

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK**

IN THE MATTER OF:)
)
)
) **Number 2015-11**
Oaks Club Room d/b/a Oaks Card Club)
Emeryville, California)
)

ASSESSMENT OF CIVIL MONEY PENALTY

I. INTRODUCTION

The Financial Crimes Enforcement Network (“FinCEN”) has determined that grounds exist to assess a civil money penalty against Oaks Club Room d/b/a Oaks Card Club (“Oaks”), pursuant to the Bank Secrecy Act (“BSA”) and regulations issued pursuant to that Act.¹

Oaks admits to the facts set forth below and that its conduct violated the BSA. Oaks consents to this assessment of a civil money penalty and enters into the CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY (“CONSENT”) with FinCEN.

The CONSENT is incorporated into this ASSESSMENT OF CIVIL MONEY PENALTY (“ASSESSMENT”) by reference.

FinCEN has authority to investigate casinos and card clubs for compliance with, and violations of, the BSA pursuant to 31 C.F.R. § 1010.810, which grants FinCEN “[o]verall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under this chapter[.]”

¹ The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.

Oaks is a card club located in Emeryville, California and has been in operation since 1896. It contains 35 table games, including baccarat, blackjack, poker, and Pai Gow. Oaks was a “financial institution” and a “card club” within the meaning of the BSA and its implementing regulations during the time relevant to this action.²

II. PAST LEGAL PROCEEDINGS

A. United States District Court for the Northern District of California

On February 24, 2011, a federal grand jury sitting in the U.S. District Court for the Northern District of California indicted 15 individuals, including Oaks employees Lap The Chung, May Chung, as well as several Oaks customers, with loan sharking.³ A superseding indictment was filed July 5, 2012.⁴ The indictment charged that the defendants “facilitated racketeering activities within Oaks Card Club such as providing gambling chips for extortionate and illegal loans.” More specifically the indictment alleged that the defendants conducted loan-sharking at Oaks and another card club with the direct assistance of their employees. Oaks Card Club and its owners were not charged in either the original or superseding indictment. Two Oaks employees pled guilty to two counts of the indictment relating to illegal loans. Lap The Chung pled guilty to RICO conspiracy. May Chung pled guilty to conspiracy to make an extortionate extension of credit.

B. California Bureau of Gambling Control

On May 9, 2011, Oaks entered into a stipulated settlement with the California Bureau of Gambling Control. Oaks agreed to pay a fine of \$550,000 with \$275,000 stayed under the terms of the Stipulation and Order for a two-year period. Oaks did not contest that illegal loan-sharking and

² 31 U.S.C. § 5312(a)(2); 31 C.F.R. § 1010.100(t).

³ *United States v. Cuong Mach Binh Tieu, et al.*, No. 11 0097 (N.D. CA. Feb. 24, 2011).

⁴ *United States v. Cuong Mach Binh Tieu, et al.*, No. 11 0097 (N.D. CA. July 5, 2012).

the illegal sales of a controlled substance took place at the card club. As part of the agreement, Oaks agreed to implement changes, including hiring a new security and surveillance expert, providing additional training on loan-sharking, illegal drugs, and structuring, and replacing all employees of the Pai Gow tables.⁵ As part of the stipulated settlement, the California Bureau of Gambling Control withdrew any alleged BSA violations.

III. DETERMINATIONS

FinCEN has determined that Oaks willfully violated the BSA's program and reporting requirements from March 31, 2009 through April 3, 2012.⁶ As described below, Oaks (a) failed to implement and maintain an effective anti-money laundering program⁷ and (b) failed to report suspicious activity.⁸

A. Violations of the Requirement to Establish and Implement an Effective Anti-Money Laundering Program

The BSA and its implementing regulations require card clubs to develop and implement a written anti-money laundering ("AML") program reasonably designed to assure and monitor compliance with the BSA.⁹ Oaks was required to implement an AML program that, at a minimum,

⁵ In the Matter of the Accusation Against: The Oaks Card Club, California Gambling Control Commission Case No. 2011 03-04-1, May 9, 2011.

⁶ In civil enforcement of the Bank Secrecy Act under 31 U.S.C. § 5321(a)(1), to establish that a financial institution or individual acted willfully, the government need only show that the financial institution or individual acted with either reckless disregard or willful blindness. The government need not show that the entity or individual had knowledge that the conduct violated the Bank Secrecy Act, or that the entity or individual otherwise acted with an improper motive or bad purpose. Oaks admits to "willfulness" only as the term is used in civil enforcement of the Bank Secrecy Act under 31 U.S.C. § 5321(a)(1).

⁷ 31 U.S.C. §§ 5318(a)(2), 5318(h); 31 C.F.R. § 1021.210.

⁸ 31 U.S.C. § 5318(g); 31 C.F.R. § 1021.320.

⁹ 31 U.S.C. §§ 5318(a)(2), 5318(h); 31 C.F.R. § 1021.210(b)(1).

provided for: (a) a system of internal controls to assure ongoing compliance; (b) independent testing of the card club's AML compliance program by card club personnel or parties external to the card club; (c) training of personnel; (d) the designation of an individual or individuals responsible for assuring day-to-day compliance; (e) procedures for using all available information to determine and verify name, address, social security or taxpayer identification number, and other identifying information for a person, to the extent determining and verifying the information is otherwise required under the BSA; (f) procedures for using all available information to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious; (g) procedures for using all available information to determine whether any records must be made and maintained pursuant to the BSA; and (h) for card clubs with automated data processing systems, use of such systems to aid in assuring compliance.¹⁰ Oaks violated several of these requirements.

1. Internal Controls

During the relevant period, Oaks failed to implement an adequate system of internal controls to ensure ongoing compliance with the BSA. As an initial matter, Oaks' policies and procedures were deficient. Oaks' BSA policies and procedures – contained in a 10 page memorandum titled "Title 31 Compliance" ("Title 31 Memorandum") – were not updated from June 10, 2005 through 2011, and contained numerous inaccuracies and misstatements about its BSA obligations. For example, it states that "[t]ransactions which do not involve currency are not reportable pursuant to the provisions of Title 31." If construed to apply to transactions other than for CTR reporting, this statement is inaccurate.

Further, the Title 31 Memorandum states that "[i]f the customer refuses to provide the necessary I.D., you must still cash the customer out...." But there are no accompanying instructions

¹⁰ 31 C.F.R. § 1021.210(b)(2).

that state whether this activity would be considered suspicious, and no guidance as to whether or not to file a suspicious activity report for this type of transaction. Such misstatements, even if considered oversimplifications, can contribute to fundamental misunderstandings by employees of what activities should be considered suspicious.

The Title 31 Memorandum also states that when a customer “may be one chip purchase or cash out away from causing a CTR to be warranted,” the employees should ask ““Are you aware of the Club’s cash reporting requirements? Any cash transactions over \$10,000 in a 24 hour period must be reported to the IRS.”” Provided at a time when a customer is nearing the reporting threshold, this advice is problematic because it suggests that customers structure their transactions to remain below reporting requirements.

The 2005 Title 31 Memorandum also failed to adequately address possible suspicious transactions beyond structuring. There were no red flags or examples of potential suspicious transactions in the memorandum other than for structuring. There were no written policies and procedures for filing suspicious activity reports. Oaks filed no suspicious activity reports in 2009 and 2010.

A fundamental component of a financial institution’s internal controls is its risk assessment. However, Oaks failed to conduct a risk assessment prior to 2011, and its 2011 risk assessment was deficient. The 2011 risk assessment failed to meaningfully assess Oaks’ risk concerning the filing of suspicious activity reports and the monitoring of their internal referral system for such reports.

2. Independent Testing

Oaks also failed to have sufficient independent testing. Prior to March 2011, Oaks had not performed any independent test of its AML program. Indeed, such a test would have likely revealed

the deficiencies in Oaks' AML programs, and would have identified ways to correct these deficiencies.

3. Training

Oaks employees were not provided adequate BSA/AML training. Oaks' 2011 Independent Test stated that, while Oaks did have an in-house training program, it did not include "identification of unusual or suspicious transactions or the reporting of such." Further, the Independent Test states that even employees that participated in the training had "a lack of understanding of who filled out CTRC's and SARC's and why."

4. Procedures for Using All Available Information

Even assuming that Oaks was unaware of the extensive criminal activity occurring in its facility and by its customers and employees, ample public information put Oaks on notice of these activities. Oaks itself was raided by state and federal law enforcement in March 2011, and its employees and several patrons were publicly indicted by a federal grand jury in the Northern District of California. Despite this, at the time, Oaks failed to file a single suspicious activity report related to the activity detailed in the indictment; as such, Oaks did not use all available information to determine the occurrence of any transactions or patterns of transactions required to be reported as suspicious.

B. Violations of Suspicious Activity Reporting Requirements

The BSA and its implementing regulations require card clubs to report a transaction that the card club "knows, suspects, or has reason to suspect" is suspicious, if the transaction is conducted or attempted by, at, or through the card club, and if the transaction involves or aggregates to at least \$5,000 in funds or other assets.¹¹ A transaction is "suspicious" if the transaction: (a) involves funds

¹¹ 31 C.F.R. § 1021.320(a)(2).

derived from illegal activity; (b) is intended or conducted in order to hide or disguise funds or assets derived from illegal activity, or to disguise the ownership, nature, source, location, or control of funds or assets derived from illegal activity; (c) is designed, whether through structuring or other means, to evade any requirement in the BSA or its implementing regulations; (d) has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the card club knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or (e) involves use of the card club to facilitate criminal activity.¹²

At the card club, in 2009 and 2010, there were nine identified instances in which Oaks should have but failed to file a suspicious activity report, including occasions in which Oaks personnel who pled guilty made illegal loans to customers circumventing BSA recordkeeping and reporting requirements. For example, on August 9, 2010, multiple transaction log entries describe a transaction for \$9,900 at 9:52am, followed by a second transaction of \$9,900 at 9:53am conducted by the same customer and the same cashier. While a currency transaction report was filed, it did not acknowledge that multiple transactions took place. Oaks also failed to file a SAR on the customer notwithstanding the obvious attempt at structuring.

On November 16, 2009, another Oaks customer refused to provide identification when cashing out \$5,400. In the presence of an Oaks cashier, the customer then broke the transaction into smaller amounts with another customer in front of the cashier. Both customers then cashed out the transaction, and neither customer was asked to provide identification despite Oaks' own internal policy of collecting information on customers conducting transactions exceeding \$5,000. Oaks failed to file a SAR.

¹² 31 C.F.R. § 1021.320(a)(2)(i)-(iv).

IV. CIVIL MONEY PENALTY

FinCEN has determined that Oaks willfully violated the program and reporting requirements of the Bank Secrecy Act and its implementing regulations, as described in the CONSENT, and that grounds exist to assess a civil money penalty for these violations.¹³

FinCEN has determined that the penalty in this matter will be \$650,000.

V. CONSENT TO ASSESSMENT

To resolve this matter, and only for that purpose, Oaks consents to this assessment of a civil penalty in the sum of \$650,000, and admits that it violated the BSA's program and reporting requirements.

Oaks recognizes and states that it enters into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made by FinCEN or any employee, agent, or representative of FinCEN to induce Oaks to enter into the CONSENT, except for those specified in the CONSENT.

Oaks understands and agrees that the CONSENT embodies the entire agreement between Oaks and FinCEN relating to this enforcement matter only, as described in Section III above. Oaks further understands and agrees that there are no express or implied promises, representations, or agreements between Oaks and FinCEN other than those expressly set forth or referred to in this document and that nothing in the CONSENT or in this ASSESSMENT is binding on any other agency of government, whether Federal, State, or local.

VI. PUBLIC STATEMENTS

Oaks expressly agrees that it shall not, nor shall its attorneys, agents, partners, directors, officers, employees, affiliates, or any other person authorized to speak on its behalf, make any

¹³ 31 U.S.C. § 5321 and 31 C.F.R. § 1010.820.

public statement contradicting either its acceptance of responsibility set forth in the CONSENT or any fact in the DETERMINATIONS section of the CONSENT. FinCEN has sole discretion to determine whether a statement is contradictory and violates the terms of the CONSENT. If Oaks, or anyone claiming to speak on behalf of Oaks, makes such a contradictory statement, Oaks may avoid a breach of the agreement by repudiating such statement within 48 hours of notification by FinCEN. If FinCEN determines that Oaks did not satisfactorily repudiate such statement(s) within 48 hours of notification, FinCEN may void, in its sole discretion, the releases contained in the CONSENT and reinstitute enforcement proceedings against Oaks. Oaks expressly agrees to waive any statute of limitations defense to the reinstated enforcement proceedings and further agrees not to contest any admission or other findings made in the DETERMINATIONS section of the CONSENT. This paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of Oaks in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of Oaks or unless Oaks later ratifies such claims, directly or indirectly. Oaks further agrees that, upon notification by FinCEN, Oaks will repudiate such statement to the extent it contradicts either its acceptance of responsibility or any fact in the DETERMINATIONS section of the CONSENT.

VII. RELEASE

Execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, settles all claims that FinCEN may have against Oaks for the conduct described in Section III of the CONSENT. Execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, does not release any claim that FinCEN may have for conduct by Oaks other than the conduct described in Section III of the CONSENT, or any claim that FinCEN may have against any director, officer, owner, employee, or agent of Oaks, or any party other than

Oaks. Upon request, Oaks shall truthfully disclose to FinCEN all factual information not protected by a valid claim of attorney-client privilege or work product doctrine with respect to the conduct of its current or former directors, officers, employees, agents, or others.

/s/ December 17, 2015

Jennifer Shasky Calvery Date
Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury