



1 NGC Case No. 19-03

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3

STATE OF NEVADA

4

BEFORE THE NEVADA GAMING COMMISSION

5 NEVADA GAMING CONTROL BOARD,

6 Complainant,

7 vs.

8 STEPHEN ALAN WYNN,

9 Respondent.

**ORDER DENYING RESPONDENT'S**

**MOTION TO DISMISS**

10 On December 19, 2019 at the regularly scheduled Nevada Gaming Commission  
11 (Commission) meeting, Chairman Tony Alamo, M.D. presided over a hearing on  
12 Respondent's Motion to Dismiss Complaint Based on Lack of Subject Matter Jurisdiction  
13 (Motion) filed on November 14, 2019. Donald J. Campbell, Esq. and J. Colby Williams, Esq.  
14 were present for Respondent, and Nevada Attorney General Chief Litigation Counsel Steve  
15 Shevorski appeared on behalf of the Nevada Gaming Control Board (Board).

16 Based on the above-mentioned Motion, the Opposition and Reply briefs filed in this  
17 matter, as well as arguments from the parties' counsel and the record made at the hearing,  
18 the Motion is denied for the reasons set forth in this Order and those stated on the record  
19 at the time of the hearing.

20 **BACKGROUND**

21 1. The facts set forth here are drawn from the Complaint filed by the Board and  
22 Respondent's uncontested evidentiary submissions included with the Motion. Nothing in  
23 this Order relieves any party of its burden, if any, to prove any issue at a hearing held  
24 pursuant to NRS 463.310 to 463.318.

25 2. On or around March 24, 2005, Respondent was found suitable by the  
26 Commission as Chief Executive Officer (CEO), Chairman, shareholder and controlling  
27 shareholder of Wynn Resorts, Ltd. (Wynn Resorts), which is registered as a publicly traded  
28 company with the Commission. Wynn Resorts, through wholly owned subsidiaries and

1 holding companies, owns Wynn Las Vegas, LLC (Wynn LV), which holds a nonrestricted  
2 gaming license.

3 3. In early 2018, the Board initiated an investigation into allegations of  
4 misconduct by Respondent in violation of the Nevada Gaming Control Act.

5 4. On February 6, 2018, Respondent resigned from his position as CEO and  
6 Chairman of Wynn Resorts.

7 5. Soon thereafter, Respondent, by and through his family partnership, sold or  
8 entered into agreements to sell all of its shares of Wynn Resorts stock.

9 6. By mid-2018, Respondent had extinguished any ownership interest in Wynn  
10 Resorts and relinquished any management responsibilities therewith.

11 7. Thereafter, at the request of Wynn Resorts, Respondent was removed as an  
12 officer and director from the Wynn LV nonrestricted gaming license.

13 8. During its investigation, the Board issued a written Order to Appear requiring  
14 Respondent to appear at the Board's offices on September 7, 2018 at 11:00 AM. The Order  
15 to Appear was hand delivered to Respondent's counsel during a meeting with Board staff  
16 on August 30, 2018. The Order to Appear stated that failure to comply would be grounds  
17 for revocation or suspension of Respondent's findings of suitability.

18 9. In violation of the Order to Appear, Respondent failed to appear and testify  
19 on September 7, 2018.

20 10. On October 14, 2019, the Board filed a Complaint alleging, among other  
21 things, that Respondent "had repeatedly violated Nevada's gaming statutes and  
22 regulations, bringing discredit upon the State of Nevada and its gaming industry." The  
23 Complaint seeks revocation of Respondent's findings of suitability and the imposition of a  
24 fine pursuant to NRS 463.310(4) for each alleged violation of the Nevada Gaming Control  
25 Act and/or the Commission's regulations.

26 11. On November 14, 2019, Respondent moved to dismiss the Complaint. The  
27 Board filed an opposition to which Respondent filed a reply brief.

28 . . .

## DISPOSITION

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2 12. The sole issue raised by the Motion and decided by this Order is whether the  
3 Commission has subject-matter jurisdiction to consider the allegations in the Complaint.

4 13. The Board has the burden of establishing that the Commission has  
5 jurisdiction.

6 14. In determining whether the Board has met its burden, the Commission may  
7 rely on the allegations in the Complaint and relevant evidentiary submissions. See  
8 *Morrison v. Beach City LLC*, 116 Nev. 34, 37 (2000); *Wolfe v. Strankman*, 392 F.3d 358, 362  
9 (9th Cir. 2004).

10 15. NRS 463.143 provides that “[t]he Commission may exercise any proper power  
11 and authority necessary to perform the duties assigned to it by the Legislature, and is not  
12 limited by an enumeration of powers in this chapter.”

13 16. NRS 463.1405(4) provides that “[t]he Commission has full and absolute power  
14 to . . . revoke . . . any finding of suitability.” Because the Board is seeking to revoke  
15 Respondent’s findings of suitability, this matter is within the Commission’s jurisdiction  
16 under NRS 463.1405(4).

17 17. NRS 463.310(3) obligates the Commission to review a complaint filed by the  
18 Board and conduct further proceedings in accordance with NRS 463.3125 to 463.3145.  
19 Thereafter, NRS 463.310(4)(b) authorizes the Commission to “[l]imit, condition, suspend or  
20 revoke any . . . finding of suitability.” Because the Board filed a complaint with the  
21 Commission in this matter, and is seeking to revoke Respondent’s findings of suitability,  
22 NRS 463.310(3) and 463.310(4)(b) establish an independent basis for the Commission’s  
23 jurisdiction over this matter.

24 18. NRS 463.310(4)(d) authorizes the Commission, in accordance with the proper  
25 procedures, to “[f]ine each person or entity, or both, which is . . . found suitable” for  
26 violations of Nevada law and regulations. Because Respondent was found suitable and the  
27 Board filed a complaint with the Commission by which it seeks to fine Respondent for  
28 alleged violations of Nevada law and regulations, NRS 463.310(4)(d) establishes an

1 independent basis for the Commission's jurisdiction over this matter.

2 19. NRS 463.140(5) vests in the Board and the Commission, and their respective  
3 members, the authority to "compel the attendance of witnesses at any place within this  
4 state, to administer oaths and to require testimony under oath." In accordance with that  
5 power, the Board issued an Order to Appear to compel Wynn's attendance at an  
6 investigatory meeting and to give testimony under oath. Relying on the authority granted  
7 to the Commission by the Legislature in NRS 463.143, it is necessary for the Commission  
8 to possess and exercise the power to sanction witnesses that do not comply with orders to  
9 appear. Because the Board issued an Order to Appear to Respondent and Respondent  
10 failed to comply with the Order to Appear, NRS 463.140(5) is an independent basis for the  
11 Commission's jurisdiction over this matter.

12 20. The Legislature has found that "strict regulation of all persons . . . related to  
13 the operation of licensed gaming establishments" is necessary to maintain public  
14 confidence and trust in the gaming industry in this State. NRS 463.0129(1)(c). To that  
15 end, it has charged the Board and Commission with observing the conduct of persons  
16 associated with gaming, investigating potential violations of the gaming laws and  
17 sanctioning persons found to have violated the laws. *See, e.g.*, NRS 463.140, 463.1405,  
18 463.310, 463.3145. In turn, the Commission has been granted the express authority to  
19 carry out these duties without limitation. *See* NRS 463.143. The Commission would not  
20 be able to carry out its legislatively prescribed duties if persons under investigation could  
21 unilaterally strip the Commission of its jurisdiction by disassociating with and/or divesting  
22 any interest held in licensed gaming establishments. Accordingly, exercising jurisdiction  
23 in this case is a "proper power and authority necessary to perform the duties assigned to  
24 [the Commission] by the Legislature" and is an independent basis for jurisdiction under  
25 NRS 463.143.

26 21. Even if the Commission's authority were limited to sanctioning conduct that  
27 occurred when a person was materially involved with a licensed gaming operation, all of  
28 the violations of law alleged here, except for Respondent's failure to comply with the

1 Board's Order to Appear, occurred while Respondent was materially involved with a  
2 licensed gaming operation.

3 22. The basis for Commission jurisdiction set out above are independent from one  
4 another. Each basis would, standing alone, be sufficient for the Commission to have  
5 jurisdiction over this matter.

6 23. The Commission has considered the arguments put forward by Respondent in  
7 support of dismissal and finds them to be without merit.


8 24. This Order's determination of the Motion is a preliminary matter. An  
9 evidentiary hearing on the merits of this case is forthcoming. Accordingly,  
10 NRS 463.3145(1), which requires the Commission to "render a written decision on the  
11 merits" after hearing, does not apply. Nevertheless, for the convenience of the parties and  
12 to produce a clear record throughout this case, the Commission is hereby issuing this  
13 written Order.

14 Accordingly, the Commission finds and concludes that the Board has carried its  
15 burden of showing that the Commission has jurisdiction over this matter. Based on the  
16 foregoing, and good cause appearing:

17 **IT IS HEREBY ORDERED** that Respondent's Motion to Dismiss Complaint Based  
18 on Lack of Subject Matter Jurisdiction is **DENIED**.

19 Dated this 9<sup>th</sup> day of January 2020.

20 NEVADA GAMING COMMISSION

21   
22 TONY ALAMO, M.D., Chairman

23 Submitted by:

24 AARON D. FORD  
25 Attorney General

26 By: 

27 Darlene Caruso (Bar No. 5866)  
28 Chief Deputy Attorney General  
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