were Independent of
12 Respondent's

13
14 67. In a letter to the Complainant dated July 10, 2013, John H. Maloney, a Nevada
15 attorney, stated that his office represented Respondent "in general gaming matters." He went on
16 to state that the letter's purpose was "to provide additional background information regarding the
17 relationship between [Respondent] and Dr. Swallow." In pertinent part, Maloney wrote

18 Please note that Dr. Swallow's business affairs are independent of [Respondent].
19 Dr. Swallow files separate tax returns, maintains her own bank accounts, and the
20 money from her business ventures is her money. Likewise, [Respondent] files his
21 own tax returns, has his own banks accounts, and maintains his own businesses.
22 Dr. Swallow has no interests in Casino M8trix or Hollywood Park Casino. With
23 the exception of the fact that the two remain legally married,....

24
25 68. Although Maloney's representations are modified to some extent by his statement
26 that the couple is still legally married, his intention is clear. The goal of the letter is to inform and
27 persuade the Complainant that their business affairs are separate. This was untrue. Although it is
28

1 correct that they filed separate tax returns and owned separate bank accounts, Deborah Swallow
2 did have specific interests – not solely general community property interests – in Garden City and
3 related entities. These interests included a buy-sell agreement providing for Deborah Swallow to
4 replace Respondent upon his death or incapacity and through property held by the Swallow
5 Family Trust.

6 69. Maloney’s intent was clear; he stated it. The intent was to persuade the
7 Complainant that it was not necessary to look at Deborah Swallow’s financial information
8 because that couple’s interests were separate, regardless of their marital status. Respondent
9 testified that he was not aware of the letter until this litigation ensued, but did not deny that
10 Maloney was his attorney. Respondent is therefore responsible for the misrepresentations.

11 70. Paragraph 46(d) was proven.

12
13 Paragraph 46(e): Respondent Misrepresented That Certain Games And Software Licensed
14 By Dolchee And Profitable Casino Were Confidential And Proprietary And Had A
15 Combined Fair Market Value Exceeding \$90 Million.

16
17 71. Millions of dollars flowed from Garden City to Dolchee, an unlicensed entity,
18 pursuant to an agreement for the provision of games. Garden City paid Dolchee \$38,362,000
19 from 2009 to 2012 and more than \$47 million from 2009 to 2013. The heart of this allegation
20 concerns Respondent’s representation that Dolchee also owned gaming analytical software that
21 was used to operate Garden City, which justified the large payments. Respondent was the only
22 witness to testify that such software exists; his partner Lunardi, CFO Kumar, and accountant
23 Bellotti were unaware of such software, and testified that the payments were for games. Lunardi
24 testified that the money was for distributions. CFO Kumar also gave an interview statement that
25 the payments were distributions. Roberts’ hearsay declaration further supports this testimony by
26 saying he prepared no Dolchee software and that Dolchee only provided games. Therefore,
27 despite the ease of producing actual proof of the software’s existence, Respondent only provided
28

1 a portion of a PowerPoint presentation he had written and his own vague testimony. It was not
2 established that Dolchee provided gaming analytical software that was installed and utilized at
3 Garden City.

4 72. Furthermore, without the presence of analytical software, the game valuations
5 standing alone appear woefully inadequate to justify the large payments. In regards to the value
6 of the alleged Dolchee games, one game that Dolchee provided to two other competitors was
7 provided at \$1,200 per table per month. In addition, Garden City paid other game licensors only
8 \$665,848 over that same period of time. The agreements with Shuffle Master in 2011 and 2012
9 were roughly only \$157,920 and \$52,800 respectively, whereas the agreements for games from
10 Betweiser/TXB Industries amounted to only \$52,800 per year.

11 73. In short, Respondent's misrepresentation regarding the games and software
12 licensing between Garden City and Dolchee establishes Respondent's indifference to the GCA
13 and the requirement that all persons receiving profits or distributions be licensed as owners.
14 Respondent misrepresented the nature of the payments from Garden City to Dolchee to mask
15 distributions in violation of the GCA, the Penal Code and to avoid licensure.

16 74. Paragraph 46(e) was proven.
17

18 Paragraph 46(f): Respondent Misrepresented That The Payments Made By Garden City
19 To Profitable Casino Were Based Upon The Value To Garden City Of The Software
20 Provided By Profitable Casino, When The Payments Were In Reality Distributions.
21

22 75. With the help of coder Bryan Roberts, Respondent created software focused on
23 casino operations. The operating software was designed to keep Garden City running well. It
24 provided information to the managers to help them make decisions, such as whether to send
25 dealers home early, thereby reducing payroll costs. It also functioned as Garden City's HR
26 program, and was installed in its current form in 2008. The software was owned by Respondent's
27
28

1 company Profitable Casino, and leased to Garden City. Roberts' declaration corroborates that
2 software was prepared by him as part of Profitable Casino and provided to Garden City.

3 76. From 2010 to 2013, Garden City paid \$17,250,000 to Profitable Casino,
4 characterized as royalties. The same amount was paid during the same period to Potere,
5 Lunardi's company, characterized as consulting fees. Although the amount could vary,
6 Respondent and Lunardi agreed that each of their entities would be paid \$400,000 per month, or
7 \$4.8 million per year. They agreed that they were both working for the business and that they
8 would each receive an equal amount even though the work they did might not be equal in any
9 given month. There were no invoices prepared. The amount was determined by discussions
10 between Respondent and Lunardi, and with Kumar.

11 77. Respondent offered evidence and argued that the payments made by Garden City
12 to Profitable Casino were based to some extent upon the value of the software. However,
13 Respondent offered no credible and independent evidence that established the value of that
14 software. Indeed, neither Respondent nor Belotti testified as to the value of this software.
15 Lunardi additionally testified that the payments he and Respondent received were not based upon
16 the value of the services or royalties they provided to Garden City but were instead distributions.
17 Furthermore, CFO Kumar gave a statement that said the owners would take distributions.

18 78. In addition as to the value of the software, another cardroom owner gave testimony
19 that he paid \$4,370 monthly for Profitable Casino's software and less than \$2 million a year on
20 software for *five* cardrooms. Moreover, Garden City employed Bryan Roberts at a rate of
21 \$12,000 a month in part to maintain, update, and improve the software which was substantially
22 more than Profitable Casino paid him for the software. Garden City ultimately replaced the
23 Profitable Casino software for an amount similar to what it had been paying Roberts; far less than
24 the millions paid from 2009 to 2013.⁸

25
26
27 ⁸ It should be noted, that even if the software provided by Secure Stone to TV Associates was identical to
28 the software provided by Profitable Casino to Garden City, TV Associates paid far less than the amount Garden City
paid Profitable Casino over roughly the same period of time.

1 79. Ultimately, these payments from Garden City to Profitable Casino, Dolchee, and
2 Potere were related party transactions where Respondent was both the buyer and seller. Under
3 the GCA such valuations must be looked at with tremendous skepticism as Section 19850 states
4 in pertinent part that any person who receives “any percentage or share of the money or property
5 played, for keeping, running, or carrying on any controlled game in this state, shall apply for and
6 obtain from the commission, and shall thereafter maintain, a valid state gambling license...”

7 80. While the evidence established that some portion of the payments from Garden
8 City to Profitable Casino was based upon the value of the software, the majority of the payments
9 were clearly based upon the payment of distributions. Respondent misrepresented the nature of
10 the payments from Garden City to Profitable Casino to mask distributions to unlicensed entities in
11 violation of the GCA, the Penal Code and to avoid licensure.

12 81. Paragraph 46(f) was proven.

13
14 Paragraphs 46(g), (h) And (i): Respondent Submitted A Report To The Complainant That
15 Contained False And Misleading Information.

16
17 82. On April 18, 2013, Respondent’s application for a license to operate Hollywood
18 Park /Lax was on the Commission’s agenda. The Commission extended the temporary license,
19 and added conditions for licensure. One of the conditions was that Respondent provided to the
20 Complainant by August 31, 2013,

21
22 A valuation and analysis by an independent company of the commodities and/or
23 services provided as it relates to the gaming license agreements between Garden
24 City...and Dolchee, LLC and software agreements with Profitable Casino, LLC.
25 This analysis must be conducted by a CPA firm approved by the Bureau.

1 83. Respondent engaged the accounting firm of Grant Thornton, LLP to provide the
2 valuation. Grant Thornton issued a report (GT report) on August 29, 2013. It states its
3 understanding that Respondent

4
5 Owner of Casino M8trix...will use our valuation for compliance purposes with the
6 ...Commission, specifically to provide a calculation of potential fair values of the
7 Subject Intellectual Properties based on the information provided by the Company
8 and [Respondent].

9
10 84. A draft report was prepared first, and Complainant was provided a copy. During a
11 telephone meeting, Complainant staff expressed concerns about the accuracy of the draft report.
12 Their concerns did not result in significant changes and the GT report was issued and provided to
13 the Commission by Respondent.

14 85. The GT report estimates the fair market value of three entities as follows:
15 Profitable Casino Software \$41,800,000; Dolchee gaming analytical software \$29,500,000 and
16 Dolchee Games \$18,800,000. The total is \$90,100,000. The GT report identifies Respondent as
17 providing the information on which it based its analysis and valuation, and this was confirmed by
18 GT staff during a meeting concerning the draft report.

19 86. The GT Report also contains incorrect information concerning games provided by
20 Dolchee to Garden City. It states that the games Casino M8trix licenses from Dolchee include:
21 “Baccarat Gold™, DHP Gold™, Pai Gow Tiles™, Texas Hold’em Gold™ and Omaha Gold™,
22 (collectively the ‘Dolchee Games’).” This list is incorrect. The only games that had been
23 approved by the Complainant for play at Garden City at that time were Baccarat Gold, Double
24 Hand Poker Bonus Gold and variants of those games.

25 87. The GT Report also states
26
27
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1 According to Management, Casino M8trix pays Shuffle Master, a third party
2 games provider, an annual license fee of approximately \$44,400 to gain access to
3 the Paigo [sic] Poker and UTH games, which are then turned over to Dolchee LLC
4 for rebranding for Casino M8trix's use.

5
6 88. This statement is contradicted by Shuffle Master's licensing agreement, which
7 does not allow modifications without written consent. In addition, if a Shuffle Master game was
8 rebranded, the Complainant would have to approve it for play at Garden City, and there had been
9 no request to do so, let alone an approval issued.

10 89. Respondent contends that he is not responsible for any efforts in the GT Report,
11 but this contention is not persuasive. Respondent was the source of his agents' false information
12 which Grant Thornton then used to produce a report containing significant errors and calculations
13 of market value that lacked a factual basis. He knew the information they were using was faulty,
14 if not an outright fabrication, but made no corrections and submitted the GT Report to the
15 Commission with the intent to assuage any concerns the Commission may have had about Garden
16 City paying distributions to unlicensed entities in violation of the GCA, the Penal Code and to
17 avoid licensure.

18 90. Paragraphs 46(g), (h) and (i) were proven.

19
20 Paragraph 46(j): False Information to the Bureau

21
22 91. Paragraph 46(j) states:

23 In response to the Bureau's request that he provide copies of certain software
24 agreements for LAX, [Respondent] responded, in part, "no payments have been
25 made to Profitable Casino LLC for services provided to date." In truth, through
26 Secure Stone and LAX, [Respondent] paid monies to Bryan Roberts for services
27 provided for Hollywood Park.
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92. This allegation is unclear.

93. Paragraph 46(j) was not proven.

Paragraph 46(k): False Information to the Bureau Re Dolchee Software

94. Respondent informed the Complainant that Bryan Roberts developed the Dolchee software. This was false as discussed above regarding paragraph 46(e); there was no Dolchee software.

95. Paragraph 46(k) was proven.

Paragraph 46(l): False Information to the Bureau Re Purpose of Payments to Bryan Roberts

96. Paragraph 46(l) states:

In response to the Complainant’s request that he “state the reason that Profitable Casino LLC made payments on a monthly basis,” [Respondent] responded “Profitable Casino pays Bryan Roberts a fixed monthly development fee to maintain and upgrade software.” In truth, Profitable Casino compensated Mr. Roberts for his work on software provided to Team View Players Services and another card room. Garden City made monthly payments to Mr. Roberts. Those payments were for him to service, update, troubleshoot, and work on and improve the software provided under Profitable Casino’s contract with Garden City.

97. This allegation is unclear.

98. Paragraph 46(l) was not proven.

1 Paragraph 46(m): False Information to the Bureau Re Nature of Agreements with Bryan
2 Roberts

3
4 99. The Complainant requested Respondent provide complete contracts of all
5 agreements between himself, Profitable Casino or any other affiliated entity, and Bryan Roberts,
6 that were “in effect at any time between January 1, 2009, and the present.” Respondent replied
7 that Profitable Casino and Roberts entered into oral agreements. Complainant alleges that this
8 was an untrue answer because they “entered into a Software Service Agreement, which created a
9 profit-sharing arrangement between the two. [Respondent] failed to provide the Bureau with a
10 copy of that agreement.”

11 100. The agreement Complainant references was signed in June 2007 and, was for
12 320 hours of work. The scope of work involved the installation, training, and set-up of supported
13 software. The term was one year from the date on which the software was fully functional, with
14 automatic renewals for maintenance services, with some conditions. Respondent testified that the
15 software was fully installed in 2008; it would therefore have been in effect on January 1, 2009.
16 Therefore, it was established that Respondent provided false information to the Complainant by
17 his answer to this question.

18 101. Paragraph 46(m) was proven.

19
20 Paragraph 46(n): False Information to the Bureau Re Failure to List Dolchee and Airport
21 Fund As Swallow Trust Assets

22
23 102. On a date not established in the record, the Complainant asked that Respondent
24 provide a list of assets held by the Swallow Trust. A list was provided that did not include
25 Dolchee and Airport Fund. The Swallow Trust held a 50 percent share in both entities.

26 103. Question 34 of the July 2013 request asks Respondent to:
27
28

1 Please confirm that the only members of Airport Opportunity Fund LLC, are the
2 Lunardi Family Living Trust . . . and the Swallow Family Living Trust If this
3 is not correct please identify each of the members of the Airport Opportunity Fund
4 LLC.

5
6 104. Respondent answered that the trusts were the only members, and that “both own a
7 50% interest.”

8 105. It was therefore established that Respondent failed to include the two entities on a
9 list provided to the Complainant, but he did identify Airport Fund as held by the trust in another
10 disclosure.

11 106. Paragraph 46(n) was proven in part.
12

13 **THIRD CAUSE: FAILURE TO PROVIDE INFORMATION AND DOCUMENTATION**
14 **REQUESTED BY THE CHIEF**
15

16 107. Paragraphs 47(a) through (f) concern Respondent’s answers to the July 2013
17 request for information submitted in connection with his Hollywood Park/LAX application.
18 Complainant alleges that Respondent failed to respond completely to the requests, including by
19 failing to provide the documentation requested. Paragraphs 47(g) through (i) concern matters
20 discussed previously in the section regarding the Third Cause of Action. Complainant alleges
21 that in each instance, Respondent failed to provide information and documentation requested.
22

23 Paragraph 47(a)

24 108. Request No. 32 reads:
25

26 Please state whether the monies shown on the closing statement of January 20,
27 2010, as provided by Potere LLC, Profitable Casino LLC, and Dolchee LLC were
28

1 loans, gifts, or investments or capital contributions. If the monies provided were
2 anything other than gifts, please provide all documents evidencing or relation to
3 the transactions.

4
5 109. Respondent replied:

6
7 The monies shown on the closing statement from Potere LLC, Dolchee LLC, &
8 Profitable Casino LLC are individual draws from the owners used as equity down
9 payment towards the purchase of the land by Airport Parkway Two LLC as
10 attested by ownership.

11
12 110. The answer does not directly respond to the question, although it does describe to
13 some extent the source of the funds. It does not indicate the funds were gifts, however and no
14 documentation was provided.

15 111. Paragraph 47(a) was proven.

16
17 Paragraph 47(b)

18
19 112. Request No. 30 reads:

20 For each loan, including loans made by commercial lenders, made in connection
21 with the acquisition, construction, or improvement of the 1887 Matrix Boulevard
22 project, please describe the collateral or security for the loan. If any collateral is
23 personal property, please provide a copy of each security agreement and financing
24 statement relating to the collateral.

25
26 113. Respondent replied:

1 Please see attachment #30 for loans provided by Comerica Bank for the Casino
2 M8trix Project.

3
4 114. Attachment #30 contained certain loan documents from Comerica Bank.
5 Respondent did not provide, however, the security agreement or stock pledge agreement that
6 existed in connection with the loan.

7 115. Paragraph 47(b) was proven.

8
9 Paragraph 47(c)

10
11 116. Request No. 35 reads:

12 Were any loans entered into in connection with the acquisition, construction or
13 improvement of the 1887 Matrix Boulevard project collateralized with or secured
14 by any assets or property owned or held by Garden City, Inc.? If so, please
15 provide copies of all documents relating to the loans including, by way of
16 example and not limitation, all security agreements, financing statements,
17 guaranties, and promissory notes entered into, provided, or made by Garden City,
18 Inc.

19
20 117. Respondent replied: "Please see attachment #30 for all loan and collateralization of
21 the project." As set forth above, the loan documents provided by Respondent were incomplete.
22 Respondent did not provide a copy of the security agreement that Garden City executed.

23 118. Paragraph 47(c) was proven.

24
25 Paragraph 47(d)

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27 119. Request No. 69 reads:
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For each calendar year from January 1, 2009, through December 31, 2012, please identify each person, entity, or company who provided Garden City, Inc. with a licensed game. For each person, entity, or company identified, please state (1) the name of the licensed game provided and GEGA⁹ number, and (2) the total licensing fees paid or other payments made for the game for the year.

120. Respondent replied: “Please see attachment #69 for payment schedule and invoice/agreements from Betwiser, TXB Industries, and Shufflemaster[sic].” The information provided did not respond to the request. The GEGA numbers were not provided.

121. Paragraph 47(d) was proven.

Paragraph 47(e)

122. Request No. 70 reads:
For each game licensed to Garden City, Inc. by Dolchee LLC, please state (1) the name of the game, (2) the GEGA number for the game, (3) the date on which it was approved by the State of California for play, (4) the date on which it was first played on the premises of Garden City, Inc., (5) the patent number, (6) the date on which a patent application was first made, and (7) the date on which a patent was issued.

123. Respondent replied: “Please see attachment #70 for patent issuance.” The only information Respondent provided was the patent information for Baccarat Gold.

124. Paragraph 47(e) was proven.

⁹ GEGA is the acronym for gambling-established game approval number.

1 Paragraph 47(f)

2
3 125. Request no. 92 reads:

4 Please state the date, amount, payor, and recipient of each payment received,
5 directly or indirectly, (1) by [Respondent] or any of his affiliates or immediate
6 family (2) from any Third Party Provider of Proposition Player Services or any
7 person or entity affiliated with a Third Party Provider of Proposition Player
8 Services or any person or entity affiliated with a Third Party Provider of
9 Proposition Player Services. For each payment, please state the reason for the
10 payment and provide the agreement or invoice underlying the payment.
11

12 126. Respondent replied: "Please see attachment #92 for payments made." The
13 attachment breaks out the amounts paid by Team View to Secure Stone/Deborah Swallow over a
14 three-year span from 2011 to 2013. The total amount is \$1,442,839. No other information was
15 provided.

16 127. Paragraph 47(f) was proven.
17

18 Paragraph 47(g)

19
20 128. This allegation concerns the same facts as discussed in Findings 52 through 57: the
21 representation by Respondent that he had a written accountant's opinion. The allegation states:

22
23 The Bureau requested [Respondent] to provide the written accountant's opinion
24 that [Respondent] had represented to the Commission existed. Despite multiple
25 requests, he did not provide the requested written opinion. Ultimately,
26 [Respondent] advised that the written opinion did not exist as previously
27
28

1 represented and, in effect, confirmed that he had provided false or misleading
2 information to both the Bureau and the Commission.

3
4 129. It appears that Complainant alleged the failure to provide a document that does not
5 exist. Additionally, as discussed above, it is not clear that Respondent understood what was
6 meant by a qualified or unqualified written opinion.

7 130. Paragraph 47(g) was not proven.

8
9 Paragraph 47(h)

10
11 131. This allegation concerns the same facts discussed in Findings 82 through 90: the
12 submission of the GT Report to the Commission by Respondent. The allegation states:

13
14 The Bureau requested [Respondent] to provide an accountant's fair market
15 determination of certain transactions with affiliates. The Bureau specifically
16 requested a valuation based upon what a willing buyer or user would pay to a
17 willing seller or vendor dealing at arms' length when neither was acting under
18 compulsion to enter into the subject transactions. [Respondent] failed to provide
19 the requested fair market valuation. Instead, as alleged in paragraph 46 above, he
20 caused the GT Report, which is false and misleading, to be provided to the
21 Bureau.

22
23 132. As stated in Findings 82-90, it was proven that the submission of the GT Report to
24 the Commission constituted a false representation by Respondent. The failure to provide a true
25 and correct response to the Complainant also constitutes a failure to respond to the request as a
26 false representation is akin to no response.

27 133. Paragraph 47(h) was proven.

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Paragraph 47(i)

134. This allegation concerns the same facts discussed in Findings 98-100: Respondent’s false statement to the Complainant concerning his agreement with Bryan Roberts. Respondent’s false answer that there were oral agreements was also a failure to provide information. There was a written agreement that Respondent failed to produce.

135. Paragraph 47(i) was proven.

136. The short turn-around time of approximately three weeks is accepted as a factor mitigating Respondent’s failure to provide complete responses to the requests contained in the third cause of action. There were 100 requests and over 500 pages were supplied by Respondent. It is also noted that there was no evidence of a dialog between the Complainant and Respondent concerning answers that the Complainant did not feel were complete.

FOURTH CAUSE: CONDUCT DEMONSTRATING LACK OF QUALIFICATION FOR LICENSURE

Paragraph 48: Acts and Omissions Contained in the First, Second and Third Causes of Action

137. As discussed in Findings 46-51, 57, 68-91, 99-127, and 131-135, Respondent engaged in conduct demonstrating a lack of qualification for licensure.

138. Paragraph 48 was proven.

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1 Paragraph 48(a): Providing False or Misleading Information To The
2 City Of San Jose
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4 139. Licensure by the City of San Jose (City) is required for the operation of a card
5 room in its jurisdiction. Complainant alleges that Respondent repeatedly provided false or
6 misleading information to the City of San Jose or impeded its licensing investigations. Among
7 other things, [Respondent] led the City of San Jose’s investigators to believe that he, not the
8 Swallow Trust, was a member of Dolchee and Airport Fund.

9 140. Richard Teng is the Gaming Administrator for City. Teng hired Michael Conroy
10 to investigate Respondent on City’s behalf. Complainant contends that Respondent, or his agents,
11 told Teng and Conroy that he and Lunardi were the owners of Dolchee, when the true owners
12 were the Swallow Trust and Lunardi. It appears that Complainant asserts that this
13 misrepresentation was made through a licensure application Respondent had submitted to City.

14 141. In 2012, Respondent completed and submitted an application to City for a
15 Landowner License.¹⁰ At question four, the application asks the applicant to list business entities
16 in which the applicant or his or her spouse has held an ownership interest of five percent or more
17 in the past five years. Respondent wrote “provided info on separate attachment.” The attachment
18 names Dolchee as a business interest. The ownership is listed as 50 percent each for Respondent
19 and Lunardi. It also states that Respondent was “sole owner to Jan 2009 then Lunardi became 50
20 percent owner with no cash infusion.”

21 142. The information in the application concerning Dolchee’s ownership was correct.
22 Dolchee was originally owned 50 percent each by the Lunardi Trust and the Swallow Trust. In
23 2011, however, ownership was changed from the Swallow Trust to Respondent.

24 143. It is further alleged that Respondent directed Roberts not to make full disclosures
25 to City, gave him guidance on how to be evasive, and told him to make false statements. As set
26

27 ¹⁰ A Landowner License is issued by City to a person or entity who holds title to the land on which a
28 cardroom is built.

1 out in Findings 30-32, Roberts' declaration was accorded less evidentiary weight, and there was
2 no non-hearsay evidence admitted in support. In addition, Respondent denied the allegations.

3 144. Paragraph 48(a) was not proven.
4

5 Paragraph 48(b): Providing False or Misleading Information to the Commission
6

7 145. First, Complainant alleges that Respondent represented to the Commission that an
8 accounting firm had provided the pricing model that was used to determine what to charge
9 Garden City for Profitable Casino's software and Dolchee's games. Respondent's representation
10 was false as both Belotti and Grant Thornton obtained their information from Respondent.

11 146. Second, to the extent this allegation concerns the certified public accountant
12 opinion discussed in Findings 52 through 57, it was not proven.

13 147. Third, Complainant alleges that Respondent, through Bellotti, made false
14 statements concerning Garden City profits in 2008 and 2009, by stating that profits increased by
15 \$13 million during that time period. The evidence to support this allegation was not identified or
16 addressed in the closing brief.

17 148. Finally, Complainant alleges that Respondent
18

19 represented to the Commission that he had documents evidencing certain
20 consulting services provided by Casino M8trix, Inc., to Dolchee, as well as a
21 contract for payment of approximately \$6 million by Dolchee for those services.
22 Despite his agreeing to do so, [Respondent] never provided such documents or
23 contract
24

25 149. This allegation was not proven.
26
27
28

1 150. Complainant argues in his closing brief that at a Commission meeting on April 8,
2 2013, Respondent falsely stated that Dolchee owned a patented card game. This allegation is not
3 contained in the ASI.

4 151. Paragraph 48(b) was proven in part.

5
6 Paragraph 48(c): Disregard for Prudent Business Practices

7
8 152. Complainant alleges that Respondent:
9 engaged in patterns and practices that demonstrate a substantial disregard for
10 prudent and usual business controls and oversight. His patterns and practices
11 included creating layers of entities and self-dealing. His patterns and practices
12 also included financial dealings involving millions of dollars that were not
13 documented. Such undocumented transactions include, among others and without
14 limitation, paying consulting fees without written consulting agreements,
15 advancing or providing monies for the benefit of affiliates without notes or similar
16 written agreements, paying out millions of dollars without invoices, engaging in
17 transactions with related parties at unfair and inflated prices, and reporting
18 inaccurate and incomplete information to governmental agencies.

19
20 153. Each and every one of these practices was established. The standard for “prudent
21 and usual business” was not established directly through testimony. However, the GCA under
22 Section 19801, 19823, 19850, 19852, and 19857, along with Penal Code 337j provides relevant
23 criteria upon which to view Respondent’s conduct as imprudent and unusual in regards to public
24 health, safety, and welfare. The meaning and standards of these sections are clear on their face.

25 154. There was ample evidence presented which demonstrated the obfuscation of
26 Garden City’s finances in relation to Profitable Casino and Dolchee, as well as Respondent’s
27 business dealings with Secure Stone and ultimately TV Services. The failure to document
28

1 transactions in writing, the dissembling of financial relationships, and the lies regarding related
2 party transactions are all imprudent and unusual for closely regulated and quintessential cash
3 businesses such as gambling enterprises. Indeed, the simple fact that the record established that
4 these payments were distributions, and Respondent was unable to provide anything clearly and
5 definitively to the contrary is itself an “imprudent and unusual business” practice given Section
6 19850, 19852, and Penal Code 337j. Ultimately, each and every one of these practices
7 demonstrates “conduct that is inimical to the public health, safety, or welfare” and constitutes
8 activities and practices that “pose a threat to the public interest” of California.

9 155. Paragraph 48(c) was proven.

10
11 Paragraph 48(d): Benefitted From San Jose Municipal Code Violations

12
13 156. Complainant alleged that Respondent “aided, facilitated, turned a blind eye to, or
14 benefited from acts and omissions that violated San Jose Municipal Code, title 16.” This
15 allegation is vague, unclear, and was not addressed in Complainant’s closing brief.

16 157. Paragraph 48(d) was not proven.

17
18 Paragraph 48(e): Benefitted From Unlicensed Play

19
20 158. This allegation repeats allegations previously made and discussed (Findings 46
21 through 51).

22 159. Paragraph 48(e) was not proven.

23
24 Paragraph 48(f): Requested Roberts to Change Data

25
26 160. This allegation is vague and unclear.

27 161. Paragraph 48(f) was not proven.

28

1 FIFTH CAUSE: DISQUALIFIED FOR LICENSURE

2
3 Paragraph 49: Conduct Inimical To the Public

4
5 162. The facts set forth in Findings 46-51, 67-90, 99-127, 131-135, 137-138, 145, and
6 152-155 demonstrate that Respondent committed violations of the GCA, Penal Code, and
7 conducted operations in a manner that was inimical to the public health, safety, and welfare.

8 163. Paragraph 49 was proven.

9
10 *Materiality*

11 164. The GCA places a mandate upon the Commission in reviewing and overseeing
12 applicants, licensees, and gaming operations. Everyone that receives a percentage or share of
13 revenue from a cardroom must be licensed, and where that person is a non-natural person, all
14 constituent natural persons connected to the owner must be licensed and endorsed. Furthermore,
15 receiving a percentage or share of revenue from a cardroom without being licensed is a
16 misdemeanor under the Penal Code.

17 165. The process of reviewing applicants, licensees, and gaming operations requires full
18 and true disclosure of business practices, relationships, and personal finances. Accurate
19 knowledge of these matters assists in the assessment of honesty and integrity, and of possible
20 threats to the effective regulation of controlled gambling. The misrepresentations and
21 withholding of information by Respondent, as well as the actions taken to conceal unlicensed
22 entities, are critically important to the Commission's decision making process and are thus
23 material to the decision of whether Respondent is suitable for licensure.¹¹ This is true regardless
24 of whether the information was related to an application or license addressed in this matter, or a
25

26
27 ¹¹ Respondent's arguments that there was no standard for what a reasonable regulator would want to know
28 for the purposes of "materiality" are unpersuasive. As demonstrated by the plain reading of the GCA, the
Commission is granted broad discretion and responsibility in determining the suitability of applicants.

1 separate application or disciplinary matter. This standard is apparent from a plain reading of the
2 GCA.

3
4 *Respondent's evidence*

5 166. Richard Delarosa has known Respondent since 2011. Delarosa now lives in Las
6 Vegas, where he works in governmental relations and lobbying. He met Respondent when
7 Lunardi and Respondent hired him to lobby on behalf of Garden City. For approximately three
8 years, he worked to develop relationships with City Council members and key staff to further the
9 goal of making the City an easier place for the casino to do business. Delarosa described
10 Respondent as a person with high character. Although they did a lot of political planning,
11 Delarosa believes that Respondent would have expected him to do the right thing legally. He
12 found Respondent enjoyable to work with and very truthful.

13 167. Martha Copra has known Respondent since 1979 or 1980. They worked together
14 at a few different companies and are friends. Copra does graphic design and marketing work.
15 She has worked at Casino M8trix since 2007, and holds a license issued by City. Copra describes
16 Respondent as a great boss who is ambitious, smart, creative, forward thinking, and appreciative
17 of loyalty and friendships. Respondent has never asked her to do anything unethical, and she
18 trusts him. Copra opined that Respondent is an honest person.

19 168. In addition to these two witnesses, Respondent's accountant, Jerome Bellotti,
20 opined that he is a person of honesty, integrity, and good character. He has known Respondent
21 since 2007, and Respondent has never attempted to use any unusual costs or expenses or asked
22 him to lie in connection with tax matters

23 ///

24 ///

25 ///

Legal Conclusions

MOTION TO DISMISS

Jurisdiction

1. In his closing brief before the ALJ, Respondent contended that this matter should be dismissed for a variety of reasons. Respondent reiterated this request to “confirm [Respondent’s] continued licensure” in the written argument following the Commission’s Order of Nonadoption. Respondent made a number of arguments collectively and separately including, statutory pre-emption, due process violations, errors of law, and insufficient evidence.

2. In regards to statutory pre-emption, Respondent argues that the Commission lacked jurisdiction to proceed on a denial of license renewal due to passage of time, and that this renewal is with prejudice to the accusation. He cites Section 19876, subdivision (b), which establishes time periods for Commission action on renewal applications. Furthermore, respondent references subdivision (c), which authorizes a license extension of up to 180 days in order to allow the Commission to act. He concludes that as Respondent’s case has taken in excess of those periods, his license was renewed by operation of law. Respondent’s arguments lack merit.

3. It is the Commission’s duty to determine suitability for licensure of all applicants and licensees as reflected throughout the GCA. Serious concerns existed regarding Respondent’s suitability at the time the renewal application was considered at the May 29, 2014 meeting including the then filed accusation. Rather than take action against Respondent’s license in any fashion that could be considered a denial of due process, the Commission stayed the license expiration, and referred the matter to an APA evidentiary hearing consistent with Section 19825.¹² These hearings occur through the Office of Administrative Hearings, with separate statutory and regulatory rules which are beyond the control of the Commission. This includes the critical issue of timing of the hearing. Respondent is not persuasive that any act or delay in acting

¹² It is not hard to imagine that if the Commission had for instance denied Respondent’s license or even placed conditions or limitations at the Bagley-Keene Open Meeting without an evidentiary hearing, he would now be arguing a violation of due process and a failure to follow the controlling evidentiary hearing statutes. The Commission considers the due process and statutory rights of applicant’s as a paramount concern.

1 caused the Commission to lose jurisdiction to decide whether Respondent’s license should be
2 renewed or disciplined as Respondent’s argument would effectively render Section 19825
3 surplusage.

4 4. In addition, Respondent asserts that the alleged automatic extension of the license
5 would be with prejudice to the accusation. Respondent cites no authority for this proposition.¹³
6 This argument makes little sense as an accusation can be brought at any point in time during the
7 term of a license. Even if assuming *arguendo* that Respondent’s license was renewed, the
8 Complainant would still be authorized to present the accusation at any point in time under Section
9 19930 during the term of then renewed license.

10
11 *Due Process Violations*

12 5. Respondent contends a number of due process violations. First, respondent asserts
13 that the Complainant’s actions surrounding its attempt to secure testimony from Bryan Roberts
14 resulted in a denial of due process under the Administrative Adjudication Bill of Rights.
15 Specifically, he points to the obligation of government attorneys in criminal matters to act with a
16 high degree of integrity and impartiality. Respondent also asserts that by allowing the
17 Complainant to essentially “purchase” the testimony of Bryan Roberts, the Commission would be
18 buying the Complainant’s conduct. Respondent also argues that the Complainant received a
19 financial benefit from the way in which it obtained Roberts’ declaration. These arguments were
20 not persuasive.

21 6. As reflected in Findings 30-32, the Roberts declaration was treated as a credibility
22 issue, and resolved in favor of Respondent in that the testimony was devalued, but not outright
23 rejected. The purpose of the emergency order which Respondent asserts led to Roberts’ hardship
24 was the “immediate preservation of the public peace, health, safety, or general welfare.” (Section
25 19931(a)) It would be an inconsistent reading of the GCA to allow the Complainant to act in the

26 ¹³ Respondent makes a reference to CCR Section 12035 indicating that the Commission can affirmatively
27 issue an interim renewal license which is without prejudice to the underlying license application. This Section is
28 inapplicable as it was enacted after the referral of Respondent’s application, and, moreover, the Section was meant to
confirm in regulation the practice of staying a license’s expiration during the pendency of an evidentiary hearing.

1 public interest by stopping the flow of money from an operation it suspected was in violation of
2 the GCA, but then turn around and deny the Commission the ability to fulfill its mandate under
3 Section 19801, by precluding access to information, including Roberts' declaration, where the
4 acquisition of this information was adversely affected by the emergency order.

5 7. Furthermore, Respondent's argument that the Commission somehow buys the
6 Complainant's alleged misconduct is spurious. The Complainant is a separate agency under the
7 GCA, as is the Indian and Gaming Law Section in the Attorney General's Office, Department of
8 Justice for which Mr. Torngren served. The Commission has no control or supervisory authority
9 in regards to these entities and cannot "buy" their conduct. Moreover, even if arguendo the
10 alleged conduct was established, Respondent received notice and an opportunity to respond to the
11 facts and argument presented in the APA hearing, the Commission's Order of Nonadoption, and
12 reply argument. Lastly, even if somehow the Commission could "disqualify" the Complainant, it
13 would not change the fact that there is a pending application concerning Respondent's renewal
14 license.

15 8. Respondent next argues a due process violation because the Complainant ordered
16 distributions from Garden City to Respondent withheld during the pendency of this action. As
17 stated above, the Complainant has statutory authority to enact emergency orders to protect the
18 public interest. This did not deny Respondent an opportunity to contest the allegations as
19 reflected by this proceeding. Therefore, this argument lacked authority and was also
20 unpersuasive.

21 9. Respondent next argues a due process violation based upon alleged impermissible
22 ex parte communications between Complainant and the Commission. The information identified
23 by Respondent does not establish impermissible communication upon the merits of an application
24 or accusation and the supporting argument was unpersuasive. Furthermore, the recipients of these
25 communications, (Commissioner Schuetz and Commission Staff Counsel Paras Modha) are no
26 longer with the Commission and have had no involvement in the consideration of the proposed
27 decision or final decision.
28

1 10. Respondent argues a lack of required notice. Section 19868, subdivision (b),
2 requires the Bureau Chief to meet with an applicant before recommending denial. Respondent
3 received notice of the Complainant’s concerns and actions through representatives. Although it
4 was after the recommendation of denial was made, Respondent’s attorney attended a meeting
5 with the Complainant. It was not established that the absence of a meeting between the Bureau
6 Chief and Respondent violated his due process rights. Moreover, the Complainant only makes
7 recommendations on renewal applications; the Commission makes determinations of suitability
8 and Respondent had an opportunity at the May 29, 2014 meeting, the APA hearing, and during
9 argument following the Commission’s Order of Nonadoption to respond to any allegations.

10 11. Respondent now argues that to apply the burden of proof on his license renewal
11 application would deny him due process. As discussed above, Section 19856 places the burden
12 on Respondent to prove he is suitable, and Section 19930 places it upon the Complainant the
13 burden to prove Respondent’s license should be revoked. The Commission cannot simply forego
14 the statute in reviewing Respondent’s renewal application based on the Complainant and ALJ’s
15 error. Ultimately however, as discussed above, even if the Complainant had the burden of proof
16 for both matters consolidated in the ASI; there was no due process violation as the Complainant
17 met that higher burden.

18 12. Respondent also argues that allowing the Complainant to amend its pleadings to
19 seek penalties would violate due process. However, the ASI in its prayer requests the
20 Commission “[t]ak[e] such other and further action as the Commission may deem appropriate.”
21 The accusation was additionally brought under Section 19930 which states under subdivision (c),
22 “[i]n addition to any action that the commission may take against a license, permit, finding of
23 suitability, or approval, the commission may also require the payment of fines or penalties.”
24 Lastly, the ASI referenced Commission disciplinary regulations under CCR Section 12554 which
25 state under subdivision (d)(5) that the Commission may “[i]mpose any fine or monetary penalty
26 consistent with Business and Professions Code sections 19930, subdivision (c).” As a result, the
27
28

1 Complainant does not need to amend the ASI, and Respondent received notice that, in addition to
2 the relief the Complainant sought, the Commission retained the discretion to enact penalties.

3 13. Therefore, Respondent received notice of all of the charges and matters raised in
4 the Bureau Report, the initial accusation, the ASI, the Commission’s Order of Nonadoption and
5 the corresponding briefing. Respondent received and exercise all of the rights he is entitled to
6 receive in his evidentiary hearing on the application for renewal of his state gambling license and
7 as regards to the ASI. He received notice, discovery, a full hearing by a neutral decision-maker,
8 notice of Commission questions in an Order of Nonadoption, and supplemental argument before
9 the Commission. No violation of Respondent’s due process rights was established.

10
11 ORDER ON MOTION TO DISMISS

12
13 14. Respondent’s motion to dismiss is denied.¹⁴

14
15 FIRST CAUSE: PROHIBITED INTEREST IN THE FUNDS WAGERED, LOST OR WON BY
16 A THIRD-PARTY PROVIDER

17
18 15. Section 19805 contains definitions that apply to the GCA. Respondent’s status as
19 a shareholder in Garden City means that he is a “licensed gambling enterprise” (Section 19805,
20 sub. (m)), also called “the house” (Section 19805, sub. (t)).

21 16. Section 19984, subdivision (a), prohibits a gambling enterprise from having “any
22 interest, whether direct or indirect, in funds wagered, lost, or won.” Complainant did not
23 establish that Respondent had a direct or indirect interest in the funds wagered lost or won by TV
24 Services as set forth in Finding 46 through 51.

25
26 _____
27 ¹⁴ It should further be noted that a “motion to dismiss” in regards to the ASI as it pertains to the renewal of
28 Respondent’s application is ill founded. Respondent filed an application for renewal subject to the Commission’s
authority under Section 19876. Any dismissal of the ASI in this regard would simply place Respondent’s application
back before the Commission for consideration; it would not be a de facto approval.

1 17. However, cause for license denial and revocation was established in regards to
2 Respondent's conduct in relation to Secure Stone and thereby TV Services. While concealing a
3 financial relationship does not inherently violate Section 19984's prohibition (notwithstanding
4 other GCA provisions), the concealment from the Complainant and the mischaracterization of his
5 involvement with Secure Stone raises questions about his character and honesty as well as the
6 effect his licensure would have on the integrity of gaming in California as more thoroughly
7 discussed below. Moreover, this conduct is consistent with a larger pattern of willful
8 noncompliance with the GCA. Simply put, Respondent appears to believe the GCA does not
9 apply to him and that he is free to act as he sees fit unless and until the Complainant,
10 Commission, and other regulatory entities are able to root out his noncompliance.

11
12 **SECOND CAUSE: PROVIDING FALSE OR MISLEADING INFORMATION TO THE**
13 **BUREAU**

14
15 18. Section 19859, subdivision (b), provides that applicants are disqualified from
16 licensure by supplying information about a material fact that is untrue or misleading. Cause for
17 license revocation and denial of licensure exists pursuant to this provision by reason of the facts
18 set forth in Findings 67-90, 99-106, and 164-165.¹⁵

19 19. Furthermore, Respondent's egregious conduct in fabricating a network of self-
20 dealing and unlicensed affiliates including Dolchee, Profitable Casino, and Secure Stone
21 undermines the public health, safety, and welfare. As was established above, Respondent, by
22 providing inaccurate valuation information to Belotti and Grant Thornton regarding Profitable
23 Casino, Dolchee and Potere, attempted to hide distributions from Garden City's books under the

24 ¹⁵ Respondent argues that the Complainant does not follow Commission regulation Section 12568(c) in that
25 it says a license "shall be subject" to revocation, implying a permissive consideration, as opposed to the Commission
26 shall revoke a license which is a mandatory consideration. This is an incorrect view of Commission regulations. If
27 the Commission finds merit to any of the basis under 12568(c)(1)-(3), which are mandatory grounds for the denial of
28 an initial or renewal application, they concurrently would be a basis for discipline. To allow otherwise would be an
incongruous reading of the regulation and statute. The GCA and the Commission's regulation are clear that
Respondent's license must be revoked if the facts establish a listed basis and moreover, the Commission determines
revocation is an appropriate penalty.

1 guise of inflated licensing, royalty, and service agreements. Beyond limited amounts to Dolchee
2 and Profitable Casino; the millions that flowed to these unlicensed entities were distributions.

3 20. The GCA lays out strict licensing requirements for owners of cardrooms under
4 Section 19850, and for non-natural persons under Section 19852. Any entity that receives a
5 percentage or share of revenue must be licensed. Furthermore, as referenced by the Complainant
6 in its briefing, Penal Section 337j prohibits the sharing of gambling profits with unlicensed
7 entities. Such profit sharing with unlicensed entities is a misdemeanor crime. As the
8 Complainant did not plead a violation of Penal Code Section 337j separately in the ASI as a basis
9 for denial or revocation, the Commission does not do so now. However, Respondent's conduct in
10 providing false and misleading information to the Complainant establishes conduct consistent
11 with an effort to violate this Penal Code section.

12
13 **THIRD CAUSE: FAILURE TO PROVIDE INFORMATION AND DOCUMENTATION**
14 **REQUESTED BY THE CHIEF**

15
16 21. Section 19859, subdivision (b), provides that applicants are disqualified from
17 licensure if they do not provide information requested or fail to reveal facts material to
18 qualification. Cause for license revocation and denial of licensure exists pursuant to this provision
19 by reason of the facts set forth in Findings 107-127, 131-135, and 164-165.

20 22. As established above, Respondent's efforts to avoid full and complete disclosure
21 of his finances, relationships, and agreements reflects an intent to mask prohibited transactions
22 with unlicensed entities and confounds the purpose of the GCA.

23
24 **FOURTH CAUSE: UNQUALIFIED FOR LICENSURE**

25
26 23. Section 19857, subdivisions (a) and (b), provides two independent criteria upon
27 which the Commission views an application. Subdivision (a) requires the Commission to look at
28

1 the applicant's character, honesty and integrity. Subdivision (b) requires the Commission be
2 assured that the applicant's activities, habits, and associations do not pose a threat to the state or
3 the effective regulation of controlled gambling.

4 24. Cause for license revocation and denial of licensure exists under both of these
5 subdivisions by reason of the facts set forth above in Findings 46-51, 67-90, 99-127, 131-135,
6 and 164-165.

7
8 **FIFTH CAUSE: DISQUALIFIED FOR LICENSURE**

9
10 25. Section 19823, subdivision (a), provides that the Commission is responsible for
11 "assuring that licenses . . . are not issued to, or held by, persons whose operations are conducted
12 in a manner that is inimical to the public health, safety, or welfare." The matters set forth in
13 Findings 46-51, 67-90, 99-127, 131-135, 137-138, 145, 152-155, and 162-165 provide cause to
14 conclude that Respondent is disqualified for licensure pursuant to this requirement.

15
16 *Analysis*

17 26. The gambling industry in California is very highly regulated. It was the desire of
18 the legislature in allowing forms of gambling to do everything it could through a statutory scheme
19 to keep the business fair, honest, and not become a vehicle for the operation of criminal activity.
20 As referenced above, under Section 19850 and 19852, every person that receives a percentage or
21 share of the revenue from a cardroom must apply for and obtain a license before engaging in that
22 activity. This is to ensure that criminals do not receive the profits from card rooms.

23 27. The Commission under the GCA is vested with many responsibilities including
24 but not limited to section 19823, subdivision (a)(1):

25 Assuring that licenses . . . are not issued to, or held by, unqualified or disqualified
26 persons, or by persons whose operations are conducted in a manner that is inimical
27 to the public health, safety, or welfare.

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28. In addition, section 19857 sets out certain requirements for licensure. Pursuant to subdivision (a), the Commission must be satisfied that proposed licensees are persons “of good character, honesty, and integrity.” Pursuant to subdivision (b), the Commission must be satisfied that proposed licensees are persons,

whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state, or to the effective regulation and control of 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.

29. Lastly, Section 19859(b) mandates that the Commission deny a license where there is a:

Failure of the applicant to provide information, documentation, and assurances required by this 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 as to a material fact pertaining to the qualification criteria.

30. Before the Commission is a licensee who took advantage of opportunities created by the GCA to invest in and operate a cardroom. The business quickly experienced considerable financial success. But instead of paying close attention to the legal requirements to operate, and doing his best to comply, Respondent took deliberate steps in contravention of the law. The most blatant of these was Respondent’s creation of four separate LLCs, including Dolchee, Profitable Casino, Potere, and Secure Stone, LLC.

31. In regards to the first three LLCs, the record establishes that they were created to funnel distributions from Garden City to LLCs in Nevada which does not have an income tax. The Commission does not pass judgment on whether this practice is an inherent violation of the

1 GCA. However, when an applicant and owner misrepresents the nature of his cardroom's
2 financial relationships, makes distributions to unlicensed entities, and misrepresents
3 corresponding material facts, he obstructs the statutory oversight of both the Complainant and
4 Commission and confounds the very purposes of the GCA. Respondent's conduct collectively
5 was a clear violation of the GCA.

6 32. Respondent's relationship to Secure Stone LLC further demonstrates an
7 indifference to the effective regulation of cardrooms. While it was not established in the record
8 presented that Respondent had a direct or indirect interest in TV Services' funds wagered, lost, or
9 won, his conduct in contracting with TV Services, TV Associates through Tim Gustin and the
10 creation of an LLC owned by his wife but ostensibly run by him demonstrates an intent to subvert
11 the purposes of the GCA.

12 33. Furthermore, Respondent's failure to honestly communicate with regulators about
13 how his agents derived their information, including specifically, his provision of the misleading
14 and flawed Grant Thornton report, was a very significant violation. It was the opposite of an
15 independent report; the information given to Grant Thornton was provided by Respondent, and it
16 contained many errors, half-truths, and omissions.

17 34. While many of the specific allegations in the ASI were not substantiated by the
18 evidence, the record is more than sufficient to support the removal of Respondent as a GCA
19 licensee in California. Respondent failed to establish his suitability. (Section 19856(a))
20 Respondent showed a lack of good character, honesty, and integrity by his violations. (Section
21 19857(a)) License revocation and denial of Respondent's pending application is also required for
22 the following reasons:

- 23 a. The protection of the public interest. (Section 19857(b));
- 24 b. The protection of effective regulation and control of controlled gambling. (Section
25 19857(b));
- 26 c. The mitigation of unsuitable and illegal practices in the conduct of controlled
27 gambling. (Section 19857(b));

28

- 1 d. The mitigation of unsuitable and illegal practices in the carrying on of the business
2 and financial arrangements related to controlled gambling (Section 19857(b));
3 e. Failure to established eligibility and qualification for licensure ((Section
4 19859(a));
5 f. Failure to provide information material to qualification. ((Section 19859(b)); and
6 g. Providing untrue or misleading information related to qualification criteria.
7 (Section 19859(b)).
8

9 *Fine and Penalty assessment*

10 35. The GCA provides that the Commission may impose penalties or fines against
11 licensees. Section 19930, subdivision (c), establishes the maximum fine to be imposed on a
12 license holder such as Respondent: “[N]o fine imposed shall exceed [\$20,000] for each separate
13 violation of any provision of this chapter or any regulation adopted thereunder.” Section (c)
14 provides no such limitation for penalties. It is apparent that the legislature authorized fines per
15 violation with a limit to remedy specific behavior whereas penalties were not correspondingly
16 limited. Instead, penalties were meant to further other purposes of the GCA. These remedies
17 appear to be disjunctive, allowing the Commission to impose one but not the other, at least in
18 addressing any particular action.

19 36. Complainant, during the initial APA hearing, requested fines in the range of
20 \$4,659,000 to \$18,815,000 against Respondent. This was based on a total of 56 violations, and
21 the application of a theory of continuing violations. The ALJ rejected this theory and awarded a
22 total fine in the amount of \$430,000 based on her specific findings. Considering the egregious
23 nature of Respondent’s conduct and the divergent findings from the Commission above, this
24 amount is inadequate. The Commission does not make any determinations about a continuing
25 violation theory for fines.

26 37. Pursuant to the Order of Nonadoption, the Complainant in its argument now
27 requests fines totaling \$1,950,000 including the acts addressed above as well as fines for
28

1 Respondent's failure to comply with the licensing requirements for Profitable Casino and
2 Dolchee along with 72 distributions to these same unlicensed entities. These fines reflect the
3 egregious conduct perpetuated by Respondent but are ultimately insufficient to ensure obedience
4 to the GCA and the legislature's stated purposes for the Commission of protecting the public
5 health, safety, and welfare in regulation controlled gambling.

6 38. The conduct addressed above is a gross violation of the GCA when each allegation
7 is taken separately but is amplified when taken as a whole. Dolchee and Profitable Casino were
8 unlicensed entities and received distributions up until the Complainant enacted its emergency
9 order. The GCA and the Penal Code is replete with requirements for entities receiving
10 distributions to be licensed and against unlicensed entities receiving distributions.¹⁶ The receipt
11 of revenue from a cardroom is a fundamental characteristic of ownership and control and without
12 Commission review of these persons, the whole purpose of the GCA fails.¹⁷ As stated above,
13 fines are best implemented to punish specific acts in violation of the GCA, whereas Respondent's
14 conduct can only be viewed as globally out of compliance with the GCA and addressed as such.
15 As the legislature has stated under Section 19971, the GCA is "an exercise of the police power of
16 the state for the protection of the health, safety, and welfare of the people of the State of
17 California, and shall be liberally construed to effectuate those purposes." It is through this lens
18 the Commission deems it appropriate to apply a penalty in addressing Respondent's rather than
19 discrete fines.

20 39. Both the Complainant and Respondent discussed whether a monetary penalty
21 would be appropriate under *People ex. Rel. Lockyer v. RJ Reynolds Tobacco Co.* (2006) 37
22 Cal.4th 707. That case stated that the inquiry must look at "(1) the defendant's culpability; (2) the
23 relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and
24 (4) the defendant's ability to pay." *Id.* at 728-729. The Complainant requests a penalty based on
25 Respondent being unqualified and disqualified for licensure. The Complainant requests a penalty
26 in the amount of \$11 million which would amount to 20 percent of a contract for the sale of his

27 ¹⁶ See Section 19850, 19852, 19882, 19892, 19855, and 19901; See also Penal Code 337j

28 ¹⁷ See Section 19801(g) – (k), 19823, etc.

1 shares in Garden City. Respondent argues that the Commission cannot impose monetary
2 penalties, and that even if it could, no person was injured or property damaged by Respondent's
3 conduct and that past penalties make this amount inconsistent. Respondent concludes that his
4 alleged impermissible conduct had nothing to do with the moneys he received. The Respondent's
5 arguments are unpersuasive and unsupported by the facts.

6 40. The GCA gives the Commission broad discretion in assessing penalties to protect
7 the public health, safety, and welfare and ensure compliance with the GCA. To that end, the
8 Commission has adopted regulation CCR Section 12554(d)(7) which allows the Commission to:

9 Order the holder to pay a monetary penalty in lieu of all or a portion of a
10 suspension. Within the guidelines of Business and Professions Code sections
11 19930, subdivision (c), and 19943, subdivision (b):

12 (A) If the respondent is an owner licensee of a gambling establishment,
13 the monetary penalty shall be equivalent of fifty percent of the average
14 daily gross gaming revenue, but not less than \$300, for the number of days
15 for which the suspension is stayed.

16
17 41. Section 12554(d)(7)¹⁸ demonstrates that a large monetary penalty is
18 sometimes appropriate and authorized under the GCA. It is also relevant in determining
19 the scope of penalty appropriate in this instance against Respondent. In 2008, prior to the
20 creation of the LLCs, Garden City had a net income of \$9,316,650. Despite testimony
21 that the operation was successful, when the payments to the LLCs began in 2009, 2010,
22 2011, and 2012, Garden City's net income plunged to \$37,105 and \$618,273 in 2009 and
23 2010, and even went into the red, (\$127,296), and (\$23,999) for 2011 and 2012. The
24 difference was undoubtedly the distributions paid to the unlicensed entities.

25
26
27 ¹⁸ This section is not applied against Respondent for two reasons. First, this section is for owners such as
28 Garden City, and not endorsed owners such as Respondent. Second, the malfeasant conduct as established by the
record rests squarely on Respondent's shoulders and not the owner.

1 42. Gross Revenue from 2009, 2010, 2011 and 2012 was \$46,819,116;
2 \$43,559,057; \$42,153,238; and \$47,072,909 respectively. This amounts to total gross
3 revenue for these four years of \$179,604,320. If a penalty in lieu of suspension under
4 Section 12554(d)(7) were applied to Garden City for these four years, assuming averaged
5 equal daily revenue, the Commission could impose a penalty in lieu of suspension in the
6 amount of \$89,802,160. Respondent as one half owner of Garden City would be liable
7 for half that amount or \$44,901,080.

8 43. Ultimately, this amount reflects a possible outer bound for a penalty for
9 Respondent's conduct but it is not narrowly tailored. Specifically, a penalty in light of
10 the forgoing causes of action must be related to Respondent's poor character and
11 integrity, the threat to public safety, as well as the egregious conduct in misrepresenting,
12 lying, and concealing his financial transactions with unlicensed entities. Over the four
13 years from 2009 through 2013, Garden City paid Profitable Casino, Dolchee and Potere a
14 total of \$81,762,000. The portion paid through these affiliates to Respondent was
15 \$40,881,000. As established above, these millions of dollars were paid to unlicensed
16 entities in violation of the GCA and the Penal Code. Even assuming arguendo that
17 portions of these millions were meritoriously paid for services, licensing, or royalty
18 agreements, the balance of these payments would be distributions to unlicensed entities.

19 44. Respondent's arguments that no harm has occurred is thoroughly without
20 merit. Gambling is a closely regulated industry which requires applicants and licensees
21 to operate under a strict regulatory scheme controlling "all persons, locations, practices,
22 associations, and activities" related to gambling enterprises. (See Section 19801(h))
23 Moreover, Section 19801(i) states:

24 (i) All gambling operations, all persons having a significant involvement in
25 gambling operations, all establishments where gambling is conducted, and all
26 manufacturers, sellers, and distributors of gambling equipment must be licensed
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28

1 and regulated to protect the public health, safety, and general welfare of the
2 residents of this state as an exercise of the police powers of the state.

3
4 45. Simply stated, Respondent's egregious conduct harms the public trust and public
5 at large that gambling operations are strictly regulated. Moreover, the harm caused by
6 Respondent accrues to each and every local jurisdiction where controlled gambling occurs with
7 the expectation that it is closely and securely regulated and to each GCA compliant gambling
8 operation, owner, and employee throughout the state which refrains from engaging in this
9 deceptive and illegal conduct and who stand to be unfortunately negatively associated. This harm
10 rests squarely on Respondent's shoulders as he provided the false information to Belotti, to Grant
11 Thornton, to Complainant, and ultimately to the Commission. Respondent further knew that he
12 was flouting the GCA as was reflected by the testimony and evidence. Respondent did not
13 simply make a good faith mistake. Respondent was a savvy businessman who was poised to take
14 over another cardroom before his conduct came to light and who hired people to help him in his
15 deception.

16 46. To determine otherwise would embolden and encourage other cardrooms that "full
17 and true disclosure" is optional, and that misrepresentations and concealing unlicensed entities is
18 acceptable and profitable. Moreover, it would encourage others to test the boundaries of the GCA
19 and invite games of "catch me if you can." Letting an applicant lie, misrepresent, omit,
20 obfuscate, and dissemble information at the expense of the Complainant's investigatory efforts
21 and Commission suitability determinations confounds the purposes of the GCA.

22 47. Additionally, Respondent's arguments that that the monies paid to the affiliates
23 would not have changed had these entities been licensed puts the cart before the horse. These
24 were unlicensed entities who by the strict language of the GCA and the Penal Code should have
25 received no distributions as receiving this money is a violation of the GCA and indeed potentially
26 a crime. Whether they should and indeed could have been licensed in accordance with the GCA
27 is speculation and indeed problematic considering Respondent's imprudent and unusual business
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1 practices. Ultimately, the Complainant and the Commission cannot be in the position under the
2 GCA of playing catch up with every financial transaction a Respondent can create in the
3 gambling context.

4 48. Respondent also makes arguments that a large penalty would be unfair and
5 disproportionate to both the amounts the Lunardi's were required to pay under the settlement
6 agreement as well as past Commission fines and penalties. As for the Lunardi's settlement, the
7 record established clearly that Respondent was far more culpable than Lunardi which justifies
8 disparate treatment. As for past fines and penalties, Respondent is correct that a large penalty
9 would be different in magnitude than past fines and penalties. This however does not mean there
10 is any inconsistency with the underlying justification previously used to apply those fines and
11 penalties and the penalty against Respondent. Rather, it is a testament to Respondent's egregious
12 conduct, the scope and hubris of which this body has never seen before which requires this
13 response.

14 49. In light of the egregious failings under the GCA and conduct, the Commission
15 determines that a large penalty based on the amount of payments to unlicensed entities in the
16 amount of \$13,672,000 is appropriate to vindicate the harm caused, ensure maintenance of the
17 public trust, and encourage compliance with the GCA. The Commission reduces the potential
18 penalty of \$40,881,000, the total amounts paid to Dolchee (owing to Respondent) and Profitable
19 Casino during the period of 2009 to 2013, by two thirds, in light of evidence that *some* of the
20 monies paid to Dolchee and Profitable Casino may have been legitimate despite Respondent's
21 woefully inadequate accounting. This resulting amount is less than a potential maximum penalty
22 but is sufficient to ensure compliance with the GCA and maintain the public trust that gambling is
23 effectively and safely regulated.

24 50. Furthermore, there is ample evidence that Respondent has the ability to pay. As
25 was established in the record, Respondent stands to receive a windfall from the sale of his share
26 of Garden City. Testimony from one purchaser placed the purchase price at \$50 million plus \$5
27 million for a five year noncompetition covenant. The penalty imposed is roughly 25% percent of
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1 this amount. This also does not take into account the millions that Respondent would be entitled
2 to receive from Garden City’s operations since the implementation of the Complainant’s
3 emergency order.

4
5 *Cost Recovery*

6 51. The GCA contains a provision that allows the Complainant and Office of the
7 Attorney General to recover their costs. Section 19930, subdivision (d), provides:

8 In any case in which the administrative law judge recommends that the
9 commission revoke, suspend, or deny a license, the administrative law judge may,
10 upon presentation of suitable proof, order the licensee or applicant for a license to
11 pay the department the reasonable costs of the investigation and prosecution of the
12 case. [Emphasis added.]

13
14 52. In cases brought under the formal provisions of the Administrative
15 Procedure Act (Gov. Code, § 11550, et seq.), such as this one, California Code of
16 Regulations, title 1, section 1042, must be followed when a cost award is requested.
17 Section 1042 provides first, that a request for costs must be alleged in a pleading. Further,
18 it provides that “proof of costs at the Hearing may be made by Declarations that contain
19 specific and sufficient facts to support findings regarding actual costs incurred and the
20 reasonableness of the costs.” (Cal. Code Regs., tit. 1, section 1042, subd. (b).; Emphasis
21 added.) It also notes that “[T]he ALJ may permit a party to present testimony relevant to
22 the amount and reasonableness of costs.” (Cal Code Reg., tit. 1, Section 1042, subd.
23 (b)(a).)

24 53. The ALJ stated in the proposed decision that, “[i]t is clear that evidence at
25 hearing is required, not only for the receipt of declarations, should that method of proving
26 costs be employed, but to allow a respondent to present evidence as well.” The ALJ
27 concluded that no “evidence at the hearing” was received. The ALJ also appears to have
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1 applied Business and Professions Code Section 125.3 when viewing the question of costs
2 which is a statutory scheme inapplicable to the GCA and the Complainant's presentation
3 of the case.

4 54. As a result, it is apparent the ALJ employed a flawed interpretation of the costs
5 provision under Section 19930(d) which allows reasonable costs of the "investigation and
6 prosecution of the case." [Emphasis added] Any reasonable interpretation of the phrase
7 "prosecution of the case" means costs cannot be applied for until the hearing has concluded and
8 indeed any closing briefing provided. Moreover, to the extent the ALJ would have required a
9 declaration as evidence at the start of the hearing would be in contravention of the CCR 1042(d)
10 which requires evidence of "actual costs." While this may be appropriate under other statutory
11 schemes where costs are only recoverable up to the start of the hearing, it is not appropriate for
12 the "prosecution" which includes the hearing to its conclusion. Indeed, any evidence offered prior
13 to the conclusion of the hearing would be at best an estimate and not "actual costs" in
14 contravention of the controlling APA regulation. (Cal. Code Regs., tit. 1, section 1042, subd. (b))
15 Declarations or testimony following the hearing would be the only feasible method for the
16 acquisition of this information under Section 19930(d). Moreover, as made clear in the
17 declarations, the Complainant did not seek costs of investigation and prosecution of the case after
18 May 14, 2015 which were paid for in an approved settlement.

19 55. Furthermore, the Commission is troubled in this matter as the ALJ and
20 Complainant appear to have reached an accord contained in the transcript (Volume 5, Pg(s)
21 107:11-16 through 109:14) which authorized the Complainant to submit a declaration at the
22 conclusion of the presentation of evidence, provided the Respondent would have had an
23 opportunity to object. Here, the Complainant submitted declarations with both its closing brief
24 and its reply brief. The ALJ's stated however "[w]hen the briefs were received, the record had
25 since closed for the receipt of evidence; it remained open only for the receipt of closing briefs.
26 And no request was made to re-open the record to receive additional evidence." The ALJ having
27 received this information and after presumably reviewing the transcript did not refer back to the
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1 parties for additional discussion or argument. It is difficult to determine how the ALJ would
2 expect the Complainant to request to re-open the record in light of the transcript and
3 Complainant’s briefing and declarations. The Complainant was clearly acting in accordance with
4 the clear meaning of Section 19930, the controlling regulations, and the stated understanding on
5 the record.

6 56. In addition, it must be noted that Respondent did not object to the substance of
7 these costs in either its closing brief, or in its arguments to the Commission. Respondent has had
8 multiple opportunities to contest the costs as requested by the Complainant but has provided no
9 argument. Indeed, the Respondent made no mention whatsoever about the merits of the costs
10 calculations themselves, but rather that the Commission is bound by the ALJ’s assessment of
11 costs pursuant to Section 19930(d). This argument is unpersuasive.

12 57. Section 19930(d)(1) states that the “costs assessed pursuant to this subdivision
13 shall be fixed by the administrative law judge and may not be increased by the Commission.”
14 However, as was established above, the ALJ committed error in improperly interpreting
15 “prosecution” of the case which necessitates declarations or other evidence after the conclusion of
16 the hearing. In light of the discussion contained in the transcript, the ALJ committed further error
17 by not discussing this issue with the parties after the conclusion of the hearing. While the
18 Commission has statutory authority to send matters to an APA hearing under Section 19825, the
19 expectation is that the ALJ will follow the applicable provisions of the GCA. The ALJ did not do
20 so here. As a result, the ALJ did not assess the costs pursuant to Section 19930(d)(1) and thus the
21 Commission is not bound by the statutory limitation. The Commission assesses the costs against
22 Respondent now in the full amount requested by the Complainant totaling \$127,880 for the
23 prosecution of the APA hearing. No costs were requested following the hearing and none will be
24 awarded.


ORDER

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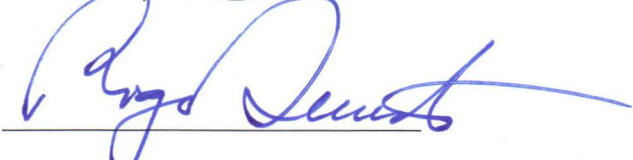
1. License number GEOW-001330, issued to Respondent Eric Swallow, is revoked.
2. Renewal of license number GEOW-0011330, issued to Respondent Eric Swallow, is denied.
3. Section 19882 shall apply commencing upon the effective date below.
4. Respondent shall pay a penalty assessment in the amount of \$13,672,000.
5. Respondent shall pay a total of \$127,880 in costs to the Complainant.

This Decision is effective 6-27-2016.

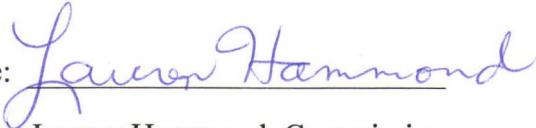
Dated: 5/26/16

Signature: 
Jim Evans, Chairman


Dated: 5/26/16

Signature: 
Roger Dunstan, Commissioner

Dated: 5/26/16

Signature: 
Lauren Hammond, Commissioner

Dated: 5/26/16

Signature: 
Trang To, Commissioner