

## **ETHICAL OVERSIGHT COMMITTEE**

### ***ACBL AS TO SHERMAN GAO***

#### **DECISION ON REMAND**

The Ethical Oversight Committee (“EOC”) issued its original decision in this matter on August 5, 2019, following a hearing at the Cosmopolitan Hotel and Casino, Las Vegas, NV on July 22, 2019. Charging Party then appealed EOC’s decision to the Appeals & Charges Committee (“A&C”). A&C heard the appeal on November 26, 2019 and issued its decision on December 9 and 10, 2019, remanding the case to EOC with the following instructive guidance:

“The A&C Committee requests that the EOC Committee reconsider its decision regarding Mr. Gao’s discipline with the instruction it may, but is not required to, consider evidence other than that used to support a finding that Mr. Gao misused UI. The A&C does not suggest or imply a different discipline or longer time period of the actual discipline imposed. Also, we note that the EOC’s assumption that "deducting masterpoints might put Mr. Gao in a lower masterpoint stratum" (EOC Narrative Decision, p. 20) is incorrect as a matter of ACBL regulation, as CDR 4.1.8(e) states that ‘Management shall assign Eligibility Points to equal the number of masterpoints that have been forfeited by the Disciplinary Body’s decision.’ In addition to reconsidering the length and type of discipline, the EOC Committee should therefore reconsider whether the removal of any of Mr. Gao’s masterpoints is appropriate. The A&C Committee does not envision the need for a new EOC hearing, as no new evidence should be considered in determining the appropriate discipline.”

Following the order of remand, no party has requested an opportunity for further briefing or for additional oral argument on remand, and none is considered necessary by EOC in order to comply with A&C’s guidance and directions.

After careful study of A&C’s decision, the EOC undertook a thorough and detailed re-examination of the disciplinary sanctions imposed on Charged Party Sherman Gao in light of the principles reflected in CDR Appendix B, Part II item 3. Following its further review and deliberation, EOC orders that:

1. The disciplinary sanction of 14 days’ suspension and 1 year probation is left

unchanged. The EOC initially considered the entire spectrum of established ethical misconduct, which, for a player with the bridge activity level of Charged Party Sherman Gao, involved 5 improper actions (one of which was not properly charged) over a 3 year period representing approximately 30,000 hands played. Moreover, some of those 5 actions represented only a marginal level of wrongdoing in the EOC's considered judgment. Therefore, notwithstanding that multiple infractions led to discipline, the EOC remains satisfied that the disciplinary parameters originally imposed were appropriate to the overall situation as well as to the individual offender, and that those parameters remain so.

No disciplinary sanction could possibly be justified for charged misconduct, such as unsportsmanlike psyching or creating Unauthorized Information, that was either not established as ethical misconduct to a level of comfortable satisfaction, or was not in any event proper grounds for disciplinary action on any view of the proven facts. There was no form of ethical misconduct charged which was supported by probative evidence short of the level of comfortable satisfaction which might be deemed to satisfy A&C's criteria as relevant to the imposition of additional discipline. The single uncharged incident of "coffeehousing" was made the subject of a reprimand (CDR 4.1.1), which EOC deems sufficient for such an isolated deviation from correct procedure.

No evidence was proffered to suggest that any other player has previously been subjected to discipline for misusing Unauthorized Information or for a single instance of "coffeehousing". It was Charging Party's burden, if it maintains that some threshold level of disciplinary penalty (greater than that imposed in this instance within the parameters specified in CDR Appendix B, Part I) is justified, to produce evidence to sustain such contentions to a level of comfortable satisfaction. While undoubtedly many like offenders have incurred director-generated *procedural* penalties under Law 90 (as Mr. Gao also did), in the absence of meaningful data showing an established history of *disciplinary* penalties for such offenses, the sanctions imposed on Mr. Gao already represent the highest sanctions (and possibly the only disciplinary sanctions) ever pronounced by a national-level ACBL disciplinary body for the type of misconduct established, and, so far as appears, by any ACBL disciplinary body at any level. **Note:** EOC is not an investigative body, so if such data could have been found, EOC lacks the necessary investigative resources, and in any event it was not EOC's obligation to find it.

2. Regarding A&C's notation that a reduction of masterpoints would have no effect on Mr. Gao's stratification eligibility by virtue of CDR 4.1.8(e), which directly undercuts the sole justification EOC initially advanced for not deducting any masterpoints, EOC separately revisited that aspect of the disciplinary sanctions. In light of the fact that no evidence was presented to suggest that any proven misconduct generated undeserved masterpoint awards directly, and after discussion and determination that a masterpoint "fine" would not contribute meaningfully to either deter or punish any ethical misconduct that was established to a standard of comfortable satisfaction, EOC determines anew that no masterpoint deduction will be imposed.

Approved:

/s/ Bob Glasson  
Bob Glasson, Chairman

/s/ Kevin Bathurst  
Kevin Bathurst

/s/ Cheri Bjerkan  
Cheri Bjerkan

/s/ Brian Platnick  
Brian Platnick

/s/ Eddie Wold  
Eddie Wold

Dated: December 19, 2019

**Right to Appeal Decision of the Ethical Oversight Committee and  
Right to Request a Stay of Discipline Pending the Outcome of Any Appeal**

**(The right to appeal applies to both the Complainant and the Disciplined Party.)**

In accordance with Section 7.2.1(a) of the *ACBL Code of Disciplinary Regulations*, an appeal may be filed with the Appeals and Charges Committee. An Appellate Body, in addition to the power to affirm or reverse, may modify, reduce or increase the discipline being appealed.

***Written notice of appeal must be made within thirty (30) days following the notice of the ruling being appealed.*** Per CDR 7.2.3, in order for an appeal to be considered, a written statement must accompany the appeal which shall provide an allegation that at least one (1) of the following exists:

- (a) The decision is not supported by the weight of the evidence presented at the hearing held by a disciplinary body (*i.e.*, not an appellate body).
- (b) Procedures inconsistent with the CDR;
- (c) Discipline inappropriate;
- (d) One (1) or more person(s) on the hearing panel having a bias which affected the decisions of the panel, when objection to such bias was raised at the hearing.

**Appeal may be filed, by regular mail or e-mail, addressed to:**

<b>Appeals &amp; Charges Chairperson</b>
<p>A. J. Stephani c/o ACBL Disciplinary Coordinator 6575 Windchase Blvd. Horn Lake, MS 38637-1523 <a href="mailto:Sabrina.Goley@acbl.org">Sabrina.Goley@acbl.org</a></p>

**Any request for stay may be filed in like manner with the Appeals and Charges Chair.**

**Section 8. Stays of Execution of Discipline Pending an Appeal**

- 8.1 The mere filing of a notice of appeal does not stay execution of a discipline.
- 8.2 A stay pending an appeal may be granted only on written request which will include the reasons for the request. Once granted, neither the appeal nor the request for the stay may be withdrawn. The foregoing does not affect the power of the grantor to modify or vacate the stay.
- 8.3 A stay may be granted only if the appellant makes a showing that a reasonable likelihood exists that the verdict will be reversed or that the discipline will be reduced.