BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION
STATE OF CALIFORNIA

In the Matter of the Accusation Against: GARDEN CITY INC., JEANINE LUNARDI, PETER LUNARDI, III, THE LUNARDI FAMILY LIVING TRUST, and ERIC G. SWALLOW, Respondents.	Case No. HQ2014-00001AL OAH No. 2014060129

PROPOSED DECISION

Mary-Margaret Anderson, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on August 10 through 13, and 17 through 19, 2015.

Deputy Attorney General William P. Torngren represented Complainant Wayne J. Quint, Jr., Chief, California Department of Justice, Bureau of Gambling Control.

Allen Ruby, Attorney at Law, and William J. Casey, Attorney at Law, Skadden, Arps, Meagher & Flom LLP, represented Respondent Eric G. Swallow.[1]

The record was left open for the receipt of closing briefs, which were timely received and marked for identification as follows: Complainant's Closing Brief, Exhibit 57, Respondent's Closing Brief, Exhibit HL, and Complainant's Reply Brief, Exhibit 58.

The record closed on October 9, 2015.

---

[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 III, and The Lunardi Family Living Trust.

FACTUAL FINDINGS

1. This action was brought by Complainant Wayne J. Quint, Jr., solely in his official capacity as Chief, California Department of Justice, Bureau of Gambling Control (Bureau).

2. The operative pleading is the First Amended Accusation and Statement of Issues filed July 22, 2015, subsequent to the settlement of the matter as regards all parties except Respondent Eric G. Swallow (Respondent). In sum, it alleges that Respondent is unsuitable for continued licensure under the California Gambling Control Act (GCA),[2] and seeks to revoke or suspend and prevent the renewal of his license, and to fine Respondent.

Background

3. Business and Professions Code[3] section 19801, subdivision (i), provides:

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

The GCA grants the Commission the authority to decide when and to whom to issue all types of licenses under the GCA. The Bureau is the enforcement wing of the Commission. Among other duties, the Bureau conducts background checks and other forms of investigations and recommends to the Commission whether a license should be issued, renewed, or revoked.

4. The GCA sets out the qualifications for licensure. Section 19857, subdivisions (a) and (b), requires licensees be "of good character, honesty and integrity" and be people

> whose prior activities, criminal record, . . . 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 . . . in the conduct of controlled gambling or in the carrying on of the business and financial arrangements incidental thereto.

---

[2] Business and Professions Code section 19800 et seq., and California Code of Regulations, title 11, section 2000 et seq.

[3] All section references are to the Business and Professions Code, unless stated otherwise.

5. Garden City, Inc., is a licensed gambling enterprise, holding California state gambling license number GEGE-000410. Garden City now does business as Casino M8trix, a 49-table card room located at 1887 Matrix Boulevard in San Jose. Garden City is owned equally by the Lunardi Family Trust and Respondent. All entities and persons who hold ownership interests in gambling enterprises are required to be licensed; in Garden City's case the owners are licensed as shareholder owners, and endorsed as such on Garden City's license. The Lunardi Family Trust holds license number GEOW-003259, Peter V. Lunardi III holds license number GEOW-001331, Jeanine Lynn Lunardi holds license number GEOW-003119, and Respondent holds license number GEOW-001330.

6. Respondent's license was first issued in 2007 and was regularly renewed. Gambling licenses such as those held by Respondent are valid for two years. If renewal is desired, the licensee must apply 120 days prior to the expiration date. Respondent's license was scheduled to expire on May 31, 2014, and he filed a renewal application with the Commission on September 16, 2013.

7. The Bureau undertook a background check investigation regarding Respondent's 2013 renewal application. In the meantime, it had been investigating Respondent as regards another application he filed for licensure in connection with Hollywood Park/LAX, an establishment in southern California. In a letter to Respondent's agent Bob Lytle dated July 16, 2013 (July 2013 request), the Bureau requested "additional clarifying information and/or documentation . . . ." The letter contains 100 questions and/or requests for information and requires a response not later than August 7, 2013. It also states that no extension of time to respond will be granted. Respondent submitted answers and supporting documentation within the time frame required. The submission contains 589 pages.

8. The Bureau found reason to question Respondent's suitability for licensure. In late 2013 or early 2014 the Bureau recommended denial of the renewal application. In addition, it sent the Commission an Accusation it recommended be filed against Respondent, alleging grounds to revoke his license. Following a meeting on May 29, 2014, the Commission decided to proceed with the Accusation, not to take action to renew Respondent's license, and referred the matter to the Office of Administrative Hearings. (Respondent has since withdrawn his application for licensure for Hollywood Park/LAX). Assistant Bureau Chief Stacy Luna Baxter described Respondent's license as having been "stayed" by the Commission. She explained that "stayed" meant that his license was "frozen in time," until it was decided to revoke it or that it could be renewed. Until that time, Respondent's license would not expire and would remain active and valid. When the action was over, it would be either revoked effective May 31, 2014, or renewed as of that date.

9. Complainant filed and served a combined Statement of Issues (regarding the renewal application) and Accusation. Respondent filed a Notice of Defense and this hearing followed.

10. The burden of proof is with the complainant in a proceeding on an accusation, and with the respondent in a statement of issues. The Bureau stipulated, however, that it would bear the burden of proof as to both the accusation and the statement of issues. The standard of proof is preponderance of the evidence. (Cal. Code Regs., tit. 4, § 12554, subd. (c).)

Credibility determinations

11. In evidence (admitted as hearsay) is a declaration signed by Bryan Roberts, a former employee of Garden City who resides in Texas, on July 9, 2015. The reliability of the declaration for any purpose was seriously undermined by the methods used to acquire it. Roberts was an independent contractor who was paid $12,000 per month for information technology-related services. Roberts's contract was terminated in approximately August 2014. At that time, Garden City owed him approximately $18,000.

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

Roberts's statement was essentially purchased by the Bureau with Lunardi's assistance. The evidence established that Roberts was not paid monies owed him for over one year and told he would not be paid unless and until he submitted to an interview. The declaration statements that resulted were thus accorded no weight in making the factual findings herein.

12. Lunardi's testimony was accorded less weight because of his self-interest in the proceedings. Lunardi testified that he was interested in what would become of Respondent's share of the money earned by Garden City since the emergency order was issued. Lunardi settled his case with the Commission, and withdrew $7.1 million from Garden City. He testified that he asked Bureau representatives what would become of Respondent's share if Respondent lost his license, and was advised that this was "to be determined." Lunardi is interested in receiving these funds. In addition, the credibility of his testimony was negatively affected by evasive and disingenuous answers.

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

13. Garden City operated a card room in San Jose. In 1998, Garden City entered bankruptcy, and operated under a court appointed trustee beginning in 2000. In 2007, Respondent and Peter and Jeanine Lunardi (collectively, the Lunardis; Lunardi refers to Peter

Lunardi) purchased it for approximately $22 million, with financing provided by Comerica Bank. Respondent owns 50 percent of the stock, and the Lunardi Trust owns 50 percent. Peter Lunardi has always been President, and the Board of Directors is comprised of Peter and Jeanine Lunardi and Respondent.

14. Respondent and the Lunardis commenced operating the card room on March 1, 2007, and made many changes in the operation. In the year ending June 30, 2007, Garden City showed a loss of $2.6 million; in the six months ending December 31, 2008, it showed a profit of $9.7 million. During the same time frames, gaming revenue increased from $37 million to approximately $49 million.

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

In any event, it was decided to establish limited liability companies in Nevada that would receive payments from Garden City pursuant to software licenses or royalty agreements. The payments would be "a way to get money out to the owners through services rendered"; they were not intended to be distributions of earnings. Bellotti defines a distribution as a payment to stockholder of current or prior earnings. His understanding was that the software was designed by Respondent and the games were designed by the Lunardis and Respondent.

16. The affiliated entities were formed in late 2008. Profitable Casino, LLC, was solely owned by Respondent, and was intended to receive payments for licenses for casino operating software. Potere, LLC, was solely owned by Lunardi, and was intended to receive payments for consulting services provided by Lunardi. Dolchee, LLC, was originally owned jointly by the Lunardi Trust and the Swallow Trust, and would receive payments for gaming royalties. In 2011, the Swallow Trust's share was transferred to Respondent as an individual. The fees were income to the entities, and taxable.

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

The amounts paid to the three entities were not dependent upon invoices or other documentation; they were based on available cash flow. The amounts paid were decided upon by Respondent and Lunardi, following a discussion of how much money they thought should be taken out of Garden City and given to them. None of the three entities has ever applied for or held a state gaming license.

18. Garden City and the three entities have been subject to tax audits. The Internal Revenue Service (IRS) audited Garden City's 2009 return, including payments from Garden City to the related entities. The IRS also audited Dolchee's 2011 return. The California Franchise Tax Board (FTB) audited the 2009 and 2010 tax returns of Respondent and Deborah Swallow. Following each audit, the IRS and FTB issued "no change" letters, indicating that no errors were found and that no changes to the returns needed to be made.

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

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

Causes for denial/discipline

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

First cause: prohibited interest in the funds wagered, lost or won by a third-party provider

PARAGRAPH 45

21. Pursuant to section 19984, a licensed gambling establishment may contract with a third party to provide proposition player services (TPPPS). TPPPS businesses provide services to the gambling establishment, including playing as a participant in any controlled game that has a rotating player-dealer position. The contract must be approved in advance by the Department of Justice (Department). The gambling establishment may not receive any interest, direct or indirect, in any funds wagered, lost, or won.

22. Garden City contracted with Team View Player Services LLC (TV Services) to provide TPPPS to Garden City. TV Services, owned by Timothy Gustin, paid Garden City pursuant to the contract. Team View Player Associates LLC (TV Associates) is another company owned by Gustin and had no assets other than its contracts with TV Services. In 2010, 2011 and 2012, TV Services paid TV Associates approximately $4.8 million. TV Associates paid approximately $3.6 million to Secure Stone LLC, a Delaware company. Respondent's wife, Deborah Swallow, is the sole member of Secure Stone. Thus, monies earned by TV Services pursuant to its contract with Garden City – monies earned by a third-party provider – went to Secure Stone.

23. As Deborah Swallow's husband, Respondent had a community property interest in Secure Stone. In addition, the record is replete with credible evidence that Secure Stone was operated and controlled by Respondent, including his testimony that he considered it his company.

24. The evidence established that Respondent, indirectly and/or directly, received an interest in funds from a TPPPS company by virtue of Secure Stone's receipt of funds from TV Services through payments from TV Associates. There were three payments in 2011 and five payments in 2012, for a total of eight payments.

25. Paragraph 45 was proven.

Second cause: providing false or misleading information to the Bureau

PARAGRAPH 46(a): MISREPRESENTATION ABOUT THE EXISTENCE OF A WRITTEN ACCOUNTANT'S VALUATION OPINION

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

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

At the time, Respondent was residing in Nevada. Commissioner Schuetz noted that Profitable Casinos was wholly owned by Respondent, that it was a Nevada LLC, and that Garden City (referred to as Matrix in the transcript) paid Profitable pursuant to a licensing agreement. He asked Respondent what Profitable does, and Respondent replied that it is a software firm that he developed that helps operate Garden City and that he planned would also help operate LAX. Commissioner Schuetz asked how the values were obtained that formed the basis for the payments by Garden City to the affiliated companies. He appeared

to be concerned that profits from Garden City were flowing to a Nevada company owned by Respondent, thus avoiding the payment of California taxes. The following is the relevant exchange:

> Commissioner Schuetz (CS): So how did you come up with the value that you pay yourself?
>
> Respondent (R): My CPA firm did that for me.
>
> CS: And do you have a written opinion to that, or a written opinion with regards to ---
>
> R: Yes. Yes.
>
> CS: And is it a qualified or an unqualified opinion?
>
> R: It is a CPA qualified opinion.
>
> CS: It's a qualified opinion. So he had absolutely no reason to question that decision.
>
> R: I'm sorry ---
>
> CS: That's what a qualified opinion is. Is it qualified or unqualified?
>
> R: You know, I don't know how to answer that. I'm not qualified to answer that today.
>
> CS: Well, if it's qualified, that means, yeah, I agree, but I've got some issues and he's going to write what those issues are on that. Could you provide for sure, and our friends at the Bureau make sure that we get it, the accountant's qualified or unqualified opinion as to the pricing model that was used in this software license?
>
> R: Sure.

28. It is unclear what Respondent was saying "yes, yes" in response to, as the Commissioner's question was either not finished or not fully transcribed. But it is clear from the rest of the exchange that Respondent either did not know what he was being asked or did not know the answer. He said he did not know the answer and that he was "not qualified to answer that today."

29. Respondent testified at hearing that he thought the question referred to sections of the audited financial statements that his accountant Jerry Bellotti prepared that concerned related-party payments. And those statements had already been provided to the Bureau. It is also noted that it would be very foolish to state that there existed a document that did not exist, knowing that the Commission would want to see the document. It does not make sense for Respondent to lie about the existence of a written accountant's valuation opinion.

30. Paragraph 46(a) was not proven.

PARAGRAPH 46(b): MISREPRESENTATIONS ABOUT HIS MARITAL STATUS

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

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

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

34. The evidence was insufficient to establish that Respondent was untruthful in 2012 and 2013 about his marital status. A couple can be separated, and still married, and that was true for Respondent and his wife and remains true. It is the legal separation date that determines the characterization of property as community or separate. There is no evidence that Respondent advised the Bureau that he and his wife were legally separated when they were not; in fact, on one occasion, Respondent elaborated that there was not yet a legal separation. It is unclear what Respondent meant by his statement that the couple "considered themselves separated," but this statement does not rise to the level of a lie about his marital status. Couples who are struggling with their marriage often "separate" and get back together over the course of the marriage. Respondent testified consistently with this observation, stating that he and his wife lived in different portions of a large house for a time in 2010, that the separation was "on and off" over time, and that they needed to pick a separation date when they decided to divorce, and chose October 8, 2013.

35. Paragraph 46(b) was not proven.

PARAGRAPH 46(c): MISREPRESENTATIONS BY AN AGENT OF RESPONDENT THAT $1.4 MILLION RECEIVED BY HIS WIFE FROM SECURE STONE RELATED TO THE SALE OF HER DENTAL PRACTICE

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

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

37. Carillo did not testify; he is retired and no longer works for the Bureau. His written statement is hearsay, offered for its truth. Robert Burge is a Senior Management Auditor. He testified that he reviewed the memo, and he thinks that he discussed it with Carillo. No witness testified that Kumar made the statement. Further, Kumar was subsequently interviewed, and denied making the statement. Although hearsay is admissible in administrative hearings, in order to support a factual finding, it must be corroborated by direct evidence. (Gov. Code, § 11513, subd. (d).) Accordingly, there is insufficient evidence to establish that Respondent's agent made a misrepresentation to the Bureau concerning the $1.4 million royalty income.

38. Paragraph 46(c) was not proven.

PARAGRAPH 46(d): MISREPRESENTATION BY AN AGENT OF RESPONDENT THAT DEBORAH STONE HAD NO INTEREST IN CASINO M8TRIX AND THAT HER BUSINESS AFFAIRS WERE INDEPENDENT OF RESPONDENT'S

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

> Please note that Dr. Swallow's business affairs are independent of [Respondent]. Dr. Swallow files separate tax returns, maintains her own bank accounts, and the money from her business ventures is her money. Likewise, [Respondent] files

> his own tax returns, has his own bank accounts, and maintains his own businesses. Dr. Swallow has no interest in Casino M8trix or Hollywood Park Casino. With the exception of the fact that the two remain legally married, ...

40. Although Maloney's representations are modified to some extent by his statement that the couple is still legally married, his intention is clear. The goal of the letter is to inform and persuade the Bureau that their business affairs are separate. This was untrue. Although it is correct that they filed separate tax returns and owned separate bank accounts, Deborah Swallow did have specific interests – not solely general community property interests – in Garden City and related entities. These interests included a buy-sell agreement providing for Deborah Swallow to replace Respondent upon his death or incapacity and through property held by the Swallow Family Trust.

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

42. Paragraph 46(d) was proven.

PARAGRAPH 46(e): RESPONDENT MISREPRESENTED THAT CERTAIN GAMES AND SOFTWARE LICENSED BY DOLCHEE AND PROFITABLE CASINO WERE CONFIDENTIAL AND PROPRIETARY AND HAD A COMBINED FAIR MARKET VALUE EXCEEDING $90 MILLION.

43. Millions of dollars flowed from Garden City to Dolchee, an unlicensed entity, pursuant to an agreement for the provision of games. The heart of this allegation concerns Respondent's representation that Dolchee also owned gaming analytical software that was used to operate Garden City, which helped justify the large payments. Respondent was the only witness to testify that such software exists; his partner Lunardi, CFO Kumar, and accountant Bellotti were unaware of such software, and testified that the payments were for games. Despite the ease of producing actual proof of the software's existence, Respondent only provided a portion of a PowerPoint presentation he had written and his own vague testimony. It was not established that Dolchee provided gaming analytical software that was installed and utilized at Garden City.

44. Paragraph 46(e) was proven.

PARAGRAPH 46(f): RESPONDENT MISREPRESENTED THAT THE PAYMENTS MADE BY GARDEN CITY TO PROFITABLE CASINO WERE BASED UPON THE VALUE TO GARDEN CITY OF THE SOFTWARE PROVIDED BY PROFITABLE CASINO, WHEN THE PAYMENTS WERE IN REALITY DISTRIBUTIONS.

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

From 2010 to 2012, Garden City paid $14 million to Profitable, characterized as royalties. The same amount was paid during the same period to Potere, Lunardi's company, characterized as consulting fees. Although the amount could vary, Respondent and Lunardi agreed that each of their entities would be paid $400,000 per month, or $4.8 million per year. They agreed that they were both working for the business and that they would each receive an equal amount even though the work they did might not be equal in any given month. There were no invoices prepared. The amount was determined by discussions between Respondent and Lunardi, and with Kumar.

46. It appears by the evidence presented that the payments made by Garden City to Profitable were based to some extent upon the value of the software.

47. Paragraph 46(f) was not proven.

PARAGRAPHS 46(g), (h) and (i): RESPONDENT SUBMITTED A REPORT TO THE BUREAU THAT CONTAINED FALSE AND MISLEADING INFORMATION.

48. On April 18, 2013, Respondent's application for a license to operate Hollywood Park /LAX was on the Commission's agenda. The Commission extended the temporary license, and added conditions for licensure. One of the conditions was that Respondent provide to the Bureau by August 31, 2013,

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

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

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

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

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

51. The GT Report provides a valuation of Dolchee gaming analytical software, based on information provided by Respondent. As stated in Finding 43, it was not established that Dolchee provided gaming analytical software that was installed and utilized at Garden City. Respondent gave false information to Grant Thornton, who calculated the value of the non-existent software and communicated that value through its report to the Commission.

52. The GT Report also contains incorrect information as concerns games provided by Dolchee to Garden City. It states that the games Casino M8trix licenses from Dolchee include: "Baccarat Gold™, DHP Gold™, Pai Gow Tiles™, Texas Hold'em Gold™ and Omaha Gold™, (collectively the 'Dolchee Games')." This list is incorrect. The only games that had been approved by the Bureau for play at Garden City at that time were Baccarat Gold, Double Hand Poker Bonus Gold, and variants of those games.

53. The GT Report also states

> According to Management, Casino M8trix pays Shuffle Master, a third party games provider, an annual license fee of approximately $44,400 to gain access to the Paigo Poker and UTH games, which are then turned over to Dolchee LLC for rebranding for Casino M8trix' s use.

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

54. Respondent contends that he is not responsible for any errors in the GT Report, but this contention is not persuasive. Respondent was the source of a great deal of false information which Grant Thornton then used to produce a report containing significant errors and calculations of market value that lacked a factual basis. He knew the information they were using was faulty, but made no corrections and submitted the GT Report to the Commission.

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

PARAGRAPH 46(j): FALSE INFORMATION TO THE BUREAU

56. Paragraph 46(j) states

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

This allegation is unclear. It does not appear that Complainant has addressed it in his closing brief.

57. Paragraph 46(j) was not proven.

PARAGRAPH 46(k): FALSE INFORMATION TO THE BUREAU RE DOLCHEE SOFTWARE

58. Respondent informed the Bureau that Bryan Roberts developed the Dolchee software. This was false; there was no Dolchee software.

59. Paragraph 46(k) was proven.

PARAGRAPH 46(l): FALSE INFORMATION TO THE BUREAU RE PURPOSE OF PAYMENTS TO BRYAN ROBERTS

60. Paragraph 46(l) states

> In response to the Bureau'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.

This allegation is unclear. Although Complainant appears to have addressed the claim in his closing brief, the argument therein is confusing.

61. Paragraph 46(l) was not proven.

PARAGRAPH 46(m): FALSE INFORMATION TO THE BUREAU RE NATURE OF AGREEMENTS WITH BRYAN ROBERTS

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

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

64. Paragraph 46(m) was proven.

PARAGRAPH 46(n): FALSE INFORMATION TO THE BUREAU RE FAILURE TO LIST DOLCHEE AND AIRPORT FUND AS SWALLOW TRUST ASSETS

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

66. Question 34 of the July 2013 request asks Respondent to

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

Respondent answered that the trusts were the only members, and that "both own a 50% interest."

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

68. Paragraph 46(n) was proven in part.

Third cause: failure to provide information and documentation requested by the Chief

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

PARAGRAPH 47(a)

70. Request No. 32 reads:

> Please state whether the monies shown on the closing statement of January 20, 2010, as provided by Potere LLC, Profitable Casino LLC, and Dolchee LLC were loans, gifts, or investments or capital contributions. If the monies provided were anything other than gifts, please provide all documents evidencing or relation to the transactions.

71. Respondent replied:

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

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

73. Paragraph 47(a) was proven.

ALLEGATION 47(b)

74. Request No. 30 reads:

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

75. Respondent replied:

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

Attachment #30 contained certain loan documents from Comerica Bank. He did not provide, however, the security agreement or stock pledge agreement that existed in connection with the loan.

76. Paragraph 47(b) was proven.

PARAGRAPH 47(c)

77. Request No. 35 reads:

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

78. Respondent replied: "Please see attachment #30 for all loan and collateralization of the project." As set forth in Finding 75, the loan documents provided by Respondent were incomplete. Respondent did not provide a copy of the security agreement that Garden City executed.

79. Paragraph 47(c) was proven.

PARAGRAPH 47(d)

80. Request No. 69 reads:

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 GEGA[4]number, and (2) the total licensing fees paid or other payments made for the game for the year.

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

82. Paragraph 47(d) was proven.

PARAGRAPH 47(e)

83. 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.

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

85. Paragraph 47(e) was proven.

PARAGRAPH 47(f)

86. Request no. 92 reads:

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

87. Respondent replied: "Please see attachment #92 for payments made."

---

[4] GEGA is the acronym for gambling-established game approval number.

The attachment breaks out the amounts paid by Team View to Secure Stone/Deborah Swallow over a three-year span from 2011 to 2013. The total amount is $1,442,839 million. No other information was provided.

88. Paragraph 47(f) was proven.

PARAGRAPH 47(g)

89. This allegation concerns the same facts as discussed in Findings 26 through 29: the representation by Respondent that he had a written accountant's opinion. The allegation states:

> The Bureau requested [Respondent] to provide the written accountant's opinion that [Respondent] had represented to the Commission existed. Despite multiple requests, he did not provide the requested written opinion. Ultimately, [Respondent] advised that the written opinion did not exist as previously represented and, in effect, confirmed that he had provided false or misleading information to both the Bureau and the Commission.

90. It appears that Complainant alleged the failure to provide a document that does not exist.

91. Paragraph 47(g) was not proven.

PARAGRAPH 47(h)

92. This allegation concerns the same facts discussed in Findings 48 through 54: the submission of the GT Report to the Commission by Respondent. The allegation states:

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

93. As stated in Finding 55, it was proven that the submission of the GT Report to the Commission constituted a false representation by Respondent. The same facts do not establish a failure to provide requested documentation.

94. Paragraph 47(h) was not proven.

PARAGRAPH 47(i)

95. This allegation concerns the same facts discussed in Findings 62 and 63: Respondent's false statement to the Bureau 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.

96. Paragraph 47(i) was proven.

97. 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. 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 Bureau and Respondent concerning answers that the Bureau did not feel were complete.

Fourth cause: conduct demonstrating lack of qualification for licensure

PARAGRAPH 48(a): PROVIDING FALSE OR MISLEADING INFORMATION TO THE CITY OF SAN JOSE

98. Licensure by the City of San Jose (City) is required for the operation of a card room in its jurisdiction. Complainant alleges that Respondent

> repeatedly provided false or misleading information to the City of San Jose or impeded its licensing investigations. Among other things, [Respondent] led the City of San Jose's investigators to believe that he, not the Swallow Trust, was a member of Dolchee and Airport Fund.

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

100. In 2012, Respondent completed and submitted an application to City for a Landowner License.[5] At question four, the application asks the applicant to list business entities in which the applicant or his or her spouse has held an ownership interest of five percent or more in the past five years. Respondent wrote "provided info on separate

[5] A Landowner License is issued by City to a person or entity who holds title to the land on which a cardroom is built.

attachment." The attachment names Dolchee as a business interest. The ownership is listed as 50 percent each for Respondent and Lunardi. It also states that Respondent was "sole owner to Jan 2009 then Lunardi became 50 percent owner with no cash infusion."

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

101. It is further alleged that Respondent directed Roberts not to make full disclosures to City, gave him guidance on how to be evasive, and told him to make false statements. As set out in Finding 11, Roberts's declaration is accorded no evidentiary weight, and there was no non-hearsay evidence admitted in support. In addition, Respondent denied the allegations.

102. Paragraph 48(a) was not proven.

PARAGRAPH 48(b): PROVIDING FALSE OR MISLEADING INFORMATION TO THE COMMISSION

103. First, Complainant again alleges the same matters discussed in Findings 26 through 29. That allegation was not proven.

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

105. Finally, Complainant alleges that Respondent

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

The evidence to support this allegation was not identified or addressed in the closing brief.

106. Complainant argues in his closing brief that at a Commission meeting on April 18, 2013, Respondent falsely stated that Dolchee owned a patented card game. This allegation is not contained in the Accusation.

107. Paragraph 48(b) was not proven.

PARAGRAPH 48(c): DISREGARD FOR PRUDENT BUSINESS PRACTICES

108. Complainant alleges that Respondent "engaged in patterns and practices that demonstrate a substantial disregard for prudent and usual business controls and oversight." The standard for "prudent and usual business" was not established.

109. Paragraph 48(c) was not proven.

PARAGRAPH 48(d): BENEFITTED FROM SAN JOSE MUNICIPAL CODE VIOLATIONS

110. Complainant alleged that Respondent "aided, facilitated, turned a blind eye to, or benefited from acts and omissions that violated San Jose Municipal Code, title 16." This allegation is vague, unclear, and was not addressed in Complainant's closing brief.

111. Paragraph 48(d) was not proven.

PARAGRAPH 48(e): BENEFITTED FROM UNLICENSED PLAY

112. This allegation repeats allegations previously made and discussed (Findings 21 through 24).

113. Paragraph 48(e) was not proven.

PARAGRAPH 48(f): REQUESTED ROBERTS TO CHANGE DATA

114. This allegation is vague and unclear.

115. Paragraph 48(f) was not proven.

Fifth cause: disqualified for licensure

PARAGRAPH 49: CONDUCT INIMICAL TO THE PUBLIC

116. The facts set forth in Findings 21 through 25, 39 thought 44, 48 through 55, 58, 59, 62 through 88, 95, and 96 demonstrate that Respondent committed violations of the GCA, and conducted operations in a manner that was inimical to the public health, safety, and welfare.

117. Paragraph 49 was proven.

Materiality

118. The GCA requires full and true disclosure of business practices and business and personal finances. Accurate knowledge of these matters assists in the assessment of honesty and integrity, and of possible threats to the effective regulation of controlled gambling. The misrepresentations made and information not provided by Respondent

concern these relevant matters, and are thus material to the decision of whether he is suitable for licensure.

Respondent's evidence

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

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

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

LEGAL CONCLUSIONS

Motion to dismiss

JURISDICTION

1. In his closing brief, Respondent contends that this matter should be dismissed for a variety of reasons. First, he argues that the Commission lacked jurisdiction to proceed on a denial of license renewal due to passage of time, and that this also prevents proceeding on the Accusation. He cites section 19876, which establishes time periods for Commission action on renewal applications, concluding 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. It is the Commission's duty to determine suitability for licensure of all applicants and licensees. Serious concerns existed regarding Respondent's suitability. Rather than issue an outright denial, the Commission stayed the application, and referred the matter for an evidentiary hearing. Respondent is not persuasive that any act or delay in acting caused the Commission to lose jurisdiction to decide whether Respondent's license should be renewed or disciplined.

DUE PROCESS VIOLATIONS

2. Respondent contends that the Bureau's actions surrounding its attempt to secure testimony from Bryan Roberts resulted in a denial of due process under the Administrative Adjudication Bill of Rights. Specifically, he points to the obligation of government attorneys in criminal matters to act with a high degree of integrity and impartiality. As reflected in Finding 11, the Roberts matter was treated as a credibility issue, and resolved in favor of Respondent. No due process violation was established.

3. Respondent next argues a due process violation because the Bureau ordered distributions from Garden City to Respondent withheld during the pendency of this action. This argument lacked authority and was also unpersuasive.

4. Respondent next argues a due process violation based upon alleged impermissible ex parte communications between Bureau staff and counsel. The fact of impermissible communications was not established and the argument was unpersuasive.

5. Finally, Respondent argues a lack of required notice. Section 19868, subdivision (b), requires the Bureau Chief to meet with an applicant before recommending denial. Respondent received notice of the Bureau's concerns and actions through representatives. Although it was after the recommendation of denial was made, Respondent's attorney attended a meeting at the Bureau. It was not established that the absence of a meeting between the Bureau Chief and Respondent violated his due process rights.

6. Respondent received all of the rights he is entitled to receive in his appeal of the denial of licensure and as regards the Accusation and his appeal of the license renewal denial. He received notice, discovery, and a full hearing by a neutral decision-maker. No violation of Respondent's due process rights was established.

ORDER ON MOTION TO DISMISS

7. Respondent's motion to dismiss is denied.

First cause: prohibited interest in the funds wagered, lost or won by a third-party provider

8. Section 19805 contains definitions that apply to the GCA. Respondent's status as a shareholder in Garden City means that he is a "licensed gambling enterprise" (§ 19805, sub. (m)), also called "the house" (§ 19805, sub. (t)).

9. Section 19984, subdivision (a), prohibits a gambling enterprise from having "any interest, whether direct or indirect, in funds wagered, lost, or won." Cause for license revocation and denial of licensure exists pursuant to this provision by reason of the fact set forth in Findings 21 through 25.

Second cause: providing false or misleading information to the Bureau

10. Section 19859, subdivision (b), provides that applicants are disqualified from licensure by supplying information about a material fact that is untrue or misleading. Cause for license revocation and denial of licensure exists pursuant to this provision by reason of the facts set forth in Findings 39 through 44, 48 through 55, 58 through 68, and 118.

Third cause: failure to provide information and documentation requested by the Chief

11. Section 19859, subdivision (b), provides that applicants are disqualified from licensure if they do not provide information requested or fail to reveal facts material to qualification. Cause for license revocation and denial of licensure exists pursuant to this provision by reason of the facts set forth in Findings 69 through 88, 95, 96, and 118.

Fourth cause: unqualified for licensure

12. No cause for revocation or denial was established pursuant to this cause of action.

Fifth cause: disqualified for licensure

13. Section 19823, subdivision (a)(1), provides that the Commission is responsible for "assuring that licenses . . . are not issued to, or held by, persons whose operations are conducted in a manner that is inimical to the public health, safety, or welfare." The matters set forth in Finding 116 through 118 provide cause to conclude that Respondent is disqualified for licensure pursuant to this requirement.

Analysis

14. The gambling industry in California is very highly regulated. It was the desire of the Legislature in allowing forms of gambling to do everything it could through a statutory scheme to keep the business fair, honest, and not a vehicle for the operation of criminal activity. As initially referenced above, the responsibilities of the Commission under the GCA include the duties set forth in section 19823, subdivision (a)(1):

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

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.

15. 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 Secure Stone, LLC, in his wife's name. It is reasonable to infer given the factual circumstances that Secure Stone was established to funnel money from the third-party provider to Respondent, a task it accomplished. Such was a clear violation of the GCA. As regards Respondent's failure to honestly communicate with regulators, his provision of the Grant Thornton report was a very significant violation. It was the opposite of an independent report; the information was provided by Respondent, and it contained many errors, half-truths, and omissions. Many of the specific allegations in the Accusation were not substantiated by the evidence, but the record is more than sufficient to support the removal of Respondent as a GCA licensee in California. Respondent showed a lack of good character, honesty, and integrity by his violations. The public interest requires license revocation and denial of Respondent's pending application.

Penalty assessment

16. The GCA provides for the imposition of fines against licensees found to have committed violations. Section 19930, subdivision (c), establishes the maximum fine to be imposed on a license holder such as Respondent: "[N]o fine imposed shall exceed [$20,000] for each separate violation of any provision of this chapter or any regulation adopted thereunder."

17. Complainant requests that a minimum of $4,659,000 and maximum of $18,815,000 in fines be imposed against Respondent. The calculations assume a total of 56 violations, and application of a theory of continuing violations. The lesser amount is calculated with an additional amount of $1,000 per violation for "failure to cure" for a specified number of days and the greater amount with an additional amount of $5,000.

18. Complainant asserts "that each day that the required disclosure was not made – or an untrue disclosure was not cured – constitutes a separate violation." The cure date is generally described as the date the Accusation was filed. This theory of assessing fines, along with the arbitrary date it is contended the violation has been cured, is presented without

legal authority or credible factual support. It is not persuasive, and will not be employed in determining the amount of the fine.

19. In support of the large fines requested, Complainant reports the amount of money Respondent may make upon the sale of his interest in Garden City, and the general fact that there are large amounts of money potentially to be made in controlled gambling. Complainant also points to the GCA's goals of deterring others from violating its provisions, and to "promote the Act's duty of full and true disclosure and revenue-sharing only with licensed persons." These facts may be true and the goals worthy, but the Legislature decided on a maximum fine of $20,000 per violation. This being said, Complainant's points are well taken as regards the large amounts of money involved and the need for deterrence. The record does support imposition of the maximum fine for each violation that was established.

20. Considering the facts established and the legal authority, it is concluded that a total fine of $430,000 is supported by the facts and law, and reasonable in these circumstances. The total was arrived at as follows:

a. First cause of action: section 19984, subdivision (a), eight violations at $20,000 per violations, total $160,000.

b. Second cause of action: section 19859, subdivision (b) (false information), seven and one-half violations at $20,000 per violation, total $150,000.

c. Third cause of action: section 19859, subdivision (b) (failure to provide information), six violations at $20,000 per violation, total $120,000.

d. Fourth cause of action: no violations established.

e. Fifth cause of action: section 19823, subdivision (a)(1), fines for these violations were imposed under the first through third causes of action.

21. Complainant also requests fines be assessed for violations of Penal Code section 337j, subdivision (a)(2). Complainant did not allege any violations of that criminal statute. No fine is assessed pursuant to the Penal Code.

Cost recovery

22. The GCA contains a provision that allows the Commission to recover its costs in certain instances. Section 19930, subdivision (d), provides:

> In any case in which the administrative law judge recommends that the commission revoke, suspend, or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee or applicant for a license to pay the

department the reasonable costs of the investigation and prosecution of the case.

In cases brought under the formal provisions of the Administrative Procedure Act (Gov. Code, § 11550, et seq.), such as this one, California Code of Regulations, title 1, section 1042, must be followed when a cost award is requested. Section 1042 provides first, that a request for costs must be alleged in a pleading. Further, it provides that "proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs." (Cal Code Regs., tit. 1, § 1042, subd. (b).) It also notes that "[T]he ALJ may permit a party to present testimony relevant to the amount and reasonableness of costs." (Cal Code Reg., tit. 1, § 1042, subd. (b)(4).) It is clear that evidence at hearing is required, not only for the receipt of declarations, should that method of proving costs be employed, but to allow a respondent to present evidence as well.

23. Complainant alleged in the Accusation that costs would be requested; Complainant did not, however, present "suitable proof" of costs incurred at the hearing. Instead, Complainant's counsel attached declarations to the closing brief and reply brief.

24. When the briefs were received, the record had since closed for the receipt of evidence; it remained open only for the receipt of closing briefs. And no request was made to re-open the record to receive additional evidence. Accordingly, the request for an award of costs will be denied.

ORDER

1. License number GEOW-001330, issued to Respondent Eric Swallow, is revoked.

2. Renewal of license number GEOW-001330, issued to Respondent Eric Swallow, is denied.

3. Respondent shall pay a total of $430,000 in fines to the Commission.

4. Complainant's request for a cost award is denied.

DATED: December 10, 2015

DocuSigned by:
Mary-Margaret Anderson
33F7F6838A33417...

MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings