

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

TSUN YOUNG,

Appellant,

NEVADA GAMING CONTROL  
BOARD; AND HARD ROCK HOTEL  
AND CASINO,

Respondents.

---

) **Supreme Court No. 78916**

) District Court No. EDC-18-77506-1 Filed  
) Jun 26 2019 02:47 p.m.

) **DOCKETING STATEMENT**  
) **CIVIL APPEALS**  
) Elizabeth A. Brown  
) Clerk of Supreme Court

**GENERAL INFORMATION**

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal. A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions. This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department: 14  
County: Clark Judge: Adriana Escobar  
District Ct. Case No. A-18-775062-J

**2. Attorney filing this docketing statement:**

Attorney: Robert A. Nersesian Telephone: (702) 385-5454  
Firm: Nersesian & Sankiewicz  
Address: 528 South Eighth Street, Las Vegas, Nevada 89101  
Client(s): Tsun Young

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney: Michael P. Somps, Senior Deputy Attorney General  
Telephone: (775) 687-2124  
Firm: Office of the Nevada Attorney General, Gaming Division  
Address: 5420 Kietzke Lane, Suite 202, Reno, Nevada 89511  
Client(s): Nevada Gaming Control Board

Attorney: Marla J. Hudgens, Esq. Telephone: (602) 262-5311  
Firm: Lewis Roca Rothgerber Christie LLP  
Address: 201 East Washington Street, Suite 1200 Phoenix, Arizona 85004  
Client(s): Hard Rock Hotel and Casino

**4. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input type="checkbox"/> Judgment after bench trial                | <input type="checkbox"/> Dismissal                                      |
| <input type="checkbox"/> Judgment after jury verdict               | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                          | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                          | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief         | <input type="checkbox"/> Other (specify):                               |
| <input type="checkbox"/> Grant/Denial of injunction                | <input type="checkbox"/> Divorce Decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief        | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____             |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

Petitioner presented \$35,000 in chips for redemption. Casino refused claiming that Petitioner was not a "patron." GCB investigator found for casino, and hearing examiner and GCB affirmed investigator. District Court affirmed GCB. This appeal followed.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

a) When the GCB investigator admits his decision is in error, and supports a decision for the Petitioner at the hearing examiner hearing, is the action of the Board arbitrary and capricious in affirming the hearing officer?

See Schedule to question 9 following the signature line on this Docketing Statement and preceding attachments.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☒ A substantial issue of first impression
- ☒ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decision
- ☐ A ballot question

If so, explain:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.**

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Presumptively assigned to Court of Appeals per NRAP 17(b)(9).

**14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

**TIMELINESS OF NOTICE OF APPEAL**

**16. Date of entry of written judgment or order appealed from:** April 29, 2019

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**17. Date written notice of entry of judgment or order was served:** April 30, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion(NRCP 50(b), 52(b), or 59) N/A**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing \_\_\_\_\_

☐ NRCP 52(b) Date of filing \_\_\_\_\_

☐ NRCP 59 Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev. \_\_\_\_, 245P.3d 1190 (2010). N/A**

(b) Date of entry of written order resolving tolling motion

(c) Date written notice of entry of order resolving tolling motion was served  
Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** May 29, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

## SUBSTANTIVE APPEALABILITY

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |  |                                       |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                           | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                           | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                           | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) NRS 463.3668 |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The statute provides in relevant part, “The judicial review by the district court and the appellate court of competent jurisdiction afforded in this chapter is the exclusive method of review of any actions, decisions and orders in hearings held pursuant to NRS 463,361 to 463.366, inclusive.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Plaintiff/Respondent: Tsun Young

Defendants/Appellants: Nevada Gaming Control Board (disputed) and Hard Rock Hotel and Casino

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Petitioner: Patron dispute on chip redemption.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No



**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims
- and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

### VERIFICATION

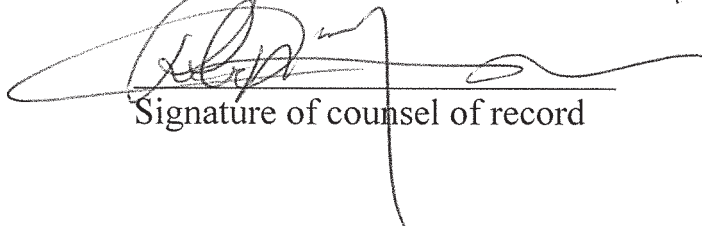
**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

Tsun Young  
Name of Appellant

6/26/2019  
Date

Clark County, Nevada  
State and county where signed

Robert A. Nersesian  
Name of counsel of record

  
Signature of counsel of record

## CERTIFICATE OF SERVICE

I certify that on the 26th day of June, 2019, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By electronic service in accordance with the Court's Master Service List as follows:

Michael Somps  
Senior Deputy Attorney General  
Attorney General's Office  
5420 Kietzke Lane, Suite 202  
Reno, Nevada 89511  
*Attorneys for Respondent*  
*Nevada Gaming Control Board*

Marla Hudgens, Esq.  
Lewis Roca Rotherberger Christie LLP  
201 E. Washington Street, Suite 1200  
Phoenix, Arizona 85004  
*Attorneys for Respondent*  
*Hard Rock Hotel and Casino*

☒ By depositing the same into the U.S. Mail in Las Vegas, Nevada, postage prepaid, addressed as follows:

Persi J. Mishel  
2725 Tidewater Ct.  
Las Vegas, NV 89117

/s/ Rachel Stein  
An employee of Nersesian & Sankiewicz

### Supplement to Question 9

- b) Did the District Court, the hearing examiner, and the GCB err in finding Petitioner was not a “patron,” and providing a definition for “patron” that is contrary to the plain meaning of the term and at odds with the Casino’s admission that the Plaintiff was a “patron?”
- c) When the Respondent admits that the casino’s records support Plaintiff having tens of thousands of dollars in chips through his activities at the casino, did the District Court, the hearing examiner, and the GCB err in denying any recovery to the Plaintiff of the sum acknowledged on the basis that he failed to demonstrate that he was a patron?
- d) Does the Nevada Gaming Control Board have standing in the District Court or this Court, as the adjudicative administrative body, to appear and argue against the merits of Petitioner’s action?
- e) Especially considering c) above and the fact that prior discovery did not disclose the “evidence” relied upon by the casino until the eve of the hearing, did the casino fail to meet its “any evidence” burden or show that its actions were not arbitrary or capricious in refusing to redeem the Petitioner’s chips?



1 PTJR  
2 Robert A. Nersesian  
3 Nevada Bar No. 2762  
4 **NERSESIAN & SANKIEWICZ**  
5 528 South Eighth Street  
6 Las Vegas, Nevada 89101  
7 Telephone: 702-385-5454  
8 Facsimile: 702-385-7667  
9 *Attorneys for Petitioner*

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 Tsun Young )  
9 ) Case No.: A-18-775062-J  
10 Petitioner, ) Dept. No.: Department 14  
11 vs. )  
12 Nevada Gaming Control Board and )  
13 Hard Rock Hotel and Casino , )  
14 Respondents. ) GCB Case No. 2016-8570-LV

15 **PETITION FOR JUDICIAL REVIEW**

16 NOW COMES petitioner, Tsun Young, by and through his attorneys, Nersesian &  
17 Sankiewicz, and herewith petitions for judicial review and reversal of the Recommendation and  
18 Order entered the 3d day of May, 2018, served by mail on May 8, 2018, and received by  
19 Petitioner on May 10, 2018 by and from the Nevada Gaming Control Board in the matter of  
20 Young v. Hard Rock Hotel and Casino (Board Case No. 2016-8570LV). This Petition is filed  
21 pursuant to NRS 463.3662. A copy of the Recommendation and Order of the Nevada Gaming  
22 Control Board in this matter is attached as Addendum 1. Further to this petition, the Petitioner  
23 represents that the recorded transcript of the hearings and the record are being requested as  
24 required by NRS 463.3664.  
25

26  
27 This Petition is premised upon the following errors presented as the grounds or reasons  
28 why the petitioner contends that a reversal or modification should be ordered:

- 1) The Board affirmed the Decision of the Agent despite the fact that the Agent testified that he misapprehended and misapplied the facts in reaching his conclusion.
- 2) The Agent acknowledged under oath that the historic gaming of the Petitioner as a patron of Hard Rock Hotel & Casino ("Hard Rock") supported the Plaintiff being legitimately in possession of the \$25,000.00 in chips at issue in this matter.
- 3) Hard Rock acknowledged that the Plaintiff was a patron of its casino, and the status of "patron" is the sole prerequisite to the requirement that Hard Rock promptly redeem Plaintiff's chips when presented (which presentation occurred and was refused). Reg. 12.060(2)(c)
- 4) The hearing examiner and the Board misapprehended the law concerning the burdens on the parties in resolving a patron dispute regarding the redemption of chips, with the regulatory burden being upon the licensee to know is not a patron of its gaming establishment, rather than a burden upon the Petitioner of any nature. Reg. 12.060(4).
- 5) The Board erred as a matter of law in determining that the Petitioner had a burden to demonstrate that the chips were "earned" at the Hard Rock, which decision apparently excludes purchase of the chips as a consideration.
- 6) The Board erred in reaching a conclusion unsupported by any evidence that the Hard Rock would have tracked all or any \$5000 chip disbursement to players or others, and such conclusion is also false.
- 7) The hearing examiner erred in excluding Paul Engstrom history in discovery.
- 8) The Board erred in redefining "patron" outside its plain meaning, thereby legislating contrary to the plain language of the applicable regulations.
- 9) Any further reasons for failure to follow the arguments set forth in Petitioner's closing argument attached as Addendum 2.

1 WHEREFORE Petitioner prays that the Court enter a briefing schedule, reverse the  
2 decision of the Nevada Gaming Control Board, order Plaintiff's chips redeemed, and order such  
3 further, alternative, or different relief as the Court determines warranted.

4 DATED this 23d day of May, 2018.

5  
6 Nersesian & Sankiewicz

7 /s/ Robert A. Nersesian  
8 ROBERT A. NERSESIAN, ESQ.  
9 Nevada Bar No. 2762  
10 528 South Eighth Street  
11 Las Vegas, Nevada 89101  
12 Attorney for Petitioner  
13  
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# **ADDENDUM 1**

# **ADDENDUM 1**



BRIAN SANDOVAL  
Governor

## NEVADA GAMING CONTROL BOARD

1919 College Parkway, P.O. Box 8003, Carson City, Nevada 89702  
555 E. Washington Avenue, Suite 2600, Las Vegas, Nevada 89101  
3650 S. Pointe Circle, Suite 203, P.O. Box 31109, Laughlin, Nevada 89028  
557 W. Silver Street, Suite 207, Elko, Nevada 89801  
9790 Gateway Drive, Suite 100, Reno, Nevada 89521  
750 Pilot Road, Suite 1, Las Vegas, Nevada 89119

BECKY HARRIS, *Chairwoman*  
SHAWN R. REID, *Member*  
TERRY JOHNSON, *Member*

May 7, 2018

Las Vegas  
(702) 486-2000  
Fax: (702) 486-2045

TSUN YOUNG  
c/o ROBERT NERSESIAN, ESQ.  
528 S. 8<sup>TH</sup> ST.  
LAS VEGAS, NV 89101

HARD ROCK HOTEL AND CASINO  
ATTN: KATIE FELLOWS  
4455 PARADISE ROAD  
LAS VEGAS, NV 89169

*Re: TSUN YOUNG v. HARD ROCK HOTEL AND CASINO, CASE # 2016-8570L*

Enclosed please find the decision of the Nevada Gaming Control Board resulting from its meeting held May 3, 2018.

Nevada law provides for judicial review of this decision pursuant to NRS 463.366 through 463.368. If you desire judicial review, you must file a petition requesting same in the State District Court of the county in which the dispute occurred within 25 days of the date the decision was deposited in the mail to you. This mailing date is indicated on the accompanying "Certificate of Service." A copy of the petition must be served upon the Board and all other parties of record, or their counsel of record, either personally or by certified mail. The copy served on the Board should be directed to the attention of the Office of the Hearing Examiner.

The party requesting judicial review must pay the costs of transcribing the record and transmitting it to the State District Court. You may be assured of our cooperation in connection with a request for judicial review.

Sincerely,

A handwritten signature in black ink, appearing to read "Chan Lengsavath".

Chan Lengsavath, Esq.  
Hearing Examiner

cc: Karl Bennison, Chief, Enforcement Division

Enclosure: Certificate of Service

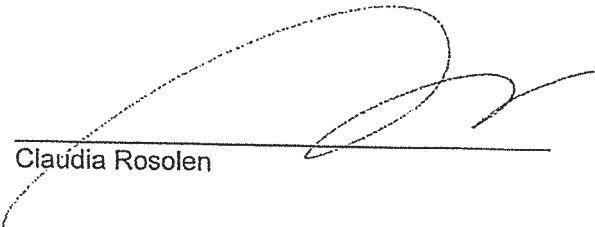


## Certificate of Service:

I hereby certify that I am employed by the Nevada Gaming Control Board Administration Division and that on the 8<sup>th</sup> day of May, 2018 at 2:00 p.m. PDT, I deposited in the U.S. Mail in Las Vegas, Nevada, postage prepaid thereon, the foregoing document, addressed to the following(s):

TSUN YOUNG  
c/o ROBERT NERSESIAN, ESQ.  
528 S. 8<sup>TH</sup> ST.  
LAS VEGAS, NV 89101

HARD ROCK HOTEL AND CASINO  
ATTN: KATIE FELLOWS  
4455 PARADISE ROAD  
LAS VEGAS, NV 89169



Claudia Rosolen

**BEFORE THE NEVADA GAMING CONTROL BOARD**

In the Matter of:	)	
	)	
<b>Tsun Young</b>	)	
Petitioner	)	
	)	
vs.	)	<b>RECOMMENDATION</b>
	)	<b>Case # 2016-8570L</b>
<b>Hard Rock Hotel and Casino</b>	)	
Respondent	)	
	)	
Pursuant to NRS 463.363	)	
	)	
Hearing Date: January 22, 2018	)	
_____	)	

**PROCEDURAL BACKGROUND**

On October 24, 2016, a chip dispute occurred between Tsun Young (Petitioner) and Hard Rock Hotel and Casino (Respondent)(Hard Rock). On the same day, the Petitioner reported the dispute to the Nevada Gaming Control Board Enforcement Division (Board) pursuant to NRS 463.362. Agent Dan Nuqui was assigned the case and on November 23, 2016 issued a decision denying payment of the disputed amount to Young.

On December 15, 2016, Young filed a Petition for Reconsideration with the Board requesting a hearing to reconsider Agent Nuqui's decision pursuant to NRS 463.363. Consequently, on October 24, 2017 and January 22, 2018, the undersigned Hearing Examiner conducted hearings in Las Vegas, Nevada. The Petitioner was present. He was represented by Robert Nersesian, Esq. Representing the Respondent were Chad Konrad, Hard Rock Vice President of Finance, and attorneys from Lewis Roca Rothgerber Christie, Marla Hudgeons, Esq. and Mary Tran, Esq. Present and testifying on behalf of the Board at the October 24, 2017 hearing was Agent Dan Nuqui. Agent Nuqui's presence was not required at the January 22, 2018 hearing.

**SUMMARY OF THE DISPUTE**

On January 23, 2011 and then again on October 24, 2016, the Petitioner attempted to cash six \$5,000 chips (total of \$30,000) at Hard Rock. The Hard Rock refused to cash the chips because they could not verify that the chips were received through game play at Hard Rock.

Differences of opinion persist among the parties, thus the instant hearing ensued.

### ISSUE

1. Was Young a "patron" at Hard Rock?
2. Did the Petitioner prove that he acquired the six \$5,000 chips by game play at Hard Rock?

### FINDINGS OF FACT

The undersigned finds the following:

1. The Petitioner was a rated player at Hard Rock.
2. From July 2008 to January 2011, Young had total Table Game Buy-ins of approximately \$335,300. (Respondent's Exhibit R1). However, after taking into consideration the evidence provided by the Respondent regarding chips redemption and chips relinquished, only approximately \$20,000 of Young's chips were unaccounted. (Respondent's Exhibit R5).
3. Young could not recall exactly when and how he came into possession of the six \$5,000 chips.
4. The Petitioner tried to cash the six chips in January 2011 and was denied then. He tried to cash the chips again in October 2016 and was again denied. He filed a dispute shortly after the October 2016 incident.

### SUBSTANTIVE OBJECTIONS RULED UPON DURING THE HEARING

1. Respondent objected to Petitioner introducing an expert witness to discuss the term "rat holing" or "going south."
  - a. Objection sustained: The Respondent or the undersigned were not given notice of an expert witness. The Respondent did not have the opportunity to retain their own expert to rebut any of the Petitioner's expert witness. For due process reasons, the objection was sustained.

### DISCUSSION

Under current gaming regulation, the "petitioner bears the burden of showing by a preponderance of the evidence that the decision made by an agent of the board pursuant to NRS 463.362 should be reversed or modified." *Nevada Gaming Commission Regulation 7A.160*. Fairness and equity are tenets the Nevada Gaming Commission emphasized when the Commission adopted Regulation 7A.010.

The Petitioner bears the burden to prove that he was a patron at Hard Rock who received the disputed six \$5,000 chips through game play at the Hard Rock. Because the Petitioner was denied

his claim by the Board, he is tasked with showing that more likely than not the below issues below should be resolved in his favor.

Was Young a "patron" at Hard Rock?

Under Nevada law, "a claim by a patron of a licensee for payment of a gaming debt that is not evidenced by a credit instrument may be resolved" as a patron dispute. (NRS 463.361(2)). Furthermore, Nevada Gaming Commission (Commission) Regulation 12.0460(4) states that "[a] licensee shall not redeem its chips or tokens if presented by a person who the licensee knows or reasonably should know is not a patron of its gaming establishment..." The term "patron" is not further defined within the statute and regulation. However, in the past, the term patron has been defined in a prior Nevada Eighth District Court case and a Board case. In those instances, a patron in chip disputes were defined as a customer of a gaming establishment that obtained the chips "through a game, tournament, contest, drawing, promotion or similar activity." <sup>1</sup> This distinction is important to discern the difference between customers who walk into Hard Rock for non-gaming reasons (for example a patron that is only dining at a gaming establishment) versus customers that place wagers at a table game.

When looking at the definition of patron, as it is defined by Board in the past, Young was a patron if he could prove by a preponderance of the evidence that the chips he had in his possession were acquired by game play at Hard Rock. However, if the chips could not be verified, he would not have been considered a patron as the term is used in Regulation 12.0460(4).

Did the Petitioner prove that he acquired the six \$5,000 chips by game play at Hard Rock?

Since the chips are a debt that is owed by the gaming establishment to the customer (when chips are exchanged), the chips are not a credit instrument as defined in NRS 463.01467. Therefore, the chip dispute is properly before the Board under NRS 463.362-363. However, Young could not prove by the preponderance of the evidence that he won the chips while playing a game, tournament, etc. at Hard Rock.

He testified that he could not remember exactly when he received the six \$5,000 chips but he believes that he collected the chips throughout 2008 to 2011 while playing at various table games. The Petitioner stated that he was "rat holing" the chips by taking his own chips off of the table while the dealer and pit personnel were not looking. Young claimed that rat holing allowed him to show the pit personnel that he had larger losses than he actually had. He testified that rat holing allowed for him to get better "comps" (free merchandise, food, and/or services) from Hard Rock.

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<sup>1</sup> See *Kyprianou v. Caesars Palace*, Nevada 8<sup>th</sup> District Court (2008), Case # A562045W, page 2 of the Revised Order on the Motion of the Gaming Control Board's Motion to Dismiss filed on August 28, 2008. Although the case is not binding on the Board because it was at the district court level, the case was at the judicial review level for patron disputes. The Order signed by the Court in *Kyprianou* defined a patron as a customer of a gaming establishment that obtained the chips "through a game, tournament, contest, drawing, promotion or similar activity." The Board relied on that definition in *Porter v. MGM Grand Hotel/Casino* (2013), Case# 2013-7893L.

The Petitioner testified that gaming establishments, such as Hard Rock, generally gives more comps to patrons that had or showed bigger losses. The Respondent acknowledged that the practice of giving larger comps to patrons with larger losses is a common practice in the industry and at Hard Rock. Young claimed that the \$5,000 chips went unnoticed by Hard Rock because he rat holed them between 2008 and 2011.

All parties agreed that Young was an active player at Hard Rock, especially between 2008 and 2011. Young stated in his voluntary statement that around 2010 and after, he curbed his playing due to "marriage and raising a family." (See State's Exhibit S8, page 3). However, the Respondent testified that they would have known if a patron was given any \$5,000 chip because they track all large denomination chips. Konrad testified that Hard Rock could track chips with lower denominations but definitely would have tracked anytime a \$5,000 chip was given to a patron. Rat holing does not appear to be a practice that could have circumvented the tracking of \$5,000 chips by Hard Rock because the chips would have been accounted for before it was physically given to the customer. Therefore, rat holing \$5,000 chips after they were logged or tracked by Hard Rock would not have resulted in \$5,000 chips leaving the table game inventory without the Hard Rock's knowledge.

Because Young could not show by a preponderance of the evidence that he earned the six specific \$5,000 chips through game play at Hard Rock, he has not shown that he was a patron at Hard Rock for the purposes of a chip dispute.

#### CONCLUSION

The Petitioner had the burden of showing the undersigned that he more likely than not should have been allowed to exchange the six \$5,000 chips. However, Young did not provide sufficient evidence to show that he acquired the six \$5,000 chips "through a game, tournament, contest, drawing, promotion or similar activity." He did not show by a preponderance of the evidence that he was a patron at Hard Rock, as the term related to a chip dispute.

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///

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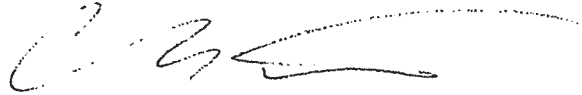
///

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In the Matter of: Young v. Hard Rock Hotel and Casino  
Hearing Dates: 10/24/17 and 1/22/18  
Page 5

Therefore, based upon the evidence presented, the undersigned recommends Agent Nuqui's decision denying a payment of \$30,000 to the Petitioner, Tsun Young, be affirmed.



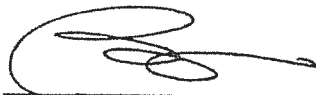
CHAN LENGSAVATH, ESQ.  
HEARING EXAMINER

NEVADA GAMING CONTROL BOARD

ORDER

IT IS SO ORDERED.

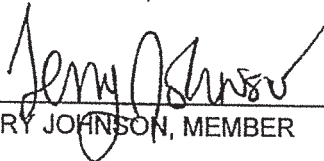
Dated this 3<sup>rd</sup> day of May, 2018.



BECKY HARRIS, CHAIRWOMAN



SHAWN R. REID, MEMBER



TERRY JOHNSON, MEMBER

## **ADDENDUM 2**

## **ADDENDUM 2**



1 Robert A. Nersesian  
2 Nevada Bar No. 2762  
3 Thea Marie Sankiewicz  
4 Nevada Bar No. 2788  
5 **NERSESIAN & SANKIEWICZ**  
6 528 South Eighth Street  
7 Las Vegas, Nevada 89101  
8 Telephone: 702-385-5454  
9 Facsimile: 702-385-7667  
10 *Attorneys for Petitioner*

**STATE OF NEVADA**

**BEFORE THE NEVADA GAMING COMMISSION**

10 Tsun Young )  
11 c/o Robert A. Nersesian )  
12 Nersesian & Sankiewicz )  
13 528 S. 8<sup>th</sup> Street ) Case #2016-8570-LV  
14 Las Vegas, Nevada 89101, )  
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**PETITIONER'S CLOSING ARGUMENT**

vs.

Hard Rock Hotel and Casino ,  
4455 Paradise Road  
Las Vegas, Nevada 89169

Respondent.

**I. REASONS FOR SUMMARILY FINDING FOR THE PETITIONER**

**A. THE AGENT CONFIRMED PETITIONER'S ENTITLEMENT**

Under the Agent's testimony the Hard Rock ("Casino") has already lost this matter. The Agent confirmed that despite a clear statement of what was and was not at issue, he misapplied the facts and sought out a win of \$30,000, which never occurred and was never claimed. He also acknowledged that his error caused him to miscalculate the Petitioner's claim.

Rather, the Agent, he evaluated the wrong question even though the proper question was posed in the written statement of Young and not disputed by Casino. He then went further, and



1 acknowledged that Young was a patron of Casino, and his play supported a finding of his  
2 legitimate possession of six \$5000 chips. That should have been the end of the matter, and under  
3 all the evidence provided by Casino to the Agent, a decision should have been rendered for  
4 Young.

5  
6 There are also some interesting questions through the Casino's exhibits. For example,  
7 they attempted to prove that Tsun Young ("Young") was not a participant in a tournament  
8 through providing a list of participants which did not include Young which was, apparently, only  
9 constructed in contemplation of the hearing on Petitioner's objection to the agent's decision.  
10 When pressed, it was seen that even the undisputed winner of the tournament was not on the  
11 alleged list of participants. In addition to no authentication of the purported list, the lack of real  
12 participants on the list shows, at worst, the Casino fabricated the list or presented a list foreign to  
13 the tournament, and at best, the list was totally unreliable. More than raising a question as to  
14 whether Petitioner participated in the tournament as he swore, clearly the motive and source of  
15 such a false list comes into question concerning the Casino's credibility.  
16

#### 17 B. PLAIN LANGUAGE OF THE REGULATIONS

18 The regulations provide clearly that chips are bearer instruments. Nevada Gaming  
19 Control Regulation ("NGCR") 12.060(1), essentially mandates that chips are bearer instruments.  
20 Per NGCR 12.060(2)(c), Casino is under an obligation to, "Promptly redeem its own chips and  
21 tokens from its patrons . . ." Here, Casino, agent, and Petitioner each represented and confirmed  
22 that the Petitioner was a "patron." Thus, Casino was under an obligation to "promptly redeem"  
23 the chips presented by Petitioner. 12.060(4).  
24

25 Casino, nonetheless, appears to maintain that despite the acknowledgment that Petitioner  
26 was a patron, it is under no obligation to redeem the chips per NGCR 12.060(4), providing: "A  
27 licensee shall not redeem its chips or tokens if presented by a person who the licensee knows or  
28 reasonably should know is not a patron of its gaming establishment . . ." (Emphasis added).

1 Assuming that this regulation takes precedence over the conflicting regulation at NGCR  
2 12.060(1),<sup>1</sup> with the admission that the Petitioner is a “patron,” it is impossible to find an  
3 exception that the Petitioner is not entitled to cash the chips at issue. Simply, in construing a law,  
4 a tribunal must apply its plain meaning unless the statute is ambiguous. Clark County v. S. Nev.  
5 Health Dist., 128 Nev. 651, 656 (2012). The word used in the regulation is patron, and there is  
6 nothing within the regulation raising any ambiguity. Petitioner is entitled to a direction that the  
7 Casino cash the \$30,000.00 in chips.  
8

9 **II. EVEN UNDER AN UNWARRANTED AND STRAINED CONSTRUCTION OF**  
10 **NGRC 12.160(4), PETITIONER STILL DEMONSTRATED HIS ENTITLEMENT**  
11 **TO HAVE CASINO REDEEM THE \$30,000.00 IN CHIPS**

12 As an introductory matter, Casino questioned Petitioner about the origination in a  
13 discovery brief by Petitioner’s counsel for a figure of over \$1.7 million in buy-ins. This was in a  
14 lawyer’s brief, and obviously Petitioner would have no such knowledge. For the Examiner’s  
15 edification, nonetheless, the figure originates from pages HRH000004-HRH000007, entitled  
16 “Cage Records.” Exhibit 1, attached. Also provided by the Board in discovery as an attachment  
17 to the Casino’s “Incident file full report” is another running buy-in for the Petitioner. This one  
18 totals \$937,621, and was provided by the Board in the Discovery as the recap provided by to the  
19 Board by the Casino. See exhibit 2, attached. Thus, at the time of the hearing Casino had  
20 provided one figure to the Board, one figure to the Petitioner, and a third figure to at the hearing,  
21 ranging from approximately \$850,000.00 to \$1.7 million. Thus, at the time of the hearing there  
22 existed three different, yet undifferentiated, calculations of Petitioner’s buy-ins as calculated by  
23 Casino, and of course, Casino relies on the lowest of these which was constructed post-  
24 investigation and pre-hearing.  
25  
26  
27

28 <sup>1</sup> Chips constitute evidence of a debt to the “custodian” of the chips.

1 This presents yet another curiosity in the litany of shortcomings to Casino's evidence.  
2 How did this figure change so drastically from the original computer print-out provided to the  
3 agent? Further, where did the custom tabulated evidence provided at the hearing come from, and  
4 why is it drastically inconsistent from the original tabulation provided regarding the Petitioner's  
5 buy-in? Again, the legitimacy of the Casino's numbers cannot be reconciled with the original  
6 history provided, and the evidence presented by Casino appears constructed after the fact to  
7 support a calculated outcome. Casino's evidence is incompetent and questionable.  
8

9 Then there's the fact that after the deposition of Casino's person most knowledgeable,  
10 and the documentation presented to the agent, Casino goes back to some files and reconstructs a  
11 new history for the Petitioner which was never-before provided. All of a sudden there exists an  
12 extra column entitled "buy-in detail" which purports to provide a chip history on the conflicting  
13 buy-in figure of \$840,043. Note that all of this arises after it became evident to Casino that its  
14 assertions could not survive under the evidence provided to the agent and after the agent adopted  
15 the erroneous position forwarded by Casino that because the Petitioner did not win the  
16 tournament, he did not have the ability to possess the chips. Also note that on Respondent's  
17 exhibit 1, page 1 as a sample, there are thirty-five "buy-ins" by Petitioner with no detail  
18 whatsoever. Casino is asking the Examiner to rely upon gibberish.  
19

20 Still, the determinative fact is that the Casino must know or reasonably should know  
21 [Petitioner] is not a patron before it can be excused from "promptly" redeeming the chips  
22 presented by Petitioner. NGCR 12.060(4) and NGCR 12.060(2)(c). If, somehow, this statement  
23 is transmogrified into mandating that a casino should not redeem chips if it knows or reasonably  
24 should know that the patron did not acquire the chips from the licensee (as Casino seems to  
25 contend), then the test is still not met here. Simply, considering the history of Petitioner at  
26 Casino, the only reasonable conclusion Casino could reach is that the chips were acquired by  
27 Petitioner at Casino, and must be promptly cashed.  
28

1 Pointedly, even under Casino's construction, the time when Petitioner must know or  
2 reasonably should know was while the Petitioner was at the cage with his attorney. That time has  
3 passed, and as of that time, under the construction of the agent's testimony and the evidence that  
4 existed and was examined, Casino did not know and could not know that the Petitioner did not  
5 acquire the chips from Casino and was not entitled to the redemption. The hearing and the  
6 evidence at the hearing is irrelevant, and the decision must be made promptly in order to meet  
7 the "promptly pay" requirement of the regulations. All this after-the-fact rigmarole presented by  
8 Casino cannot provide an excuse for not complying with a duty that has already passed, and  
9 Casino was duty bound by regulation to pay the Petitioner when he presented the chips. I.e., the  
10 duty arises under the knowledge at the time of presentment, and under the regulations, Casino  
11 has no ability to take months to reach a conclusion - - they either know or they don't know, and  
12 if they don't know, the duty to pay becomes operative.  
13  
14

15 Moreover, to assume that a patron with this kind of action could not have \$30,000 in  
16 \$5000 chips strains credulity, as also recognized by the agent on examination. As noted in the  
17 records, Petitioner largely played craps. Casino would have the Examiner believe that in this  
18 high-action fast-paced game with multiple wagers and multiple players, all of the Petitioner's  
19 chips could be tracked. The proposition is ridiculous, and even Casino's witness acknowledged  
20 that players could and would pocket chips without recognition as well as pit personnel missing  
21 transactions or chip exchanges. If either of the Casino's other set of records is correct, and there  
22 was over a million and one-half dollars in buy-ins or \$937,621.00 in buy-ins, then the  
23 righteousness of Petitioner having the chips at issue is even beyond question regardless of how  
24 being a "patron" is construed. Still, Casino stands before this tribunal and says, we knew that the  
25 Petitioner did not get these chips from us, when, in fact, it has admitted that it could not know  
26 this. In fact, it could not know it at the time it was required to promptly redeem the chips (which  
27  
28

1 is the relevant inquiry) and could not know this today. The chips are subject to immediate  
2 redemption, and the Examiner should so find.

3 Also note that in the presentation at the hearing Casino maintained that the most that the  
4 Petitioner could have in chips is \$20,000.00. Even under the questionable analysis and strained  
5 reading of the regulations, this puts the discrepancy, at the high end, at \$10,000.00. Certainly,  
6 with the consideration of the moving target of buy-ins maintained by Casino as well as the  
7 admissions that there are sources of leakage in their figures, considering the level of action by  
8 the Petitioner, this discrepancy is de minimis, and Casino has not shown anything that would  
9 indicate that it knew that the Petitioner did not get the chips from Casino.  
10

11 The Examiner could further note the disingenuousness of Casino's entire interaction with  
12 the Board. The last page of the Board's discovery provided in this matter is an email, apparently  
13 provided by Casino to Agent Naqui. There, the Casino employee, Ms. Wallace writes that she  
14 "has noting to support where this guest would have received \$30k plus in gaming chips  
15 anywhere in his gaming history." Every record shows that the Petitioner received a multiple of  
16 \$30k plus in his gaming history a number of times. Clearly, Ms. Wallace was dissembling, and  
17 Casino hoped that agent Naqui would buy the farce (and until cross examination where the  
18 dissembling became apparent, even Agent Naqui was roped in and apparently unable to see that  
19 a Casino would prevaricate to such a degree). To the disgrace of the industry, here Casino is just  
20 taking a shot to keep \$30,000.00 in unearned cash. This is not only a case where the Petitioner's  
21 chips should be cashed, but in light of the changing perspectives, cumulative conflicting exhibits  
22 from Casino, and Casino's admission that Petitioner could have pocketed the chips or the casino  
23 personnel could have miscounted, the refusal to pay in this instance should be subjected to an  
24 investigation for unsuitable practices.  
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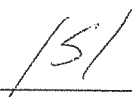


1 III. CONCLUSION

2 For the reasons set forth above, and upon the evidence and arguments presented at the  
3 hearing, it is requested that the Examiner find that the Hard Rock is required to redeem the  
4 \$30,000.00 in \$5k chips presented at the cage by Petitioner.  
5

6 DATED this 7<sup>th</sup> day of February, 2018.

7 Nersesian & Sankiewicz

8   
9 \_\_\_\_\_  
10 Robert A. Nersesian  
11 Nevada Bar No. 2762  
12 528 South Eighth Street  
13 Las Vegas, Nevada 89101  
14 Attorney for Petitioner

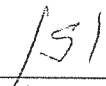
15 CERTIFICATE OF MAILING

16 I HEREBY CERTIFY that on the 7<sup>th</sup> day of February, 2018, I mailed a copy of the above  
17 and foregoing Petitioner's Closing Argument by first class mail, in a sealed envelope mailed  
18 from within the State of Nevada, postage prepaid to the following:

19 Michael G. Alonso, Esq.  
20 Marla J. Hudgens, Esq.  
21 Mary Tran, Esq.  
22 Lewis Roca Rothgerber Christie LLP  
23 50 W. Liberty Street, Suite 410  
24 Reno, Nevada 89501  
25 [malonso@lrc.com](mailto:malonso@lrc.com)

26 Mr. Chan Lengsavath  
27 Hearing Examiner  
28 Nevada Gaming Control Board  
555 E. Washington  
Ste. 2600  
Las Vegas, NV 89101

A copy was also delivered to Mr. Lengsavath via email this date.

26   
27 \_\_\_\_\_  
28 An employee of Nersesian & Sankiewicz



1 NEOJ  
2 AARON D. FORD  
3 Attorney General  
4 MICHAEL P. SOMPS  
5 Senior Deputy Attorney General  
6 Nevada Bar No. 6507  
7 Attorney General's Office  
8 Gaming Division  
9 5420 Kietzke Lane, Suite 202  
10 Reno, Nevada 89511  
11 Telephone: (775) 687-2124  
12 Facsimile: (775) 850-1150  
13 Email: [Msomps@ag.nv.gov](mailto:Msomps@ag.nv.gov)  
14 *Attorneys for Respondent, the Nevada Gaming Control Board*

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 TSUN YOUNG,	)	CASE NO.:	A-18-775062-J
12                      Petitioner,	)	DEPT. NO.:	14
13 vs.	)	GCB CASE NO.:	2016-8570-LV
14 NEVADA GAMING CONTROL BOARD	)		
15 AND HARD ROCK HOTEL AND	)		
16 CASINO,	)		
Respondents.	)		

17 NOTICE OF ENTRY OF ORDER

18 **TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

19        YOU AND EACH OF YOU, PLEASE TAKE NOTE that on April 29, 2019, the  
20 Court entered its *Order on the Petition for Judicial Review* in the above-referenced  
21 matter. A copy of said *Order* is attached hereto as Exhibit "1".

22 /////

23 /////

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28 /////

1 AFFIRMATION

2 Pursuant to NRS 239B.030, the undersigned affirms that the preceding document,  
3 *Notice of Entry of Order*, does not contain the Social Security Number of any person.

4 Dated: This 30<sup>th</sup> day of April 2019.

5 AARON D. FORD  
6 Attorney General

7  
8 By: 

9 MICHAEL P. SOMPS  
10 Senior Deputy Attorney General  
11 Nevada Bar No. 6507  
12 Gaming Division  
13 5420 Kietzke Lane, Suite 202  
14 Reno, Nevada 89511  
15 Telephone: (775) 687-2124  
16 *Attorneys for the Respondent*  
17 *Nevada Gaming Control Board*  
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada, Office of the Attorney General, Gaming Division, and on the 30<sup>th</sup> day of April 2019, I electronically filed the foregoing *Notice of Entry of Order*, by using the Court's electronic filing system to the following:

Michael G. Alonso, Esq.  
Marla J. Hudgens, Esq.  
Mary Tran, Esq.  
Lewis Roca Rothgerber Christie LLP  
201 East Washington Street, Suite 1200  
Phoenix, Arizona 85004-2595

Robert A. Nersesan, Esq.  
Nersesian & Sankiewicz  
528 South Eighth Street  
Las Vegas, Nevada 89101

  
Sue Dehnen, an employee of the State of  
Nevada, Office of the Attorney General

1 INDEX OF EXHIBITS

2

3 <u>Exhibit</u> 4 <u>Number</u>	<u>Exhibit Description</u>	<u>Number of Pages</u>
5 1	6 File-stamped <i>Order on the Petition for Judicial</i> 7 <i>Review</i>	8 2

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**EXHIBIT “1”**

**EXHIBIT “1”**

*Steven D. Grierson*

1 **ORDER**  
2 AARON D. FORD  
3 Attorney General  
4 MICHAEL P. SOMPS  
5 Senior Deputy Attorney General  
6 Nevada Bar No. 6507  
7 Attorney General's Office  
8 Gaming Division  
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13 Email: [Msomps@ag.nv.gov](mailto:Msomps@ag.nv.gov)  
14 *Attorneys for Respondents, the Nevada Gaming Control Board*

9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 TSUN YOUNG, ) CASE NO.: A-18-775062-J  
12 Petitioner, ) DEPT. NO.: 14  
13 vs. ) GCB CASE NO.: 2016-8570-LV  
14 NEVADA GAMING CONTROL BOARD )  
15 AND HARD ROCK HOTEL AND )  
16 CASINO, )  
Respondents.

17 ORDER ON THE PETITION FOR JUDICIAL REVIEW

18 THIS MATTER having come on for hearing, the Court having read the briefs and  
19 papers in support and opposition, having reviewed the record, having heard oral  
20 argument, and being otherwise fully advised;

21 THE COURT HEREBY FINDS:

22 1. This Court should affirm a decision of the Nevada Gaming Control Board  
23 (Board) which is supported by any evidence whatsoever. *Sengel v. IGT*, 116 Nev. 565, 570  
24 P.3d 258, 261 (2000).

25 2. Further, this Court should show great deference to a Board decision on appeal  
26 and not disturb the decision unless it is arbitrary, capricious or contrary to the law.  
27 *Redmer v. Barbary Coast Hotel & Casino*, 110 Nev. 374, 378, 872 P.2d 341, 344 (1991).

28 /////

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Def(s)	<input type="checkbox"/> Judgment of Arbitration

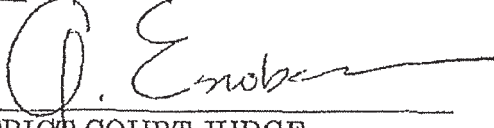
1 3. The Board's findings and its decision are supported by the evidence in that  
2 Petitioner's game play at the Hard Rock does not support that he was properly in  
3 possession of the six (6) \$5,000 chips. The Hard Rock presented evidence to show how it  
4 tracks game play, and it presented evidence to show Mr. Young's tracked game play at  
5 the Hard Rock. Although the Hard Rock's records demonstrate that Mr. Young had  
6 possible chips to redeem, the Hard Rock's records do not substantiate Mr. Young's  
7 possession of \$30,000 in chips, particularly six (6) \$5,000 chips.

8 4. Further, the Board's decision is not arbitrary or capricious, and is in accordance  
9 with the law. The Board has interpreted Nev. Gaming Comm'n Reg. 12.060(2)(c) and (4)  
10 to require a "patron" to be more than merely a customer of a gaming licensee. In order to  
11 be entitled to redeem chips, a "patron" must verify or substantiate his or her play. This  
12 interpretation is reasonable, particularly in the context of patron disputes generally.

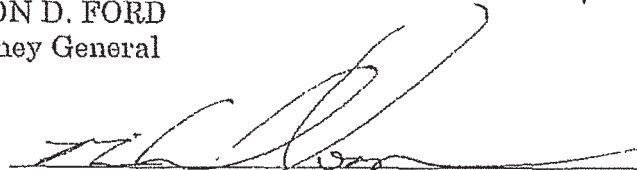
13 THEREFORE, IT IS HEREBY ORDERED on the *Petition for Judicial Review* that  
14 the Board's decision is AFFIRMED.

15 IT IS FURTHER ORDERED that Petitioner's requests to strike the Board's  
16 *Answering Brief* and the Hard Rock's *Answering Brief* are DENIED.

17 Dated: This 24<sup>th</sup> day of April 2019.

18  
19   
20 DISTRICT COURT JUDGE

21 Respectfully submitted by:  
22 AARON D. FORD  
23 Attorney General

24 By:   
25 MICHAEL P. SOMPS (Nevada Bar No. 6507)  
26 Senior Deputy Attorney General  
27 5420 Kietzke Lane, Suite 202  
28 Reno, Nevada 89511  
Telephone: (775) 687-2124  
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