



IS THIS AN AUTOMATIC REVIEW OR APPEAL OR BOTH Both

CHECK THE APPELLANT (party who filed the appeal)

<input type="checkbox"/>	Disciplined Party	Sherman Gao	ACBL #	K510154	Disciplined Party	N/A	ACBL #	N/A
<input checked="" type="checkbox"/>	Charging Party	Joseph Jones	ACBL #	5399696	Location of Hearing	2019 Fall NABC San Francisco		
Appellate Body		Appeals and Charges Committee				Date of Hearing	11/26/2019	
Original Disciplinary Body		Ethical Oversight Committee				Date of Hearing	07/22/2019	
Original Complainant		Robb Gordon	ACBL #	K652927	Effective date of the CDR consulted		January 1, 2019	

DISCIPLINE BEING APPEALED OR REVIEWED

Disciplined Party	Discipline	Beginning Date	Ending Date
Sherman Gao	Suspension	8/12/2019	8/25/2019
	Probation	8/26/2019	8/25/2020
Additional comments or description regarding discipline being appealed or reviewed			

BASIS FOR APPEAL (skip this section if this is an Automatic Review)

<input checked="" type="checkbox"/>	Decision not supported by the weight of evidence.
<input checked="" type="checkbox"/>	Procedures were inconsistent with CDR which affected the substantial rights of Appellant or undermined the confidence in the integrity or fairness of the disciplinary process.
<input checked="" type="checkbox"/>	Discipline inappropriate.
<input type="checkbox"/>	One or more person(s) on the hearing panel had bias (objection to such bias was raised at the hearing).

COMMITTEE MEMBERS WHO REVIEWED THE MATTER OR HEARD THE APPEAL

Name	ACBL #	Name	ACBL #
A.J. Stephani	Q368694	Dennis Carman	O828450
Paul Janicki	K545799	Claire Jones	P912129
Al Levy	J908243	Julie Smith	J494848
Merlin Vilhauer	O820654		

ALSO PRESENT (include web-conference (WC), in person (P), telephonic (TP), etc. and include their capacity as witness, expert, etc.)

Name	ACBL #	Via	Capacity	Name	ACBL #	Via	Capacity
Andrew Collins	J302612	TP	Adv - Charged Party				
Chris Compton	Q007713	P	Adv - Charging Party				
Linda Dunn	P197314	P	In-House Counsel				
Robb Gordon	K652927	P	Adv - Charging Party				

ARGUMENTS PRESENTED (summary of arguments presented by the Disciplined Party and Charging Party, including testimony)

ACBL Management argued that the EOC's decision was not supported by the weight of the evidence, that their procedures were inconsistent with the CDR, and that the discipline imposed was inappropriate.

COMMITTEE FINDINGS OF FACT (based on the evidence, state the committee's conclusion as to what happened)

The Appeals & Charges Committee heard and reviewed the appeal of ACBL Management of the EOC decision finding that Sherman Gao violated the ACBL's Code of Disciplinary Regulation and imposing a discipline of 14 days suspension and 1 year probation. The A&C Committee AFFIRMS the EOC decision that Mr. Gao violated the CDR. However, the A&C Committee believes that the EOC should revisit the discipline imposed and its reasoning therefor.

As described in the EOC Committee Narrative Decision, the EOC treated the evidence as falling into five separate categories: (1) Psyching; (2) Coffeehousing; (3) Transmission of Unauthorized Information (UI); (4) Receipt of UI from Extraneous Sources; and (5) Misuse of UI. Of these five, the EOC determined that the evidence supported a finding that "Mr. Gao repeatedly availed himself of unauthorized information contrary to Laws 16B1 and 73C1, and thereby violated CDR 3.1" (EOC Narrative Decision, p. 15). The EOC further determined that the evidence was insufficient to support a finding of unethical conduct or other CDR violation for the other four categories.

The EOC then considered the evidence on the Misuse of UI in fashioning an appropriate discipline. However, it did not appear to consider any other evidence, which, though insufficient to support a violation in the other four categories, may nonetheless be relevant in determining the appropriate discipline.

The A&C Committee therefore 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.

DECISION OF APPELLATE COMMITTEE

<input type="checkbox"/>	Remanded for rehearing	Disciplinary Body expected to rehear.		
<input type="checkbox"/>	Decision of the original hearing committee is upheld.			
<input type="checkbox"/>	Decision of the original hearing committee is amended as described below:			
	Discipline	Beginning	Ending	Comments
<input type="checkbox"/>	Reprimand	N/A	N/A	
<input type="checkbox"/>	Probation			
<input type="checkbox"/>	Suspension			
<input checked="" type="checkbox"/>	Other	N/A	N/A	Please describe other decision below:
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.				

RESPECTFULLY SUBMITTED (CHAIRMAN)

/s/ A.J. Stephani		Date:	12/9/2019
Electronic Signature (type name above)	Wet Signature (sign above)		