

IN THE SUPREME COURT OF THE STATE OF NEVADA

Tsun Young)
)
Appellant/Petitioner,)
)
vs.)
)
Hard Rock Hotel and Casino)
and State of Nevada, *ex rel*)
Nevada Gaming Control Board)
)
Appellees/Respondents.)
_____)

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Clark County, Nevada

JOINT¹ APPENDIX
Volume 4, Bates Nos. 499-648

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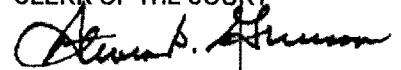
¹ The context of this Appendix was circulated, and the parties agreed it is appropriate to file as joint.

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

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

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18 **GAMING CONTROL BOARD ON PETITION FOR JUDICIAL REVIEW**
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1 A. With over \$260,600 in buy-ins on table games at the Hard Rock (over \$300,000.00 by
2 Hard Rock's account), can it be said that Plaintiff is not a patron and/or did not
3 legitimately acquire the \$30,000.00 in chips at the Hard Rock?

4 B. When Hard Rock admits that the Petitioner is a "patron," and the Board's agent
5 admits that the Petitioner is a "patron," and Hard Rock's attorney refers to Petitioner as a
6 patron, did the Board err in defining "patron" differently than its plain meaning,
7 differently than its agent, differently than the casino, differently than all dictionaries, and
8 differently than case law? Further, in doing so, was it proper for the Board to create a
9 definition found in no law, at odds with the historic use of the word, and apparently
10 constructed to allow the casino to escape liability?

11 C. Did the hearing examiner err in excluding an expert on behalf of Plaintiff when that
12 expert was presented to address an issue that the Hard Rock only raised, for the first time,
13 at the hearing and which was based on previously unproduced documentation and at
14 variance with the prior documentation produced by Hard Rock?
15

16 D. When the Hard Rock's refusal to redeem Petitioner's chips is subject to a law that says
17 they must redeem the chips unless they have reason to know that the Petitioner is not a
18 patron, did the Board err in changing the burden on this law, removing the Hard Rock's
19 burden within the law, and transferring that burden to the Petitioner to prove a negative?
20

21 E. When the records provided by the Hard Rock show that even by their calculations,
22 Petitioner likely has \$20,000.00 in legitimate chips outstanding, is it error to deny Petitioner
23 any redemption of this chips?
24

25
26
27 **V. STATEMENT OF THE CASE**
28

1 On October 24, 2016, Plaintiff presented \$30,000.00 in \$5000.00 denomination chips of
2 the Hard Rock Hotel & Casino ("Hard Rock") for redemption. Hard Rock refused to redeem the
3 chips stating "[Hard Rock] is unable to verify where he got his cheques." Record on Review
4 ("ROR"), 357. Although this is not a standard under any legal theory for refusing to cash chips,
5 the Nevada Gaming Control Board, after hearing, confirmed the Hard Rock's ability to refuse to
6 redeem the chips. Petitioner seeks the right to redeem his chips, and an order reversing the Board
7 and directing Hard Rock to redeem the chips in Petitioner's possession.
8

9 As shown below, the Decision of Agent Naqui is factually erroneous, and, in fact, he
10 admitted as much in his testimony at the hearing held under Nev. Gaming Comm. Reg. § 7A.
11 Further, the confirmation in the Recommendation drafted by Mr. Lengsevath is legally erroneous
12 as well as arbitrary and capricious in his application of the facts to the law.
13

14 **VI. SUMMARY OF ARGUMENT**

15 Plaintiff, a long-standing and high-end customer and patron of the Hard Rock is entitled
16 to redeem \$30,000.00 in chips held by him. This is because the chips are bearer instruments
17 properly presented by the Petitioner as a patron. Further, the Hard Rock has an affirmative legal
18 obligation to "promptly redeem" such chips when they are presented. Here the Board and Hard
19 Rock have erroneously required the Petitioner to demonstrate entitlement far beyond what the
20 law requires, the chips were required to be redeemed when presented, and Hard Rock is,
21 essentially, stealing the value represented by the chips from the Petitioner with the blessing of
22 the Board. Therefore, the Board's decision should be reversed, and the Hard Rock should be
23 directed to redeem Petitioner's \$30,000.00 in chips.
24

25 **VII. STATEMENT OF FACTS**

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28

1 1. Despite a ruling by the Board to the contrary based on a contrived definition of “patron,”
2 Plaintiff was a “patron” of the Hard Rock Hotel & Casino (“Hard Rock”). Petitioner’s
3 Declaration, ROR 302, ¶¶ 1, 4, and 17.
4
5 2. Further to this “patron” status, the Agent investigating the matter also found that the Petitioner
6 was a “patron” of Hard Rock. Agent Naqui report, ROR 351 (“I found Young was a patron of the
7 Hard Rock); ROR 349 (“Reported by Patron Tsun Young”); ROR 350 (“[Petitioner] was a rated
8 player for several years.”); ROR 351, line 1; and Agent Naqui Testimony, ROR 64: 12 and 13.
9
10 3. The Hard Rock, by its core witness, also admitted that the Petitioner was a “patron.” Konrad
11 Testimony, ROR 258: 20-22; and see ROR 444: 13; (Attorney for Hard Rock referring to
12 Petitioner as a “patron” during argument on a motion for protective order); and see record of
13 play, ROR 359-360.
14
15 4. Hard Rock holds an unrestricted gaming license with the State of Nevada.
16
17 5. Plaintiff presented \$30,000.00 for chips for redemption at the Hard Rock on October 24, 2016.
18 Agent Naqui report, ROR 349, et seq.
19
20 6. The Hard Rock refused to redeem the Plaintiff’s chips. Id.
21
22 7. The Nevada Gaming Control Board Enforcement Division (“NGCBED”) was contacted by
23 Petitioner regarding a patron dispute centered on Hard Rock’s refusal to redeem the chips
24 presented. Agent Naqui report at ROR 350, COMPLAINT, last sentence.
25
26 8. The NGCBED responded through gaming enforcement agent Dan Naqui. ROR 349.
27
28 9. Upon arriving, Agent Naqui met with the Hard Rock and with the Petitioner and Petitioner’s
attorney, and was provided the voluntary statement from the Petitioner which include a
declaration made under penalty of perjury, said statement being found at ROR 353-356.
10. From Hard Rock Agent Naqui, at the time of responding, received from Hard Rock
documents comprised of two documents, one being a narrative and the other being a two-page

1 print out alleged to be Petitioner's historic wagering activity at Hard Rock. Kevin Covell Report
2 narrative, ROR 357; Paul Blanco report, ROR 358; and attachment to Paul Blanco report, ROR
3 359-360.

4 11. Per the information provided to Agent Naqui at the time of his investigation, ROR 359-360,
5 Petitioner historically bought in at various table games at the Hard Rock for \$260,600.00 during
6 his history of gambling table games at Hard Rock as captured by Hard Rock.¹

7
8 12. Over his history at Hard Rock, Petitioner was a net winner of an additional \$23,650, bringing
9 the total chips placed in action at Hard Rock by Plaintiff at least \$284,250.00. Konrad
10 Testimony, ROR 272-273

11 13. Per Petitioner's declaration Agent Naqui was informed specifically that Petitioner did not
12 claim that he had won the chips in a tournament, but rather, explained that the chips were
13 comprised and accumulated from a \$100,000.00 deposit he made with the casino as well as the
14 results of his gaming with that \$100,000.00. Declaration, ROR 354, ¶¶ 6, 7, and see ROR 383
15 (Hard Rock record confirming Petitioner's \$100,000.00 deposit).
16

17 14. These representations are in direct accord with Petitioner's play as referenced at the report
18 provided to Agent Naqui by Hard Rock for the dates of play where Petitioner claims he
19 accumulated the chips. Compare ROR 360 (7/21/08-8/1/08) with Declaration, ROR 354-355, ¶¶
20 5-11.

21 15. Additionally, Petitioner averred that an additional amount was taken from the tournament
22 amounting to \$5000. Declaration, ROR. 355, ¶ 11.

23
24 16. Agent Naqui reviewed and investigated the circumstances and issued a decision denying
25 Petitioner's right to redeem the chips. Decision, ROR 349-352.

1 17. Directly contrary to the Petitioner's assertion that the chips came from a source other than
2 claimed winnings occurring in a tournament, and Petitioner's statement that the most taken from
3 the tournament was \$5000 (which was played off and did not constitute part of the chips for
4 which Petitioner sought redemption), Agent Naqui rendered his decision falsely asserting that the
5 Petitioner's claim was premised off of "Young stated Hard Rock . . . would not cash out \$30,000
6 worth of chips he received from a blackjack tournament . . ." and that Petitioner claimed he had
7 "acquired the chips during that specific blackjack tournament." Agent Naqui Decision, ROR
8 349, and 350, COMPLAINT, ¶ 2, respectively. That is, Agent Naqui made a determination as if
9 Petitioner was claiming that he won the chips in a blackjack tournament when, in actuality,
10 Petitioner expressly emphasized that the chips did not come from a blackjack tournament, but
11 rather, his play at the table games of the casino as evident on the Report provided Agent Naqui
12 by Hard Rock (ROR 359-360).

13
14
15 18. When confronted with this contradiction at the hearing, in addition to recognizing that he
16 decided an issue contrary to the Petitioner's declaration and claim, Agent Naqui acknowledged
17 that he "vaguely recalled" that he was told at the time of his investigation by Petitioner's
18 representative (the undersigned) that the dispute had nothing to do with winnings at a
19 tournament. He also acknowledged that the written declaration of the Petitioner contradicted a
20 claim for money won in a tournament, and that nothing written in any way asserted that the funds
21 represented by the \$30,000.00 in chips had anything to do with money won at a tournament.
22 Agent Naqui Testimony, ROR p. 56:1-60: 5. Indeed, he went so far as to affirmatively
23 acknowledge that he was mistaken in his assumptions giving rise to his decision. Naqui
24 Testimony, ROR 59-60: 23-5.

25
26
27
28 ¹ This notes "as captured by Hard Rock" because that is Petitioner playing as a rated player on a
player's card. Nominal play on a player's card or anonymous play would, necessarily, not be

1 19. At the hearing, after being confronted with his contradiction between Petitioner's claim and
2 his decision, Agent Naqui then acknowledged that the information he was provided relative to
3 the Petitioner's play at Hard Rock supported Petitioner's position that he legitimately acquired
4 the \$30,000.00 in chips from Hard Rock as a patron of Hard Rock. Agent Naqui testimony ROR
5 69: 4-13; and see Agent Naqui testimony, ROR 66-67.

6
7 20. Another issue here are the records produced by Hard Rock. Initially, Hard Rock provided
8 Agent Naqui with the documentation found at ROR 359-360. Plaintiff noticed and took Hard
9 Rock's deposition through its person most knowledgeable, and was provided additional
10 documentation. Then, at the hearing, Hard Rock presented and relied upon that which appears at
11 ROR 368-370, a record containing information that was not provided to Agent Naqui, not
12 provided at the deposition of Hard Rock, duces tecum, and only magically appears on a second
13 day of the hearing after Petitioner filed briefs pointing out exactly what was absent in Hard
14 Rock's analysis.

15
16 21. Even with the Hard Rock placing their best construction upon the chip history of the
17 Petitioner and constructing an exhibit for presentation at the hearing, Hard Rock still
18 acknowledges that Petitioner could have \$20,000.00 in \$5000.00 chips, but redeemed none of the
19 chips. Constructed Hard Rock chip record, ROR 396.

20
21 22. Despite this new information arising, and Hard Rock's agent, Konrad, testifying as an expert
22 without being disclosed as an expert, Petitioner sought to bring in a counter-expert to address
23 these new issues first being raised by Hard Rock, which testimony was barred by the hearing
24 examiner. Decision, ROR 3.

25 VIII. ARGUMENT

26 A. STANDARD OF REVIEW

27
28 captured and attributed to the Petitioner, and the \$260,600.00 is an absolute minimum.

1 The reviewing court may affirm the decision and order of the Board or
2 the hearing examiner, or it may remand the case for further
3 proceedings or reverse the decision if the substantial rights of the
4 petitioner have been prejudiced because the decision is:

- 5 (a) In violation of constitutional provisions;
- 6 (b) In excess of the statutory authority or jurisdiction of the Board
7 or the hearing examiner;
- 8 (c) Made upon unlawful procedure;
- 9 (d) Unsupported by any evidence; or
- 10 (e) Arbitrary or capricious or otherwise not in accordance with
11 law.

12 NRS 463.3666(3). Here, Petitioner contends that the decision was arbitrary and capricious as it is
13 based upon an illegitimate reading of the law and is also contrary to law. Also, there was no
14 evidence to support the decision as the Board applied erroneous parameters under the law to
15 make the decision. This second basis is also subject to reversal because it, too, renders the
16 decision arbitrary and capricious. Per NRS 463.3666(2), these standards are applied on the
17 review of the record.

18 **B. OVERARCHING LEGAL PRINCIPLES APPLICABLE TO THIS MATTER**

19 While gaming is certainly a specialized area of the law, it remains governed by statutes
20 and regulations. Certain laws applicable to the case sub judice include the following:

21 “Chips and tokens are solely representatives of value which **evidence**
22 **a debt owed to their custodian by the licensee** that issued them . . .”
23 and are not the property of anyone other than that licensee.

24 Nev. Gaming Comm. Reg. § 12.060(1)(emphasis added).

25 A licensee that uses chips or tokens at its gaming establishment **shall: .**
26 **. . Promptly redeem its own chips and tokens from its patrons** by
27 cash or check drawn on an account of the licensee . . .”

28 Nev. Gaming Comm. Reg. § 12.060(2)(c)(emphasis added).

“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 . . .”

1 Nev. Gaming Comm. Reg. § 12.060(4)(emphasis added). Further, there is no statute or
2 regulation which states or alludes that before a casino must cash the chips of a patron, it must be
3 assured that the chips were acquired by the patron through game play at the casino, although
4 this is the basis of the Board's decision.²

5 **C. THE BOARD ERRED IN CONSTRUCTING AN UNSUPPORTED DEFINITION OF**
6 **"PATRON" AT ODDS WITH THE MEANING OF THE WORD**

7 The regulation at issue per the decision provides that when a 'patron' of a casino presents
8 chips to the casino for redemption, they must be 'promptly redeemed.' Nev. Gaming Comm.
9 Reg. § 12.060(2)(c). Here the undisputed, and in fact unanimous, facts gleaned at the hearing and
10 shown during the investigation show the following: 1) Petitioner was a patron of the Hard Rock,³
11 2) He presented \$30,000.00 in Hard Rock chips to Hard Rock for redemption, and 3) Hard Rock
12 refused to redeem them. That is every element prerequisite to Hard Rock's duty and legal
13 responsibility to redeem the chips under the law, yet the Board has excused them from this
14 obligation.
15

16 Despite this agreed status and the unambiguous language of the pertinent regulation, the
17 Board unilaterally changed the pertinent regulation and excused Hard Rock from paying. The
18 pertinent regulation reads as follows: "A licensee shall not redeem its chips or tokens if
19 presented by a person who the licensee knows or reasonably should know is not a patron of
20 its gaming establishment" Nev. Gaming Comm. Reg. § 12.060(4)(emphasis added). As
21
22

23
24 ² Note that the basis of the Decision is completely flawed in this respect. The decision states that
25 Petitioner must lose because he cannot show that he acquired the chips "through a game,
26 tournament, contest, drawing, or promotion." ROR 005, CONCLUSION. Per the Decision, a
27 patron who buys \$50,000.00 at the cage, yet fails to play and returns to the cage to return the
28 chips, is not entitled to redemption because the chips were not won. The proposition is
ridiculous, and the entire concept supporting the Board's Decision is flawed. And this is how
Petitioner claims he got his chips. Declaration, ROR 354-355, ¶¶ 7-11.

1 rewritten by the Board in the Decision, this regulation now necessarily reads, 'A licensee shall
2 not redeem its chips or tokens if it knows or reasonably should know that the person presenting
3 the chips did not win the chips from the casino in a game offered by the casino.' Decision, ROR
4 004. But the express condition in the regulation is the status of the person presenting the chips (a
5 patron), and not the status of the chips (won at a game). To read in this extra and extraneous
6 language, the Board has legislated and altered the regulatory framework and changed the law.
7

8 In construing regulations and statutes, when the regulation "is clear and unambiguous,"
9 there is no construction to be undertaken, and the tribunal is to give "effect to the plain and
10 ordinary meaning of the words" Davis v. Beling, 128 Nev. 301, 311, 278 P.3d 501, 508-509
11 (2012). Moreover, this rule is so sacrosanct that even if the tribunal believes that the plain
12 language of a law is at odds with the legislative scheme surrounding that law, the tribunal
13 remains constrained to apply the plain language over the perceived intent. Pope v. Motel 6, 121
14 Nev. 307, 314, 114 P.3d 277, 282 (2005). Thus, when the regulation contains the common word
15 "patron," it is to be given its ordinary and plain meaning, and tribunals are restrained from
16 embarking on a search of non-existing ambiguities or hidden meanings beyond the face of the
17 word.
18

19 Patron is just such a word. The authorities are unanimous in the unambiguous meaning of
20 the word. A patron is, "[A] person who is a customer, client, or paying guest, esp. a regular one,
21 of a store, hotel , or the like." Webster's College Dictionary (Random House 1990), and see
22 Black's Law Dictionary, Fifth Ed., (West 1979)("A regular customer."); Oxford Living
23 Dictionaries ("A customer of a shop, restaurant, etc., especially a regular one."); Miriam
24 Webster ("[O]ne who buys the goods or uses the services offered especially by an
25
26

27 ³ As noted in the Statement of Facts above, ¶¶ 1-3, Petitioner, Agent Naqui, Hard Rock and Hard
28 Rock's counsel have all acknowledged that the Petitioner was a "patron."

1 establishment.”). Clearly, through respected lexicography four deep, including the
2 premier legal dictionary, “patron” has a plain and ordinary meaning. The same is true in
3 the limited case law applicable to the term. See Peoria v. Henderson, 39 Ill. App. 3d 762,
4 765, 350 N.E.2d 540, 542 (1976)(One who has made wagers at a gambling house is a patron of
5 the gambling house); Acker v. S.W. Cantinas, Inc., 586 A.2d 1178, 1181 (Del. 1991)(A “patron”
6 is one who conveys an economic benefit through purchase on the business of another.); Lehman
7 Bros. v. Certified Reporting Co., 939 F. Supp. 1333, 1340 (1996)(Analogizing a “patron” to a
8 customer); Kottaras v. Whole Foods Mkt., Inc., 281 F.R.D. 16, 17 (D. D.C. 2012)(same). Clearly
9 there exists a plain and ordinary meaning to patron, Petitioner squarely fits and falls within that
10 meaning, and the Board, in excluding Petitioner from the class of persons referenced (patrons)
11 clearly erred in turning their decision on their flawed construction of the word. See Decision,
12 ROR 003, ISSUE.
13

14
15 Further, despite the foray afield by the Board, the Decision attempts to support this
16 unwarranted construction through citing to a prior District Court case allegedly supporting its
17 conclusion. Decision at ROR, p. 4, ¶ 2 and n. 1. The Board erred here as well, and the decision
18 cited, Kyprianou v. Caesars Palace,⁴ in no way supports the Boards conclusion. In fact, to the
19 extent that Kyprianou could provide any precedent or guidance in the present matter, it supports
20 Petitioner’s contentions.
21

22 Specifically, in the matter of Kyprianou v. Caesars Palace, the dispute was over a chip
23 gifted to Mr. Kyprianou and Caesars’ corollary refusal to cash the chip. The Nevada Gaming
24 Control Board denied jurisdiction because the allegation was that the chip was a gift, and did not
25

26
27 ⁴ The Order dismissing the Board can be found here:
28 https://www.clarkcountycourts.us/Portal/DocumentViewer/Index/U8qZQ7Dtwr6urssYIi2J2a19oXNLrXiuwMVMTmec4CYRnbmvdYpvE0AEIYUatGFo26NPzPG686kUhqz7jsjz3TuVAv5DkrCZ_q4MBHXYeUhMwuUkoiBX2yKTnRR30AFM0?p=0 <viewed 8/25/18>

1 fall under the jurisdiction of patron disputes under NRS 463.362 limiting their jurisdiction to
2 disputes involving, “[a]lleged winnings, alleged losses or the award or distribution of cash,
3 prizes, benefits, tickets or any other item or items in a game, tournament, contest, drawing, or
4 similar event. The nature of the action against the Board was to seek mandamus to compel the
5 Board to accept jurisdiction over Mr. Kyprianou’s claim that Caesars must redeem the \$5000
6 chip. This was in the third claim in the Complaint he filed, the claim was limited to the Board,
7 and the first two claims were against Caesars on common-law grounds. The Board moved to
8 dismiss on the grounds that they lacked jurisdiction over a gift due to the language of NRS
9 463.362. At the same time, Caesars sought to dismiss the Complaint against them, and it was
10 Caesars that made the assertion that Mr. Kyprianou was not a patron.
11

12 The order cited by the decision is available as stated in n. 4. Clearly, the order found and
13 expressed a specific reason as to why the Board was dismissed,⁵ It had nothing to do with Mr.
14 Kyprianou’s status or lack of status as a patron, but rather, by its express terms, the fact that the
15 chip was admittedly gifted removed it from the jurisdiction of the Board. It was the nature of the
16 claim that barred the Board’s jurisdiction, not the status of the plaintiff. More importantly, it was
17 Caesars that claimed the lack of patron status in their corollary moving papers, and as is evident
18 in exhibit 1, the dismissal of Caesars was denied. That is, the court appears to accept that
19 someone attempting to cash a chip is a “patron,” but limits the Boards jurisdiction to those
20 claims arising from gaming at the casino under the application of NRS 463.362, as opposed to
21 items unrelated to gaming at the casino (i.e. being gifted a chip). Thus, the sole authority upon
22 which the Decision relies is inapposite to the proposition in the Decision, actually supports
23
24
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27
28 ⁵ “[T]he dispute at issue in this case was not within the Board’s Jurisdiction under NRS 463.361,
nor did the Board have jurisdiction under NRS 463.362, as the chip at issue was not obtained

1 Petitioner's (and the world's) definition of "patron," and does not support the Board's
2 conclusion.

3 From yet another perspective, if the construction of "patron" in the Board's Decision is
4 accepted as allegedly supported by Kyprianou, then the determination that the Petitioner is not a
5 patron must also be a determination that the Board lacks jurisdiction over the dispute. Clearly,
6 this is not the case, and the construction of "patron" in the Decision is contrary to the regulations.
7 The entire statutory and regulatory scheme is designed to resolve "patron disputes," and a
8 determination that a complainant is not a patron is a decision that the Board lacks jurisdiction
9 over the dispute. In this sense, applying the Board's analysis, the Board could not even render a
10 decision on this matter. It's obvious that that is not the case, and in having accepted jurisdiction
11 and deciding this as a "patron dispute," the Board is acknowledging that the Petitioner is a patron
12 while denying the Petitioner is a patron. This matter was not dismissed for lack of jurisdiction,
13 and in undertaking jurisdiction, the Board admits that Petitioner is and was a patron. The only
14 possible way to reconcile this inconsistency is to find that the Decision is in error in determining
15 that Petitioner was not a patron as used in the regulatory framework.
16

17
18 In this respect, the Board must be reversed in its entirety. The Decision cites to two issues
19 prerequisite to the determination of the matter; 1) Was Petitioner a patron; and 2) Did Petitioner
20 prove he acquired the \$5000.00 chips through game play. A positive determination on the first
21 issue (Petitioner was a patron), obviates any necessity for evaluation of the second question
22 because the chips are a debt. Nev. Gaming Comm. Reg. § 12.060(1). The only authority to
23 withhold redemption of the debt is if the Petitioner was not a patron. Nev. Gaming Comm. Reg.
24

25
26
27 through a "game, tournament, contest, drawing, promotion or similar activity or event" as
28 contemplated therein.

1 § 12.060(4). The Decision is contrary to law and thusly arbitrary and capricious, should be
2 reversed, and the Board directed to direct Caesars to redeem Petitioner's chips.

3 **C. BECAUSE AGENT NAQUI'S DECISION WAS ERRONEOUS AND AT THE TIME**
4 **OF THE DECISION AND THE TIME OF THE INVESTIGATION, HARD ROCK HAD**
5 **AN ABSOLUTE LEGAL DUTY TO REDEEM THE CHIPS PRESENTED BY**
6 **PETITIONER, THE AFTER-THE-FACT ARGUMENTS BY HARD ROCK**
7 **CANNOT ERRADICATE HARD ROCK'S DUTY TO REDEEM**

8 In applying the any evidence standard, it is important to understand the question
9 presented to the Board under the law, especially concerning timing. As to the "any evidence"
10 standard, there is no evidence that the Petitioner did not receive the chips at issue from his
11 gaming activities at Hard Rock at the time redemption was mandated. The Board conflated the
12 proper time of inquiry in rendering its decision. Specifically, the duty is to "promptly redeem"
13 unless the Hard Rock knew or reasonably should have known that Petitioner was not a patron.
14 Even accepting the Board's contrived and unsupported position that patron means something
15 more than a patron, under the regulations the "promptly redeem" language can only be
16 evaluated at the time of redemption. The only (albeit exceedingly weak) evidence presented by
17 the Petitioner showing that the Petitioner was not a patron under the contrived definition of
18 "patron" found in the Decision, ROR 1, et seq.

19 Looking to the decision of the Board, it misses the mark in yet another respect. The
20 Board sets out the issue decided as, "Did the Petitioner prove that he acquired the six \$5000
21 chips by game play at the Hard Rock?" Decision, ROR 3, Issue 2. This is the wrong standard at
22 the wrong time in the wrong context. There is no statute or regulation that the Petitioner has a
23 burden to prove that he acquired the chips through "game play" at the Hard Rock, and also,
24 "game play" is a further departure from the statutory and regulatory prerequisites to getting
25 paid. As noted, the law is that the Hard Rock must "promptly redeem" unless it knows or
26 reasonably should have known that Petitioner was "not a patron" at the time the chips were
27
28

1 presented. Nev. Gaming Comm. Reg. § 12.060(2)(c) and (4). That is the only reason under
2 which a casino has a reason to not redeem chips under the regulatory scheme, and otherwise,
3 chips are a bearer instrument which must be 'promptly redeemed.' Id. and Nev. Gaming Comm.
4 Reg. § 12.060(1) Petitioner's burden is not to show that he won the chips, but rather, that Hard
5 Rock did not know or have reason to know that Petitioner was not a patron at the time the chips
6 were presented.
7

8 The only evidence presented that could have given Hard Rock pause at the time of its
9 refusal to redeem is that given to Agent Naqui at the scene, and reproduced here at ROR 359-
10 360. As Agent Naqui testified, looking at that very evidence at the time, the evidence supports
11 the Petitioner's legitimate possession of \$30,000.00 in gaming chips acquired from Hard Rock
12 through his play at Hard Rock. Agent Naqui testimony ROR 69: 4-13; and see Agent Naqui
13 testimony, ROR 66-67. Nothing presented proximate to the Petitioner's presentation of the
14 chips for redemption provides any evidence that, at the time of refusal, Hard Rock knew or
15 reasonably should have known that Petitioner was not a patron who acquired the chips through
16 legitimate gaming activities at Hard Rock. In deciding the issue as of the date of the hearing,
17 rather than the date of the obligation to redeem, the Board conflated the standard and decided an
18 issue not before it. With the only evidence supporting Petitioner's legitimate ownership of the
19 chips at the time of the presentation of the chips for redemption, and no evidence that his
20 possession was not legitimate or that the Hard Rock knew or reasonably should have known
21 that the Petitioner was not a patron under the Boards contrived definition, the decision here is
22 made on no evidence, and under the review standards, should be reversed.
23
24

25 Also absent is the fact that through Hard Rock's records the Petitioner has shown that
26 over \$280,000.00 in chips were variably in his possession throughout his play at Hard Rock,
27 and that over \$260,000.00 were in play. Hard Rock also acknowledges that Petitioner was a net
28

1 winner throughout his play, and there is nothing to contradict the fact that Plaintiff put
2 \$100,000.00 on deposit with Hard Rock and took all of it out through chips during his play.
3 Declaration, ROR 354 at ¶¶ 6-9. Hard Rock presents all sorts of records, revised three times,
4 redrafted and amended throughout the course of the proceedings in an attempt to claim that the
5 Petitioner could not have had \$30,000.00 in chips from his historic gaming at Hard Rock. The
6 undisputed facts, nonetheless, show that he could have had this amount and a multiple of this
7 amount. Considering that these facts are undisputed and in accord with the initial production of
8 records to Agent Naqui by Hard Rock, there is no evidence to contradict the established fact
9 that Hard Rock knew or reasonably should have known that Petitioner did not legitimately
10 acquire the \$30,000.00 in chips from Hard Rock. The Decision is not only not supported by any
11 evidence, but also contradicted by Hard Rock's own evidence, and should be reversed.
12

13
14 Also note, not only in the context of the amounts wagered and played by Petitioner at
15 Hard Rock tables evident at ROR 324-325; 359-360, the Hard Rock acknowledged that
16 Petitioner was not a loser, but a winner, at their casino, thusly demonstrating that he actually
17 achieved and held more than his "buy-ins" on ROR 324-325. Konrad Testimony, ROR 272-273.
18 With acknowledged buy-ins on Hard Rock's records provided to Agent Naqui, and additional
19 winnings on top of this of \$23,650, Petitioner had in his position at various times no less than
20 \$284,250.00 in Hard Rock chips. On top of this, Hard Rock's records show buy-ins by
21 Petitioner of over \$840,000.00 during his gaming at Hard Rock. Even Hard Rock's later
22 produced records for the hearing show that he only redeemed some \$46,000.00 in chips, leaving
23 over \$54,000.00 in chips in his possession under the deposits and draws referenced in the
24 exhibits. In short, the claim that Petitioner did not have \$30,000.00 in legitimate chips is not in
25 the evidence.
26
27
28

1 To highlight the impropriety of the decision, it is only necessary to look to the language
2 immediately preceding the Conclusion of the Board at ROR 005. There the Board holds:
3 “Because Young could not show by a preponderance of the evidence that he earned the six
4 specific \$5000.00 game chips through game play at Hard Rock, he has not shown that he was a
5 patron at Hard Rock.” Where does this burden appear in the law? Could anyone, other than by
6 testimony, prove where any “specific chip” was earned of any denomination against a casino’s
7 denial. The Board and the Hard Rock have entered a decision which gives Nevada gaming
8 licensees carte blanche to steal from patrons by denying payment at any time, and have entirely
9 undermined the absolute requirement that chips are to be ‘promptly redeemed’ and chips
10 constitute a “debt” to the holder found in other regulations. Clearly, this decision was arbitrary
11 and capricious.
12

13
14 There is another limit on the review by the Board and hearing examiner as well. Review
15 by the hearing examiner is limited to a review of the decision of the gaming agent; here, Agent
16 Naqui. (NRS 463.363(1): “Within 20 days after the date of receipt of the written decision of the
17 agent, the aggrieved party may file a petition with the Board requesting a hearing to reconsider
18 the decision.”). Here, the decision was not reviewed, but an entirely new evaluation and
19 decision entered. This is especially true considering the fact that the Decision is at odds with
20 Naqui’s report and testimony. For example, the Board, sua sponte, reached its decision in total
21 disregard of Agent Naqui’s decision, and overruled his determination that the Petitioner was a
22 patron. It smacks of questionable practices when a Petitioner challenges a decision as erroneous,
23 and the reviewing tribunal agrees and enters their own search for unrelated reasons not
24 addressed by Agent Naqui to deny Petitioner his claim. The report of Agent Naqui having been
25 shown to be both factually and legally in error, the responsibility of the Board was to reverse the
26 decision.
27
28

1 **E. AS THE EVIDENCE FROM HARD ROCK SHOWED THAT**
2 **PETITIONER COULD HAVE \$20,000.00 IN \$5000.00 CHIPS**
3 **THE COMPLETE DENIAL OF ANY RECOVERY IS**
4 **AGAINST THE EVIDENCE**

5 Hard Rock acknowledges that even under their own retconning the Petitioner could
6 support \$20,000.00 still being held by him in chips. ROR 396. That's four of the six chips at
7 issue. As mentioned above, the test here is whether Hard Rock knows the Petitioner is not a
8 patron. Even under the constructed definition of Patron discussed above, Hard Rock, by this
9 admission, could not know or reasonably suspect that the Petitioner is not a customer.
10 Minimally, even if the Decision is deemed appropriate in all other respects, Petitioner has met
11 his burden in showing that Hard Rock did not know and should not have reasonably known that
12 Petitioner was not a patron as to this \$20,000.00, and Hard Rock's duty to promptly redeem
13 applies. The Decision errs in, even under its own terms, not requiring Hard Rock to redeem four
14 of the chips.

15 **IX. CONCLUSION**

16 For the reasons set forth above, Petitioner requests that the within Petition be granted, and
17 that a Decision enter reversing the Decision of the Nevada Gaming Control Board and directing
18 that Hard Rock redeem Petitioner's \$30,000.00 in chips upon presentment by Petitioner or
19 Petitioner's attorney, Robert A. Nersesian.
20

21 DATED this 30TH day of August, 2018

22 NERSESIAN & SANKIEWICZ

23 /s/ Robert A. Nersesian
24 Robert A. Nersesian
25 Nev. Bar # 2762
26 528 S. 8th St.
27 Las Vegas, NV 89101
28 (702) 385-5454
 (702) 385-7667
 vegaslegal@aol.com
 Attorneys for Petitioner

1 **X. ATTORNEY'S CERTIFICATE**

- 2 1. I have read, and indeed wrote, the foregoing brief;
- 3 2. To the best of my knowledge, information and belief, the brief is not frivolous or interposed
- 4 for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in
- 5 the cost of litigation;
- 6 3. This brief complies with all applicable rules appertaining to a Petition for Judicial Review on a
- 7 Decision from the Nevada Gaming Control Board; and
- 8 4. This brief complies with the formatting requirements of the Local Rules for the Eighth Judicial
- 9 District Court, and meets the page- or type-volume limitations stated therein.
- 10
- 11 stated in Rule 32(a)(7).

12 Dated this 30th day of August, 2018

13 /s/ Robert A. Nersesian

14 Robert A. Nersesian

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on the 30th day of August, 2018, pursuant to NRCP 5(b) and

17 EDCR 8.05(f), the above referenced **BRIEF IN SUPPORT OF REVERSAL OF THE**

18 **DECISION OF THE NEVADA GAMING CONTROL BOARD ON PETITION FOR**

19 **JUDICIAL REVIEW** was served upon Respondents Hard Rock and the Nevada Gaming

20 Control Board via e-service upon their respective counsel through the Eighth Judicial District

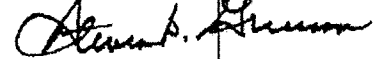
21 Court e-filing system, and that the date and time of the electronic service is in place of the date

22 and place of deposit in the mail.

23

24 /s/ Robert A. Nersesian

25 Robert A. Nersesian



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9 *Attorneys for Petitioner*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

STIPULATION AND ORDER FOR EXTENSION OF TIME

16 Pursuant to NRCP 6(b), Petitioner, Tsun Young, by and through his counsel of record,
17 Robert A. Nersesian, and Respondent, Nevada Gaming Control Board, by and through its
18 counsel of record, Adam Paul Laxalt, Attorney General, and Michael P. Somps, Senior Deputy
19 Attorney General, and Respondent, Hard Rock Hotel and Casino, by and through its counsel of
20 Record, Marla J. Hudgens, hereby stipulate to extend the period of time by which Petitioner

22 ///

23 ///

24 ///

25 ///

26 ///

28 ///

1 has to file his Memorandum of Points and Authority in Support of his Petition on Judicial
2 Review pursuant to EDCR 2.15, up to and including August 30, 2018.

3 DATED this 15th day of August, 2018

DATED this ____ day of August, 2018.

4
5 NERSESIAN & SANKIEWICZ

ADAM PAUL LAXALT
Attorney General

6 
7 Robert A. Nersesian

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9 528 South Eighth Street
10 Las Vegas, Nevada 89101
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11
12
13 DATED this ____ day of August, 2018

14 LEWIS ROCA ROTHGERBER CHRISTIE LLP

15
16 Marla J. Hudgens, Esq.
17 Nevada Bar No.: 11098
18 201 E. Washington Street, Suite 1200
19 Phoenix, AZ 85004-2595
Attorneys for Respondent
Hard Rock Hotel and Casino

20
21 ORDER

22 IT IS SO ORDERED that the Petitioner shall have up to and including August 30, 2018,
23 to file his Memorandum of Points and Authority in Support of his Petition on Judicial Review.

24 Dated this ____ day of August, 2018.

25
26 _____
27 DISTRICT COURT JUDGE

1 has to file his Memorandum of Points and Authority in Support of his Petition on Judicial
2 Review pursuant to EDCR 2.15, up to and including August 30, 2018.

3 DATED this ____ day of August, 2018

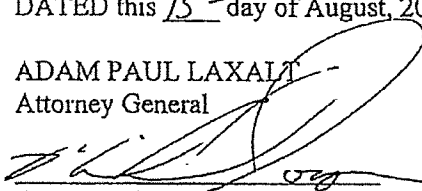
4 NERSESIAN & SANKIEWICZ

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11 *Attorneys for Petitioner*

DATED this 15th day of August, 2018.

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Attorney General


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13 DATED this ____ day of August, 2018

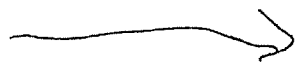
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20 *Attorneys for Respondent*
21 *Hard Rock Hotel and Casino*

22 ORDER

23 IT IS SO ORDERED that the Petitioner shall have up to and including August 30, 2018,
24 to file his Memorandum of Points and Authority in Support of his Petition on Judicial Review.

25 Dated this ____ day of August, 2018.

26 
27 DISTRICT COURT JUDGE
28

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2 Review pursuant to EDCR 2.15, up to and including August 30, 2018.

3 DATED this ____ day of August, 2018

DATED this ____ day of August, 2018.

4
5 NERSESIAN & SANKIEWICZ

ADAM PAUL LAXALT
Attorney General

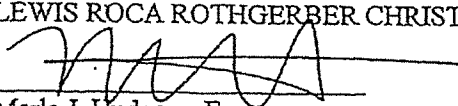
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12
13 DATED this 15th day of August, 2018

14 LEWIS ROCA ROTHGERBER CHRISTIE LLP

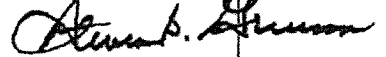
15 
16 Marla J. Hudgens, Esq.
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19 Phoenix, AZ 85004-2595
Attorneys for Respondent
Hard Rock Hotel and Casino

20
21 ORDER

22 IT IS SO ORDERED that the Petitioner shall have up to and including August 30, 2018,
23 to file his Memorandum of Points and Authority in Support of his Petition on Judicial Review.

24 Dated this 6th day of September 2018.

25
26 
27 DISTRICT COURT JUDGE
28



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5 *Attorneys for Respondents*
Nevada Gaming Control Board and
6 Hard Rock Hotel and Casino

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 Tsun Young,

11 Petitioner,

12 vs.

13 Nevada Gaming Control Board and
14 Hard Rock Hotel and Casino,

15 Respondents.

Case No.: A-18-775062-J

Dept. No.: XIV

GCB Case No. 2016-8570-LV

16 **STIPULATION FOR EXTENSION OF TIME**

17 Pursuant to NRCP 6(b), Respondent, Hard Rock Hotel and Casino, by and through
18 counsel of record, Marla J. Hudgens, and Petitioner, Tsun Young, by and through his counsel
19 of record, Robert A. Nersesian, and Respondent, Nevada Gaming Control Board, by and
20 through its counsel of record, Adam Paul Laxalt, Attorney General and Michael P. Somsps,
21 Senior Deputy Attorney General, hereby stipulate to extend the period of time by which

22 ///

23 ///

24 ///

25 ///

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28 ///


1 Respondents have to file their Response to Memorandum of Points and Authority in Support
2 of Tsun Young's Petition on Judicial Review pursuant to EDCR 2.15, up to and including
3 October 30, 2018.

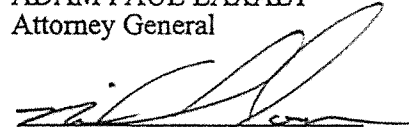
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5 DATED: September ____ 2018.

DATED: September 19th, 2018

6 LEWIS ROCA ROTHGERBER CHRISTIE LLP

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13
14 DATED: September ____ 2018.

15 NERSESIAN & SANKIEWICZ

16
17 Robert A. Nersesian
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528 South Eighth Street
18 Las Vegas, Nevada 89101
Attorney for Petitioner

19
20
21
22 **ORDER**

23 IT IS SO ORDERED that the Respondents shall have up to and including October 30,
24 2018 to file their Response to Petitioner's Memorandum of Points and Authority in Support of
25 Petitioner's Petition on Judicial Review.

26 Dated this ____ day of September, 2018.

27
28 _____
District Court Judge

1 Respondents have to file their Response to Memorandum of Points and Authority in Support
2 of Tsun Young's Petition on Judicial Review pursuant to EDCR 2.15, up to and including
3 October 30, 2018.

4
5 DATED: September ____ 2018.

DATED: September ____, 2018

6 LEWIS ROCA ROTHGERBER CHRISTIE LLP


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13 DATED: September 19th 2018.

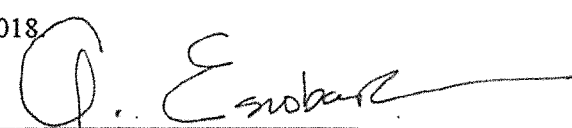
14 NERSESIAN & SANKIEWICZ

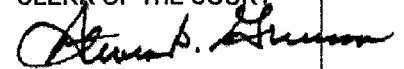
15
16 
17 Robert A. Nersesian
Nevada Bar No. 2762
18 528 South Eighth Street
Las Vegas, Nevada 89101
19 *Attorneys for Petitioner*

20
21
22 **ORDER**

23 IT IS SO ORDERED that the Respondents shall have up to and including October 30,
24 2018 to file their Response to Petitioner's Memorandum of Points and Authority in Support of
25 Petitioner's Petition on Judicial Review.

26 Dated this 25 day of September, 2018.

27
28 
District Court Judge



1 ANSB
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8
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)		
CASINO,)		
16 Respondents.)		

17
18
19 RESPONDENT NEVADA GAMING CONTROL BOARD'S ANSWERING BRIEF
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Regulations

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1 **I. STATEMENT OF THE ISSUES**

2 A. Was the BOARD'S decision denying payment of \$30,000 to Petitioner, TSUN
3 YOUNG (hereinafter "YOUNG"), arbitrary and capricious or otherwise not in accordance
4 with the law?

5 B. Was the BOARD'S decision denying payment of \$30,000 to YOUNG
6 unsupported by any evidence?

7 **II. STATEMENT OF THE CASE**

8 On October 24, 2016, a BOARD agent responded to the Hard Rock Hotel and
9 Casino (hereinafter "HARD ROCK") regarding a patron dispute initiated by YOUNG.
10 Record on Review (hereinafter "ROR") 349 – 352. The HARD ROCK had refused to cash
11 six \$5,000 HARD ROCK gaming chips presented by YOUNG because his game play did
12 not support that YOUNG acquired the chips through gaming at the HARD ROCK. *Id.* A
13 patron dispute was initiated in accordance with NRS 463.362. On November 23, 2016,
14 the BOARD decided against YOUNG and denied payment of the disputed amount. ROR
15 347 – 348.

16 On December 15, 2016, YOUNG filed a Petition for Reconsideration with the
17 BOARD requesting a hearing in accordance with NRS 463.363. ROR 2. A BOARD
18 hearing examiner conducted a hearing and recommended to the BOARD that the decision
19 denying payment to YOUNG be affirmed. ROR 2 – 6. On May 3, 2018, the BOARD
20 accepted the hearing examiner's recommendation and affirmed the decision to deny
21 payment to YOUNG. ROR 6. YOUNG filed his Petition for Judicial Review on May 23,
22 2018.

23 **III. STATEMENT OF THE FACTS**

24 The relevant facts include those Findings of Fact set forth in the recommendation
25 of the BOARD hearing examiner:

- 26 - YOUNG was a rated player at the HARD ROCK.
- 27 - From July 2008 to January 2011, YOUNG had total table game
- 28 buy-ins of approximately \$335,300. However, after taking into

1 consideration the evidence provided by the HARD ROCK
2 regarding chips redemption and chips relinquished, only
3 approximately \$20,000 of YOUNG'S chips were unaccounted.
4 - YOUNG could not recall exactly when and how he came into
5 possession of the six \$5,000 chips.
6 - YOUNG tried to cash the six chips in January 2011 and was
7 denied. He tried to cash the chips again in October 2016 and
8 was again denied. He filed a dispute shortly after the October
9 2016 incident.

10 ROR 3.

11 Additional evidence considered by the hearing examiner includes:

- 12 - YOUNG "believes that he collected the chips throughout 2008 to
13 2011 while playing at various table games." ROR 4.
14 - YOUNG "states that he was 'rat holing' the chips by taking his
15 own chips off of the table while the dealer and pit personnel
16 were not looking." *Id.*
17 - The HARD ROCK "would have known if a patron was given any
18 \$5,000 chip because they track all large denomination chips."
19 *Id.*
20 - "Rat holing does not appear to be a practice that would have
21 circumvented the tracking of \$5,000 chips by Hard Rock because
22 the chips would have been accounted for before it was physical
23 [sic] given to the customer." *Id.*
24 - "Rat holing \$5,000 chips after they were logged or tracked by the
25 Hard Rock would not have resulted in \$5,000 chips leaving the
26 table game inventory without the Hard Rock's knowledge." *Id.*

27 /////

28 /////

1 IV. SUMMARY OF THE ARGUMENT

2 The BOARD'S decision to deny payment of \$30,000 to YOUNG was not arbitrary or
3 capricious and was in accordance with the law given that YOUNG, for purposes of
4 redeeming the chips, was not the patron who had acquired the six \$5,000 chips.

5 The BOARD'S decision to deny payment of \$30,000 to YOUNG was supported by
6 more than sufficient evidence. YOUNG could not show by a preponderance of the
7 evidence that he acquired the six \$5,000 chips through gaming at the HARD ROCK. The
8 evidence instead showed that the HARD ROCK tracked its high denomination \$5,000
9 chips and that YOUNG had not acquired them through gaming at the HARD ROCK.

10 V. STATEMENT OF THE STANDARD OF REVIEW

11 NRS 463.3666 sets forth the standard of review for this matter. Specifically,
12 NRS 463.3666(2) provides in part that "[t]he review must be conducted by the court
13 sitting without a jury, and must not be a trial de novo but is confined to the record on
14 review." Further, NRS 463.3666(3) provides:

15 The reviewing court may affirm the decision and order of
16 the Board or the hearing examiner, or it may remand the case
17 for further proceedings or reverse the decision of the substantial
rights of the petitioner have been prejudiced because the
decision is:

- 18 (a) In violation of constitutional provisions.
19 (b) In excess of the statutory authority or jurisdiction of
the Board of the hearing examiner.
20 (c) Made upon unlawful procedure.
21 (d) Unsupported by any evidence; or
(e) Arbitrary or capricious or otherwise not in accordance
with law.

22 NRS 463.3666(3).

23 In addition, "a reviewing court should affirm a decision of the Board which is
24 supported by *any evidence whatsoever*. . . ." *Sengel v. IGT*, 116 Nev. 565, 570, 2 P.3d 258,
25 261 (2000).

26 Finally, the court is to show "great deference to a Nevada Gaming Control Board
27 decision on appeal. An order of the Nevada Gaming Control Board will not be disturbed
28 unless it is arbitrary, capricious or contrary to the law." *Redmer v. Barbary Coast Hotel*

1 & *Casino*, 110 Nev. 374, 378, 872 P.2d 341, 344 (1994) (citations omitted). However,
2 “this court is free to examine purely legal questions decided at the administrative level”.
3 *Id.* (citations omitted).

4 YOUNG challenges the BOARD’S decision on the basis that it is unsupported by
5 any evidence and that it is arbitrary or capricious or otherwise not in accordance with the
6 law.

7 VI. ARGUMENT

8 A. The BOARD’S decision to deny payment of \$30,000 to YOUNG was not arbitrary or capricious and was in accordance with the law.

9 Nev. Gaming Comm’n Reg. 12.060(4) provides in relevant part that “[a] licensee
10 shall not redeem its chips or tokens if presented by a person who the licensee knows or
11 reasonably should know is not a patron of its gaming establishment. . . .”

12 YOUNG presented six \$5,000 chips to the HARD ROCK seeking to exchange them
13 for \$30,000 cash. ROR 2. However, the HARD ROCK refused to cash the chips because
14 YOUNG’S play at the HARD ROCK did not support that he was properly in possession of
15 the chips. ROR 2 and 5. In other words, the HARD ROCK concluded that YOUNG could
16 not have come into possession of the chips through his play of a game at the HARD
17 ROCK. Subsequently, a BOARD agent responded to the HARD ROCK to resolve the
18 dispute between YOUNG and the HARD ROCK and concluded that the HARD ROCK’S
19 refusal to cash the chips was appropriate. ROR 349 – 352. After a hearing, the BOARD
20 affirmed the agent’s decision to deny payment. ROR 2 – 6. Ultimately, YOUNG was not
21 a patron for purposes of cashing the chips and the HARD ROCK acted in accordance with
22 Nev. Gaming Comm’n Reg. 12.060(4).

23 There is nothing in the record to suggest that the BOARD acted arbitrarily or
24 capriciously or contrary to the law. As pointed out by the BOARD’S hearing examiner,
25 the BOARD has historically interpreted the law as precluding a casino from cashing chips
26 from patrons who did not acquire those chips through their gaming activities. ROR 4.
27 The BOARD’S interpretation of Nevada gaming regulations should be given great
28 deference by a court. *Redmer*, 110 Nev. at 378, 872 P.2d at 344.

1 YOUNG argues that because he was a patron of the HARD ROCK in the past, he
2 qualifies as a patron for purposes of cashing the six \$5,000 chips. Young's position is
3 convenient for him, but is a simplistic view of Nevada's gaming regulations and leads to an
4 absurd result. "A statute should always be construed to avoid absurd results." *Gen. Motors*
5 *v. Jackson*, 111 Nev. 1026, 1029, 900 P.2d 345, 348 (1995) (citations omitted). Accepting
6 YOUNG'S argument would allow any patron of the HARD ROCK, regardless of whether
7 the patron engaged in gaming, to have the ability to redeem gaming chips. If that were the
8 proper interpretation, it would frustrate one of the primary purposes of Nev. Gaming
9 Comm'n Reg. 12 to ensure that the use of chips in the gaming industry does not run afoul
10 of the currency laws of the United States. During a November 2010 hearing before the
11 Nevada Gaming Commission regarding amendments to Nev. Gaming Comm'n Reg. 12.060,
12 then BOARD Chairman Neilander stated the following:

13 The regulations have been in place for some time. There were a
14 number of reasons it was adopted. We didn't want chips to be
15 treated necessarily as currency. That was one of the concerns,
and then also counterfeit chips and fraudulent transactions. So
those were generally the reasons for it.

16 Transcripts of the Meeting of the Nevada Gaming Commission, Nov. 18, 2010, p. 258.

17 In other words, gaming chips are not legal tender and are not currency. Nev.
18 Gaming Comm'n Reg. 12.060(2)(d) further supports that chips are not to be used as
19 currency through its requirement that a licensee "[p]ost conspicuous signs at its
20 establishment notifying patrons that federal law prohibits the use of the licensee's tokens,
21 that state law prohibits the use of the licensee's chips, outside the establishment for any
22 monetary purpose whatever. . . ." If gaming chips are allowed to be transferred amongst
23 people without limitation, they would effectively become currency. Therefore, Nevada's
24 gaming regulations place strict limits on the use and circulation of gaming chips.
25 Allowing YOUNG to cash chips that he did not acquire through his gaming at the HARD
26 ROCK would frustrate the purposes behind those regulations.

27 /////

28 /////

1 **B. The BOARD'S decision to deny payment of \$30,000 to YOUNG was**
2 **supported by more than sufficient evidence.**

3 NRS 463.364(1) places the burden on YOUNG to show that the BOARD agent's
4 decision denying him payment should be reversed. Specifically, NRS 463.364(1) provides
5 that "[t]he party seeking reconsideration bears the burden of showing that the agent's
6 decision should be reversed or modified."

7 Given the restrictions placed on the redemption of gaming chips through
8 Nev. Gaming Comm'n Reg. 12.060, the BOARD considered whether YOUNG was a patron
9 for purposes of redeeming the chips. However, YOUNG was unable to meet his burden to
10 show that he obtained the six (6) \$5,000 chips through gaming at the HARD ROCK and
11 was thus a patron who could redeem the chips. In fact, the evidence indicates otherwise.

12 The HARD ROCK'S Vice President of Finance reviewed the HARD ROCK'S records
13 regarding YOUNG and confirmed during his testimony that those records did not
14 substantiate the redemption of six (6) \$5,000 chips to YOUNG. ROR 202 – 203.
15 Significantly, it was meaningful to the BOARD'S hearing examiner that the HARD ROCK
16 tracks "anytime a \$5,000 chip was given to a patron." ROR 5. *See also* ROR 204, 266,
17 and 279. Further, the tracking of \$5,000 chips could not be circumvented by a customer
18 "because the chips would have been accounted for before it was physically given to a
19 customer." *Id.*

20 Ultimately, YOUNG was in possession of HARD ROCK chips that are of a
21 significant value at \$5,000 apiece. The HARD ROCK understandably and prudently
22 keeps track of such chips because of their high value. Despite YOUNG'S efforts to
23 convince the BOARD that he came into possession of the six (6) \$5,000 chips through his
24 game play at the HARD ROCK, the evidence instead supports that YOUNG did not
25 obtain the chips from the HARD ROCK.

26 Given the evidence, the BOARD properly concluded that YOUNG had not met his
27 burden to show that he obtained the six (6) \$5,000 chips through his gaming activities at
28 the HARD ROCK. Therefore, the BOARD affirmed the decision to deny payment.

1 VII. CONCLUSION

2 The BOARD'S decision affirming the refusal by the HARD ROCK to cash six (6)
3 \$5,000 chips presented by YOUNG is not arbitrary and capricious and is in accordance
4 with the law as it is consistent with the BOARD'S historical interpretation of
5 Nev. Gaming Comm'n Reg. 12.060(4). Further, the evidence presented to the BOARD'S
6 hearing examiner supports the conclusion that YOUNG did not obtain the six (6) \$5,000
7 chips through his gaming activities at the HARD ROCK. YOUNG is not a patron for
8 purposes of redeeming the chips.

9 The BOARD respectfully requests that YOUNG'S Petition for Judicial Review be
10 denied.

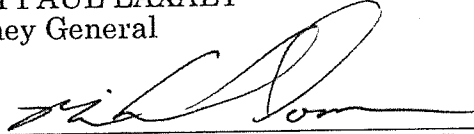
11 AFFIRMATION

12 Pursuant to NRS 239B.030, the undersigned affirms that the preceding document,
13 *Respondent Nevada Gaming Control Board's Answering Brief*, does not contain the
14 Social Security Number of any person.

15 Dated this 29th day of October, 2018.

16 ADAM PAUL LAXALT
17 Attorney General

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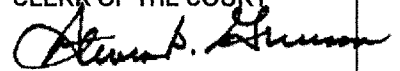
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12 **DISTRICT COURT**
13
14 **CLARK COUNTY, NEVADA**

15 TSUN YOUNG,

16 Petitioner,

Case No.: A-18-775062-J
Dept. No.: XIV

17 vs.

18 Nevada Gaming Control Board and
19 Hard Rock Hotel and Casino,

GCB Case No. 2016-8570-LV

20 Respondents.

21 **HARD ROCK HOTEL AND CASINO'S ANSWERING BRIEF**

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1 **A. INTRODUCTION AND SUMMARY OF THE ARGUMENT**

2 This is an administrative appeal arising from a Decision made by the Nevada Gaming Con-
3 trol Board (the “Board”). The Decision affirms the Hard Rock Hotel & Casino’s (“Hard Rock”)
4 refusal to redeem \$30,000 in casino chips that were presented by Mr. Young. The Hard Rock’s
5 records do not substantiate his play, meaning that the records do not show how Mr. Young could
6 have possession of \$30,000 in chips to redeem. The Board’s Decision was made after a day-long
7 evidentiary hearing, during which a hearing examiner took evidence, heard arguments from both
8 sides, and ultimately decided the Hard Rock made the right choice to refuse redemption of the
9 chips.

10 The Board accepted the hearing examiner’s recommendations to deny redemption. First, it
11 determined that, in order to be a “patron,” a customer must demonstrate that chips in his posses-
12 sion were actually acquired through game play, and Mr. Young could not make that showing.
13 Second, while Mr. Young presented argument that he frequently hid chips from Hard Rock in or-
14 der to garner more or better “comps” for himself, the Board dismissed the argument given Hard
15 Rock’s internal procedures for tracking chips.

16 The Board’s Decision should now be upheld under NRS 463.3666(3). Contrary to Mr.
17 Young’s argument, the Board did not misinterpret Nevada gaming regulations. A “patron” is enti-
18 tled to redeem casino chips under Gaming Reg. § 12.060(2)(c) only if he shows that the chips in
19 his possession were acquired through play at the casino. If the records do not substantiate the play,
20 he is not entitled to redeem them. This is a well-recognized proposition supported by Nevada stat-
21 utes and federal mandates. A person cannot redeem chips from a gaming licensee without showing
22 how he got them. That would open the door for a plethora of financial crimes and abuse.

23 Moreover, Mr. Young cannot prove that the Board’s Decision is not supported by the evi-
24 dence. Numerous records were produced that supported Hard Rock’s suspicions of Mr. Young’s
25 redemption attempts. The Hard Rock’s Vice President of Finance walked the hearing examiner
26 through relevant documents to explain how internal tracking procedures work and how Mr.
27 Young’s play did not show \$30,000 in remaining chips for redemption. With this, it is untenable
28 for Mr. Young to argue there is *no* evidence that supports the Board’s Decision

1 Finally, Mr. Young incredulous explanation for the lack of records must not be the basis to
2 reverse the Board's Decision. Indeed, Mr. Young has continued to argue that Hard Rock's records
3 must be incomplete because he repeatedly hid or "rat holed" chips in order to garner better or
4 more comps. Admitted deceit is not a credible basis to overturn the Board's Decision.

5 Accordingly, there is no justifiable basis to overturn the Board's Decision. This Court
6 should affirm it.

7 **B. STATEMENT OF ISSUES ON REVIEW**

8 This Petition raises the following issues:

- 9 1. Whether a gaming licensee must redeem any amount of chips presented by a cus-
10 tomer without the legal right to verify the customer's play?
- 11 2. Whether the Board erred by requiring Mr. Young to substantiate his play?
- 12 3. Whether there is any evidence to support the Board's Decision?
- 13 4. Whether Nevada and federal laws support a gaming licensee's right to verify a cus-
14 tomer's play?
- 15 5. Whether Mr. Young can rely on deception in order to substantiate his play?

16 **C. STATEMENT OF FACTS**

17 **1. Mr. Young and his Play at the Hard Rock Casino**

18 Mr. Young is unemployed and apparently earns a living off of various investments. (Rec-
19 ord on Review ("ROR") 166-67.) Mr. Young was a rated player at Hard Rock and first gambled at
20 the casino in Las Vegas in 2008. (*Id.* at 364-65.) From 2008 through 2011, Young gambled during
21 sporadic weekends—the casino has records showing that he gambled a totally of 23 days during
22 the four-year period. (*Id.* at 368-370.) When he did gamble, however, Mr. Young played both slot
23 machines and table games (*e.g.* craps) and wagered quite a bit of money. (*Id.*)

24 Mr. Young's "buy-ins" (the amount of money he paid to gamble) were tracked for both his
25 slot machine play and his play at table games. (*Id.*) Hard Rock's tracking system is quite sophisti-
26 cated and allows the casino to determine a number of factors including (a) the nature of the buy in
27 (cash, credit, re-playing chips, etc.), (b) the length of play at any given table or machine, (c)
28 whether the player won or loss during that playing session, and (d) the value of the win or lost.

(See, e.g., *id.* at 406-440.) This tracking system also allows the Hard Rock to determine whether a player seeking to redeem casino chips (*i.e.*, cash them in) can actually substantiate his or her play to demonstrate that the chips lawfully belong to the player redeeming them. (*Id.*)

2. Mr. Young's Attempt to Redeem \$44,000 in Casino Chips in 2011

In January 2011, Young attempted to redeem \$44,000 in casino chips from the Hard Rock—six chips valuing \$5,000 each (\$30,000) and 14 chips valuing \$1,000 each (\$14,000). (ROR 361-62, 380.) The Hard Rock refused to redeem the chips because it could not verify Mr. Young's play or the amount he sought to redeem. (*Id.* at 380.) Concerns about Mr. Young were noted in his records, including an entry dated January 22, 2011, stating: "DO NOT CASH OUT ANY CHIPS WITHOUT VERIFICATION! DO NOT EXCHANGE ANY CHIP ON THE TABLE WITHOUT CONTACTING A MANAGER AND SURVEILLANCE." (*Id.* at 380.) Likewise, a note on March 25, 2011 states:

Guest has been banned from playing until we can find out where he is getting HRH gaming chips from! He currently has approx.. \$30k-\$40k in HRH house chips! Gaming has been notified and has begun an investigation. Please do not allow this guest to play, contact security, surveillance and a manager if he lands!

(*Id.* at 380.)

3. Mr. Young's Attempt to Redeem \$30,000 in Casino Chips in 2016

From 2011 and until 2016, Mr. Young did not gamble the Hard Rock. But on October 24, 2016, Mr. Young attempted again to cash out chips, this time only \$30,000 worth (6 chips worth \$5,000 each). He also brought an attorney with him to the Hard Rock and had a statement prepared for that purpose. (ROR 181-82, 354-56.) In his statement, Young alleged the \$30,000 in casino chips were acquired in connection with a blackjack tournament in August 2008, among other play. (*Id.* at 354-56.)

Due to the high dollar amount of chips to be redeemed, the casino shift manager was called to verify the transaction. (*Id.* at 357.) The shift manager ultimately denied Mr. Young's transaction because Mr. Young's casino play was not commensurate with the amount of chips to be redeemed, and Mr. Young's player's account noted Petitioner was a banned patron. (*Id.*)

1 Mr. Young requested assistance of the Nevada Gaming Control Board (“Board”). Board
2 Agent Dan Nuqui investigated the matter. (*Id.* at 349-52.) As part of his investigation, Agent Nu-
3 qui obtained the surveillance report, reviewed Mr. Young’s rated player information, and reviewed
4 records from the Tournament. (*Id.*) After his investigation, Agent Nuqui determined Petitioner was
5 not entitled to redeem the disputed amount in large part because his player records did not substan-
6 tiate a \$30,000 payout. (*Id.* at 297.)

7 On November 23, 2016, the Board informed Mr. Young that, pursuant to its investigation,
8 Hard Rock was not obligated to award the \$30,000 in dispute. Mr. Young filed a request for re-
9 consideration. (*Id.* 293-95.)

10 **4. Evidentiary Hearing Before a Hearing Examiner**

11 An evidentiary on Mr. Young’s Petition for Reconsideration took place on October 24,
12 2017, and continued on January 22, 2018.

13 Before the hearing, Mr. Young’s attorney sought player records from Hard Rock and con-
14 ducted a deposition. Hard Rock produced a series of records showing Mr. Young’s rated play.
15 (*See* ROR at 368-96.) At the deposition, however, confusion arose as to whether the play records
16 demonstrated buy-in details, particularly, the type of funds used for each play at a table game. For
17 example, there was confusion whether Young used cash, chips, promo chips, or credit each time
18 he played table games. Those details are relevant to show whether Young could have \$30,000 in
19 casino chips. Specifically, they would show whether Mr. Young used chips in his possession to
20 play again, such that he would no longer have possession of those chips.

21 Following the deposition, and in order to clarify any confusion, Mr. Konrad—Hard Rock’s
22 Vice President of Finance—did a detailed review of all of Young’s records and the information
23 underlying those records. For each instance of table play, Mr. Konrad accessed records that show
24 buy-in detail. Mr. Konrad prepared a spreadsheet with his findings, which included all of the in-
25 formation disclosed to Agent Nuqui and to Young’s attorney. (*Id.* at 368-70.) The spreadsheet also
26 included one additional column entitled “Buy In Detail” to show the type of buy-in for Mr.
27 Young’s play (e.g., cash, chips, credit, etc.). (*Id.*) The spreadsheet and the underlying data used to
28

1 create the “Buy In Detail” column were produced to Young’s attorney. (*Id.*; *see also id.* at 398-
2 440.)

3 In addition, using all of the information available, Mr. Konrad prepared a second spread-
4 sheet he entitled “Chip Transactions,” as a summary of the data and to demonstrate the amount of
5 chips Mr. Young could have in his possession based on his play. (*Id.* at 396.) According to the da-
6 ta, Mr. Young could have *no more than* \$20,000 in chips in his possession. (*Id.*; *see also id.* at
7 215-216) This amount does not include or account for chips used for dealer tips, server tips, or
8 non-logged chip redemptions. (*Id.*)

9 During the hearing, Mr. Young attempted to defend why Hard Rock’s records would show
10 only \$20,000 in chips even though he’s sought to redeem as much as \$44,000. When asked wheth-
11 er Hard Rock “could have possibly tracked all your winnings and losses,” Mr. Young answered
12 “no,” explaining that, “[a]ny time I had the chance, I would stick chips in my pocket. My goal was
13 to make them think I lost money to invite me back, plus better comps. Hoping to get better comps.”
14 (*Id.* at 193 (emphasis added).) In other words, Mr. Young testified that he purposefully hid chips
15 from Hard Rock to garner better benefits for himself. (*Id.* at 193-94.)

16 According to Mr. Konrad, however, even if Mr. Young hid some chips while he played, it
17 is still not possible for him to have six, \$5,000 chips. Chips in such high denominations would not
18 escape the Hard Rock’s pit bosses and security team, who would know if those chips were being
19 systematically hidden. (*Id.* at 279.) They are recorded when handed to the player. And, if Young
20 received the chips because he “colored up,” doing so would have then been recorded in Young’s
21 player records. (*Id.* at 279-80.) Thus, his theory is logistically impossible given the documentary
22 evidence.

23 Also suspicious was Mr. Young’s inability to explain why in 2011, he sought to redeem
24 \$44,000 in chips, whereas in 2016, he sought only to redeem \$30,000 in chips. At the hearing, he
25 testified (untruthfully) that the chips were small denominations (\$1 or \$5 etc.), (*id.* at 221-22), but
26 surveillance reports clearly showed that of the \$44,000 in chips he sought to redeem in 2011,
27 \$14,000 worth were in \$1000 denominations. (*Id.* at 222.)
28

1 **D. ARGUMENT**

2 Mr. Young bears the burden of proof in this case. *See* NRS 463.3666(3). He must show
3 that the Decision of the Board is “(a) In violation of constitutional provisions; (b) In excess of the
4 statutory authority or jurisdiction of the Board or the hearing examiner; (c) Made upon unlawful
5 procedure; (d) Unsupported by any evidence; or (e) Arbitrary or capricious or otherwise not in
6 accordance with law.” *Id.*

7 Here, Mr. Young argues that the Board’s Decision is arbitrary or capricious or contrary to
8 law, NRS 463.3663(e), and it is not supported by any evidence, NRS 463.3663(d). (Young’s Brief
9 at 11.) Mr. Young has not and cannot meet this burden. The Board’s reading and application of the
10 law is correct, and the Decision is supported by substantial evidence, not just any evidence—a
11 much lower threshold that is impossible for Mr. Young to meet. The Decision should be upheld.

12 **1. The Board’s Decision is Not Contrary to Law**

13 **a. Nevada Law Recognizes that a “Patron” Must Substantiate his Play**

14 Throughout the proceedings, Young’s position has been that his only obligation is to pre-
15 sent casino chips to the cage. Once presented, he claims that Hard Rock *must* redeem them, and
16 Hard Rock has no right to verify his play. (Young’s Brief at 12-17 (citing Nev. Gaming Comm.
17 Rec. § 12.060(2)(c).) In other words, Mr. Young contends that once he proves himself to be a cus-
18 tomer of Hard Rock, he must also be a “patron” and there can be no dispute about his chips and
19 they must be redeemed. He is wrong.

20 If Mr. Young’s position was correct, patron disputes would never occur; a licensee would
21 be bound by law to redeem chips as a matter of course without any verification. But the opposite is
22 true. NRS 463.362 specifically presents a resolution process for patron disputes. It provides, in
23 pertinent part, that:

24 1. Whenever a patron and a licensee . . . have any dispute which cannot be
25 resolved to the satisfaction of the patron and which involves:

26 (a) Alleged winnings, alleged losses or the award or distribution of cash,
27 prizes, benefits, tickets or any other item or items in a game, tournament, contest,
28 drawing, promotion or similar activity or event; or

...
↳ the licensee is responsible for notifying the Board or patron in accordance with
the provisions of subsection 2, regardless of whether the licensee is directly or in-
directly involved in the dispute.
...

1 3. Upon being notified of a dispute, the Board, through an agent, shall con-
2 duct whatever investigation it deems necessary and shall determine whether pay-
3 ment should be made.

4 NRS 463.362.

5 Thus, NRS 463.362 recognizes the occurrence of patron disputes that involve payouts or
6 distributions of cash in all forms, including through chip redemption. If there is a *process* for pa-
7 tron disputes, then proving himself a customer by itself, is not sufficient enough for Mr. Young to
8 be a entitled to a payout as a matter of law. In order to be an entitled patron, he must also substan-
9 tiate his play. Put simply, the Nevada Legislature would not have enacted a dispute-related statute
10 if any customer could simply present chips for redemption and demand licensee redeem them
11 without verification.¹

12 **b. Mr. Young's Position is Contrary to Other Licensee Obligations**

13 Mr. Young's position would also result in the Hard Rock's (and other licensees') inability
14 to meet other legal obligations designed to prevent fraud, money laundering, the redemption of
15 someone else's chips (*e.g.*, theft) and other financial crimes. In other words, Hard Rock has legal
16 obligations to more than just an individual customer.

17 For example, casinos like the Hard Rock with gross gaming revenues that exceed \$1 mil-
18 lion are financial institutions subject to the Bank Secrecy Act, which are designed to prevent fi-
19 nancial crime, including money laundering and terrorism. 31 C.F.R. § 1021.320 *et seq.* Under 31
20 C.F.R. § 1021.320, Hard Rock *must* report certain transactions that the casino suspects might in-
21 volve funds derived from illegal activities or to evade other laws. These requirements prevent
22 Hard Rock from simply paying out \$30,000 to a "patron" where internal records don't substantiate
23 his play.

24 Accordingly, Young's argument that Hard Rock *must* redeem his chips simply because he
25 is a customer who has presented them is an over-simplified argument that is untenable in context
26 and under Nevada and federal law. Hard Rock is permitted to—and in fact, must in certain cir-

27 ¹ To the extent that the Board's regulations conflict with Nevada statutes, statutes control. *State,*
28 *Div. of Ins. v. State Farm*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000) (holding that "a court will
 not hesitate to declare a regulation invalid when the regulation . . . conflicts with existing statutory
 provisions . . .").

1 cumstances—review records to substantiate a customer’s play. For his part, Mr. Young must do
2 more that rely on prior deceptions in order to redeem those chips.

3 Accordingly, the Board did not err in reading Gaming Regulation § 12.060 to mean that a
4 licensee cannot redeem its own chips if presented by someone who has not substantiated his play.
5 The narrow way that Mr. Young reads the regulation—*i.e.* that any person who has gambled at the
6 casino has the right to have any amount of chips redeemed—would mean that any customer could
7 play \$10 at a single game and come back later with \$30,000 in chips demanding redemption. That
8 is unsupported and illogical.

9 **2. The Undisputed Records Show that Young Could Not Have \$30,000 in Chips**

10 Mr. Young cannot prove that there is not “any” evidence supporting the Board’s decision,
11 either. See NRS 463.3666(3)(d) (allowing an agency decision to be overturned if it is “unsupport-
12 ed by any evidence.”). As explained in *Sengel v. IGT*, 116 Nev. 565, 570, 2 P.3d 258, 261 (2000):

13
14 NRS 463.3666(3)(d) uses the word “any” instead of “substantial,” indicating that
15 a reviewing court should affirm a decision of the Board which is supported by *any*
16 *evidence whatsoever*, even if that evidence is less than that which a reasonable
mind might accept as adequate to support a conclusion. This comports with the
“great deference” we afford a decision of the Board on appeal.

17 Hard Rock has reviewed and produced dozens of records in this case. It has also undertaken its
18 own investigations to determine whether or not Young could actually have \$30,000 in chips to re-
19 deem—specifically, 6 chips each in the amount of \$5,000. It undertook these investigations not to
20 deprive a patron of his legitimate winnings or money, but to determine if it could actually substan-
21 tiate Young’s play. If it could, it would readily pay out and redeem the chips.

22 The point is, there is no way to do so. The *most* Young could have is \$20,000, and that
23 amount does not even include amounts Young would have used for dealer or server tips or other
24 non-tracked items. The fact that he has any amount of chips more than \$20,000 is troublesome.

25 Likewise, it would not resolve this dispute to simply order Hard Rock to redeem \$20,000
26 in chips. The circumstances make it so that *any* redemption would mean that Hard Rock would be
27 forced to pay out monies Mr. Young could not have logically accumulated at the casino. Put simp-
28

1 ly, the records show that Mr. Young cannot have \$30,000 in chips, and it is unbelievable that he
2 would even have \$20,000 in chips.

3 Thus, there is at least *some* evidence to support the Board's decision. Mr. Young cannot
4 prove that there is not "any" evidence.

5 **3. Mr. Young Cannot Rely on His Own Deceit**

6 Mr. Young's argument that the Board's Decision must be wrong because he purposefully
7 hid chips from Hard Rock is not a basis to overturn the Decision. In fact, Mr. Young's admission
8 that he hid chips to deceive Hard Rock triggers claims that Hard Rock would have against Mr.
9 Young; namely, a claim for false pretenses, among others.

10 In Nevada, a person may not make a representation to another person in an attempt to mis-
11 lead them. *Bright v. Sheriff, Washoe Cty.*, 90 Nev. 168, 170, 521 P.2d 371, 373 (1974) ("A false
12 pretense may be defined as a representation of some fact or circumstance which is not true and is
13 calculated to mislead."). Additionally, "[a] false pretense may consist of any act, word, symbol or
14 token calculated and intended to deceive. It may be made either expressly, or by implication." *Id.*
15 Young's admitted attempt to mislead Hard Rock through hiding chips, if true, would be a civil of-
16 fense.

17 If any patron can meet his burden of proof by claiming that he hid chips, what is to stop
18 others? Adopting Mr. Young's position, a patron could illegally obtain chips, play a minimal
19 amount, seek to redeem them, and simply claim that he had them but hid them. It perpetuates a
20 practice and culture of deceit that the Board, and indeed, this Court, should not support. Accord-
21 ingly, Young's argument that the records must be incomplete is wrong and raises a plethora of
22 problems this Court should seek to prevent, not condone.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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Lewis Roca
ROTHGERBER CHRISTIE

1 **CONCLUSION**

2 Hard Rock respectfully requests that this Court affirm the Decision of the Nevada Gaming
3 Control Board.

4 DATED this 30th day of October, 2018.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP

6 

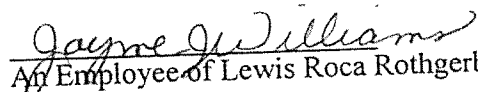
7
8 By: Marla J. Hudgens (NV Bar No. 11098)
9 *Attorney for Respondent Hard Rock Hotel &*
10 *Casino*

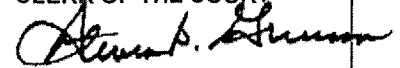
11 **CERTIFICATE OF SERVICE**

12 Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify that on the
13 30th day of October 2018, I served a true and complete copy of the foregoing **HARD ROCK**
14 **HOTEL AND CASINO'S ANSWERING BRIEF** upon those persons designated by the parties
15 in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court
16 eFiling System in accordance with the mandatory electronic service requirements of Administra-
17 tive Order 14-2 and the Nevada Electronic Filing and Conversion Rules:

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7 Tel: 602.262.5311

8 Attorneys for Respondent
9 Hard Rock Hotel and Casino

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 Tsun Young,

13 Petitioner,

14 v.

15 Nevada Gaming Control Board and
16 Hard Rock Hotel and Casino,

17 Respondents.

Case No. A-18-775062-J

Dept No.: X1V

GCB Case No. 2016-8570-LV

18 **NOTICE OF ENTRY OF ERRATA**

19 Hard Rock Hotel and Casino hereby provides notice that, as a result of a scrivener's error,
20 the cover sheet to its Answering Brief, incorrectly indicates that Lewis Roca Rothgerber Christie
21 represents both the Hard Rock Hotel and Casino and the Nevada Gaming Control Board. Lewis
22 Roca Rothgerber Christie represents only the Hard Rock Hotel and Casino. A corrected copy of
23 the coversheet is attached as Exhibit A.

24 DATED this 7th day of November, 2018

25 LEWIS ROCA ROTHGERBER CHRISTIE LLP

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CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify that on the 7th day of November, 2018, I served a true and complete copy of the foregoing **NOTICE OF ERRATA** upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules:

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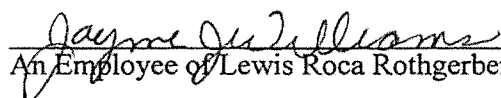

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EXHIBIT A

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Hard Rock Hotel and Casino

DISTRICT COURT
CLARK COUNTY, NEVADA

Tsun Young,

Petitioner,

vs.

Nevada Gaming Control Board and
Hard Rock Hotel and Casino,

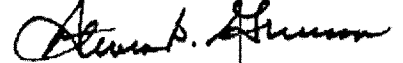
Respondents.

Case No.: A-18-775062-J
Dept. No.: XIV

GCB Case No. 2016-8570-LV

HARD ROCK HOTEL AND CASINO'S ANSWERING BRIEF

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

**BRIEF IN REPLY TO THE RESPONSE BRIEFS OF HARD ROCK HOTEL
AND CASINO AND THE NEVADA GAMING CONTROL BOARD AND REQUEST TO
STRIKE THE BRIEFING SUPPLIED BY THE RESPONDENTS**

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1 NRS 463.110

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3 NRS 463.363(1) 9

4 *Weisbrod v. Fremont Hotel*, 74 Nev. 227, 326 P.2d 1104 (1958) 12

5
6 **III. ANALYSIS**

7 **A. THE BRIEF OF THE RESPONDENTS ARE INCOMPETENT AND**
8 **SHOULD BE STRICKEN**

9 **1. The Board's Brief Is Unauthorized and Improper**

10 A petition for judicial review of a decision of the Nevada Gaming Control Board
11 ("Board") does not fall within Nevada's administrative procedures act. Rather, it is addressed in
12 EDCR 2.15, which expressly contemplates a single respondent and a single responsive brief.
13 There is no provision within the statutory provisions for recovery of a debt by a patron setting
14 forth the procedure or the parties involved in a Petition for Judicial Review under NRS 463.361
15 *et seq*. In this absence, and looking to the next best source, Plaintiff included the Nevada Gaming
16 Control Board in the caption for notice purposes, which, in an abundance of caution, also
17 complied with NRS 233B.130(2)(a).
18

19 As shown by the record on file in this matter, the proceeding before the Nevada Gaming
20 Control Board proceeded as a trial before a hearing examiner under NRS 463.110(4). Also, as
21 referenced in that statute, the licensee is the other "party" to the hearing. The Board is,
22 obviously, not a party and participates in the determination of the patron dispute in a judicial
23 capacity. *Id*. It is axiomatic that those acting in a judicial capacity lack standing to argue on
24 appeal or take a position on subsequent proceedings which could affect their rulings. *See e.g.*
25 *Curle v. Superior Court*, 24 Cal. 4th 1057, 1068, 16 P.3d 166, 174, (2001).
26

27 Indeed, briefing by the Board is both unseemly and detrimental to the notions of fair play
28 and substantial justice. Obviously, entities judging matters in a judicial capacity under the law

1 must remain unbiased, and avoid any allusion to bias, in their actions. In appearing before this
2 Court and attempting to bolster and support its rationale for the denial of the Petitioner's patron
3 dispute, the Board is taking a direct position publicly adverse to a litigant before it and
4 forwarding a bias against a litigant appearing before it. Indeed, if this matter is remanded
5 following hearing here or on appeal, the Board has entirely destroyed its required lack of bias
6 through filing the current brief. It is for this Court, at this stage, to determine the scope and
7 application of the law to the facts, and the inferior judicial tribunal has no say in such matters.
8 Thus, the briefing by the Board is incompetent, should not be considered by the Court, and
9 should be stricken.
10

11 **2. The Brief of Hard Rock Is Non-Complaint and Should Be Stricken**

12 Pursuant to EDCR 2.15, NRAP 28 applies to the briefing by Hard Rock. Hard Rock's
13 Brief does not include a table of contents nor a table of authority as required by NRAP 28(a)(2)
14 and (3). As materially non-compliant, Hard Rock's brief should be stricken.
15

16 **B. THE RESPONDENT PARTIES ATTEMPT TO PROVIDE AN UNSUPPORTED** 17 **DEFINITION OF "PATRON" IN CONFLICT WITH NEVADA LAW**

18 **1. Contrary to the Decision By the Board, it Now Appears That There Was** 19 **No Authority for a Decision Finding Petitioner Was Not a Patron**

20 In seeking to prevent the application of the law as clearly written, the Board and Hard
21 Rock go far afield in attempting to distinguish the term "patron" from its clear meaning. Further
22 as to the arbitrary and capricious nature of this determination, the Court can take note that the
23 Board initially relied upon the case of *Kyprianou v. Caesars Palace*, Dist. Ct. Case No.
24 562045W. ROR 000004. In his opening brief, Plaintiff pointed out that this case did not say what
25 the decision says it says. Pl. Opening Brief, pp. 14-16. In their opposing briefs the Board and the
26 Hard Rock place no reliance on, and do not even cite to, the Board's purported authority in
27 arguing that the Petitioner is not entitled to relief. Simply, they appear to wholly agree that the
28

1 decision of the Board is premised on inapplicable authority. Minimally, the Board has abandoned
2 its rationale, and also possible, the Board initially constructed the purported authority out of
3 whole-cloth in order to deny Petitioner his winnings. Thus, the basis for the decision was
4 arbitrary and capricious as pointed out in the Opening Brief, pp. 14-16.

5
6 **2. The Substitute Definition of a “Patron” Forwarded by
the Board and Hard Rock Is Unsupportable**

7 Petitioner provided a universal and unwavering definition of a “patron” for this Court’s
8 consideration. Petitioners Opening Brief, pp. 13-14. If Petitioner is correct in this definition, then
9 the Board’s decision is patently in error.

10 Before embarking on a discussion of the legal basis for a decision for the Petitioner, it is
11 important to point out the disingenuous nature of the Hard Rock’s response. Hard Rock states,
12 “A ‘patron’ is entitled to redeem casino chips under Nev. Gaming Comm. Reg. 12.060(2)(c),
13 only if he shows that the chips in his possession were acquired through play at the casino.” Hard
14 Rock Brief, p. 2: 17-19. Here’s what the regulation actually states: “A licensee shall not redeem
15 its chips or tokens if presented by a person who the licensee knows or reasonably should know is
16 not a patron of its gaming establishment . . .” Nev. Gaming Comm. Reg. 12.060(2)(c). No where
17 within this regulation is there any burden on the Petitioner to show, at any level, where or how
18 (s)he acquired the chips. Rather, and directly contrary to Hard Rock’s position, the entire onus of
19 the regulation falls on the casino who must cash the chips unless they know, or should know, at
20 the time of presentation that the presenter is not a patron. Indeed, as shown below, both the
21 Board at the hearing and here, and Hard Rock had to rewrite the unambiguous regulation in order
22 to refuse to redeem Petitioner’s chips.

23
24
25 Addressing the dispute at issue, as discussed at length, under Nevada’s Gaming
26 Regulations a casino must “promptly redeem” chips when presented, subject to only one
27 exception, to wit: When the casino “knows” or reasonably should know that the person
28

1 presenting the chips is not a patron. Nev. Gaming Comm. Reg. §§ 12.060(2)(c) and (4). While
2 this statement is, at first, confusing in the nature of negatives and exceptions to the regulatory
3 scheme mandating that chips must be “promptly redeemed,” it provides a clear standard when
4 parsed out. If a person presents chips for redemption and at the time the chips are presented (or
5 proximately thereafter perhaps), in order for the Hard Rock to refuse to redeem the chips when
6 presented, it must know that Petitioner was not a patron. Thus, the burden upon the Petitioner at
7 the hearing is to show that Hard Rock did not know that Petitioner was not a patron on October
8 24, 2017. Again, a double negative, but that is the standard the Petitioner must meet in order to
9 have had his chips redeemed, and contrary to Hard Rock’s position, there is no colorable
10 evidence that on October 24, 2017 it knew that Petitioner was not a patron.¹

12 Most importantly, the argument of the Board is not supported by the “patron” designation
13 within the regulation. The Board concludes that because the regulation uses the term “patron,”
14 that anything less than its theory will not advance legitimate concerns raised by the regulation.
15 Knowing that a person is a “patron” does provide information to the casino. It provides the fact
16 that the casino must recognize the presenter of the chips as a customer, arguably of some
17 regularity. In this sense, it likely also advances an assurance that the casino can identify the
18 “patron” as well as the patron’s recognized history with the casino. In defining “patron” as its
19 unambiguous definition provides, obviously the very concerns of the Board are advanced to a
20 degree. It is no argument that all the information possible is not obtained by adding restrictions
21 on the term “patron” when some of the relevant information is received. That is, it is not absurd
22 for the regulation to gain some information when absent the application of the regulation as
23 written, no information would be gained. Even under the Board’s position, there is every reason
24
25
26

27
28 ¹ The language of Nev. Gaming Comm. Reg. § 12.060(2)(c), including the term “promptly
redeem” obviously means when presented.

1 to conclude that the regulation means what it says and advances the purpose behind the
2 regulation.²

3 The argument against applying the regulation as written is also without logical basis. The
4 Board asserts that the “patron” requirement does not mean “patron,” but rather, means that the
5 chips must have been acquired at the casino by the presenter. If that were the case, then the
6 regulation would, obviously, so state, and it, also obviously, does not so state. The use of an
7 unambiguous term in the regulatory scheme cannot mean more or less than that which is
8 provided.³

10 The argument to the contrary is also incompetent. The Board maintains that in using the
11 term “patron” can only mean limited to a person who demonstrates that the chips came from the
12 casino to the presenter as a result of the presenter’s patronage because demonstrating anything
13 less would thwart the regulatory scheme. This is just false.

15 Per the Board, to adopt the rationale of the Petitioner and the clear and unambiguous
16 language of the statute results in an “absurd” result. Board’s Brief, p. 5. The converse is that if it

18 ² The Board’s citation to a Commission hearing transcript, Board’s Brief, p. 5, is also
19 inappropriate. This citation does not appear to be accessible to either the Court nor the Petitioner,
20 and no copy is attached. This is, simply, a phantom statement presented in the Board’s Brief.
21 More importantly, no context is provided, and the section at issue is only a small portion of Nev.
22 Gaming Comm. Reg. 2.060. It is impossible to determine or apply the Board’s isolated statement
23 to a transcript of at least 258 pages in the exclusive possession of the Board to the matters here.
24 In fact, the only amendment to Nev. Gaming Comm. Reg. 12.060 addressed at the meeting was
25 to add a new section 5, a change unrelated to the issues here. *See*

26 <<https://gaming.nv.gov/modules/showdocument.aspx?documentid=3246>> viewed 11/12/18.

27 ³ The Board states that Hard Rock refused to cash the chips “because Young’s play did not
28 support that he was properly in possession of the chips.” Board’s Brief, p. 4: 13-15. This was in
dispute, and the only evidence produced at the hearing was that at the time the chips were
presented, Hard Rock could not have known one way or another if the chips were acquired by
Petitioner through gaming. Indeed, as shown at the hearing, all the evidence at the time showed
that the Hard Rock had no evidence that Petitioner did not acquire the chips through gaming at
Hard Rock, and could not have known that the chips were not so acquired. In this sense, Hard
Rock’s denial was fabricated, and the reason they denied to pay Petitioner was to keep \$30,000
and nothing more.

1 does not result in an absurd result, then the decision of the Board was patently erroneous under
2 the law.

3 The argument the Board makes that the result is absurd is that allowing the chips to be
4 cashed would thwart the “currency laws of the United States.” This is a curious argument to be
5 made without even a citation to such laws. More importantly, it is not the case. If the chips are
6 cashed, then Hard Rock is required to file a CTR (cash transaction report). Casinos are included
7 in those institutions which must file CTRs. *See* 31 USCS § 5312(a)(2)(x) If the redemption is
8 refused, no such report is filed. If the chips are redeemed, then a report must be filed. 31 USCS
9 §§ 5311 *et seq.* Per the argument of the Board, under its analysis there is no information
10 provided to the federal government, while, under the Petitioner’s analysis, information is
11 provided through a CTR filed by Hard Rock. It is only on the refusal to redeem that the
12 government is bereft of receiving information, and clearly, the currency laws of the United States
13 are supported through redemption, not denial. The Board, simply, has the analysis backwards.⁴⁵
14
15

16 C. THERE WAS NO FRAUD OR DECEIT HERE

17 Hard Rock concludes with an argument that the Petitioner somehow committed fraud
18 upon them by putting his chips in his pocket. Oh, the humanity! A simple search of the internet
19 will indicate that attempting to prevent a casino from tracking one’s win/loss (“rat-holing”) is
20 ubiquitous in the industry. Indeed, one court addressing rat-holing pointed out that the practice
21 destroyed the reliability of casino win/loss records with respect to a player. *Macway v. United*
22

23
24 ⁴ The idea that this somehow prevents chips moving through the economy is also in error. Only
25 transactions with financial institutions are reported on CTRs (which includes casinos).
26 Obviously, among individuals, cash, gold, checks, and all representatives of value are freely
27 interchangeable without reporting. And this does not thwart the United States currency laws. The
28 Board’s concerns do not exist at any level.

⁵ Further to this, in 2003 the reporting requirements for chip redemption, etc., Nev. Gaming
Comm. Reg. Chapter 6A, was repealed showing that there was a lack of concern for the issues
the Board claims were material to the rationale behind Nev. Gaming Comm. Reg. §§ 12.060(4).

1 *States (In re Macway)*, 2014 U.S. Dist. LEXIS 106560, *12, 2014 WL 3817103 (D. Nev. 2014).

2 There was no suggestion whatsoever that the practice was deceitful or improper. *Id.*

3 Indeed, it cannot be improper. To accept Hard Rocks premise would indict a poker player
4 for not disclosing pocket aces to his competitors. Gambling is a competition, and it is a regular
5 part of that competition for a participant to secret his wherewithal. Finally, by making this
6 argument, the Hard Rock essentially acknowledges that it could not keep accurate track of the
7 Petitioner's wagers, pocketed money, winnings, or losses. That is, it could not know or
8 reasonably should have known that the Petitioner did not receive the chips at issue in his gaming
9 interactions at Hard Rock. That is, it could not know he was not a patron, even under its
10 argument of the definition of patron. Therefore, as a matter of law per Nev. Gaming Comm. Reg.
11 §12.060, it was required to promptly redeem Petitioners \$30,000.00 in chips on October 24,
12 2016, and Petitioner was entitled to a determination that his chips be redeemed in this matter.
13
14

15 D. AS IT IS AGENT NAQUI'S DECISION THAT THE BOARD IS TO REVIEW, THE
16 BOARD WAS REQUIRED TO OVERTURN THIS DECISION AND DIRECT THAT HARD
17 ROCK REDEEM THE CHIPS PRESENTED BY PETITIONER

18 The charge of the Board was to review "the decision" of Agent Naqui, and affirm or
19 reject it. NRS 463.363(1). Agent Naqui soundly acknowledged that his decision, the decision on
20 review before the Board, was made on a false premise, and was in error. Indeed, he testified:

21 Q: Were you just mistaken when you wrote that [Petitioner
22 claimed he won the money at a blackjack tournament]?

23 A: Yes sir.

24 ROR 60; and see ROR 68: 17-14. Review of ROR 56-60 shows that Agent Naqui addressed the
25 Petitioner's claim as a claim for funds won at a blackjack tournament. Throughout his
26 examination he acknowledges that the lawyer for the Petitioner told him to not get caught up in
27 the Hard Rocks assertion that that was the claim he was addressing, and that, in fact, the funds
28

1 were from play undertaken to qualify for an entry into the blackjack tournament. This was fully
2 supported as well by the documentation he left with showing table play, not a blackjack
3 tournament. , Agent Naqui fully agrees that he was working off of an erroneous premise.

4 He then, under examination, undertook to review the matter under the actual facts, not his
5 erroneously perceived facts. He acknowledged that from documents produced by Hard Rock
6 Petitioner was a gambler who played large sums of money at Hard Rock. ROR 61-63. Then,
7 upon review of the documentation provided by Hard Rock to support its assertion that the
8 Petitioner could not have won the money at Hard Rock, he concluded:

10 Q: So as you look at that today [the records provided by Hard Rock at
11 the time], do you see anything that would cause you to even question
12 whether a person playing at that level . . . that this person would be
13 somebody who would not have \$30,000.00 in chips in their possession?

15 A: I believe based on this information he may have – he would have
16 possibly \$30,000.00 in his possession.

17 ROR 69: 4-13. That is the whole issue in a nutshell. Per the agent who's decision was being
18 reviewed, his decision was fully recanted, he admitted to operating under an erroneous premise,
19 and under the facts that he actually knew and the correction of the erroneous premise, the Hard
20 Rock could not "know or reasonably should have known" that Petitioner was not a patron or
21 even that the Petitioner did not get the money through gaming activities at Hard Rock. That is,
22 the Petitioner showed that the decision being reviewed was in error and per the agent that made
23 the decision, should be reversed.

26 ///

27 ///

1 E. AS THE EVIDENCE FROM HARD ROCK SHOWED THAT
2 PETITIONER COULD HAVE \$20,000.00 IN \$5000.00 CHIPS
3 THE COMPLETE DENIAL OF ANY RECOVERY IS
4 AGAINST THE EVIDENCE

5 Hard Rock did a calculation of the Petitioner's total history in support of its argument
6 that Petitioner was not a patron. It was a reconstruction by an in-house person for the very
7 purpose of denying payment to Petitioner, and it is found at ROR 396. Petitioner raised this in
8 the opening brief, pointing out that even under Hard Rock's reckoning, Petitioner had
9 \$20,000.00 in chips outstanding. This was done after Hard Rock represented to Agent Naqui that
10 Petitioner could not have any chips. ROR 396 was constructed after the deposition duces tecum
11 of Hard Rock where this record (and the record produced on the eve of the hearing which
12 included a new column for buy-backs) were not provided. In short, Hard Rock produced
13 documents at the hearing which should have been provided earlier, but were not, to substantiate
14 that Petitioner could not have these chips.

15 The bottom line is that if everything produced and argued by Hard Rock is given
16 complete credibility and all of its legal arguments are accepted without question, there remains a
17 party admission at ROR 396 that the Petitioner was a patron for at least \$20,000.00 of the chips
18 presented and for which Hard Rock denied redemption. Hard Rock argues that its own
19 calculations are "unbelievable." Hard Rock Brief, p. 10: 1-2. Then none of its presentation, all
20 premised on calculations by the same person, are "unbelievable," and, simply, Hard Rock could
21 not know that the Petitioner was not a patron.

22 From a different perspective, and finally, Petitioner played hundreds of thousands of
23 dollars at Hard Rock tables. He presented \$30,000.00 in chips for redemption, Hard Rock claims
24 that he could have no more than \$20,000.00. Hard Rock is telling this court that it can pinpoint a
25 player's loose chips moving in transactions and transportation entirely outside the control of the
26 player's loose chips moving in transactions and transportation entirely outside the control of the
27 player's loose chips moving in transactions and transportation entirely outside the control of the
28 player's loose chips moving in transactions and transportation entirely outside the control of the

1 Hard Rock and totaling multiple six-figures to a shortfall of \$10,000.00. Now, there's
2 unbelievable. *See also Macway v. United States, supra.*

3 IV. CONCLUSION

4 Petitioner showed that the agent's decision was in error. Petitioner showed that he put
5 sufficient funds in play to support the conclusion that he acquired the funds at issue in gaming at
6 Hard Rock. Petitioner showed that the language of the applicable regulations required payment.
7 Petitioner showed that, through a party admission, even the Hard Rock acknowledges that it
8 owes Petitioner at least \$20,000.00 in outstanding chips. Yet the Board had to ignore this
9 evidence and rewrite a regulation to boot in order to deny Petitioner redemption of his chips. The
10 decision of the Board was arbitrary and capricious, and appears geared to allow the outright theft
11 of \$30,000.00 from Petitioner. The entire patron dispute program was enacted to avoid just this
12 result in light of the decision under *Weisbrod v. Fremont Hotel*, 74 Nev. 227, 229, 326 P.2d
13 1104, 1104 (1958), which, in some senses, essentially provided casinos with a license to steal. In
14 light of the entire lack of competent evidence to deny the payment, should the current decision
15 stand, then the Board and Casinos are returning to the stage where a casino can do no wrong, and
16 patrons are simply marks to be fleeced. The legislature enacted the patron dispute procedure to
17 assure that this could not be the paradigm for gaming in Nevada, and the decision of the Board
18 should be reversed, and Hard Rock ordered to pay Petitioner \$30,000.00 in return for his chips.
19
20
21

22 DATED this 13th day of November, 2018

23 NERSESIAN & SANKIEWICZ

24 /s/ Robert A. Nersesian

25 Robert A. Nersesian

26 Nev. Bar # 2762

27 528 S. 8th St.

28 Las Vegas, NV 89101

(702) 385-5454

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Attorneys for Petitioner

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V. ATTORNEY'S CERTIFICATE

1. I have read, and indeed wrote, the foregoing brief;
 2. To the best of my knowledge, information and belief, the brief is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
 3. This brief complies with all applicable rules appertaining to a Petition for Judicial Review on a Decision from the Nevada Gaming Control Board; and
 4. This brief complies with the formatting requirements of the Local Rules for the Eighth Judicial District Court, and meets the page- or type-volume limitations stated therein.
- stated in Rule 32(a)(7).

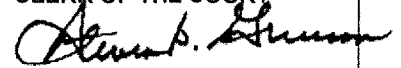
Dated this 13TH day of November, 2018

/s/ Robert A. Nersesian
Robert A. Nersesian

VI. CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2018, pursuant to NRCP 5(b) and EDCR 8.05(f), the above referenced BRIEF IN REPLY TO THE RESPONSE BRIEFS OF HARD ROCK HOTEL AND CASINO AND THE NEVADA GAMING CONTROL BOARD AND REQUEST TO STRIKE THE BRIEFING SUPPLIED BY THE RESPONDENTS was served upon Respondents Hard Rock and the Nevada Gaming Control Board via e-service upon their respective counsel through the Eighth Judicial District Court e-filing system, and that the date and time of the electronic service is in place of the date and place of deposit in the mail.

/s/ Robert A. Nersesian
Robert A. Nersesian



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2 Marla J. Hudgens
3 Nevada Bar No. 11098
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9 *Attorneys for Respondents*
10 *Hard Rock Hotel and Casino*

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA
14

15 TSUN YOUNG,

16
17 Petitioner,

18 vs.

Case No.: A-18-775062-J
Dept. No.: XIV

19 Nevada Gaming Control Board and
20 Hard Rock Hotel and Casino,

GCB Case No. 2016-8570-LV

21 Respondents.
22
23
24
25
26
27
28

29 **HARD ROCK HOTEL AND CASINO'S OPPOSITION TO PETITIONER'S REQUEST**
30 **TO STRIKE ITS BRIEF AND SUPPLEMENT TO ANSWERING BRIEF**

31 Marla J. Hudgens
32 Nevada Bar No. 11098
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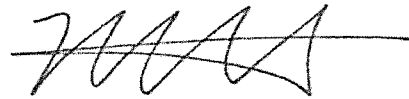
1 **A. INTRODUCTION**

2 Petitioner Tsun Young requests this Court to strike Hard Rock's Answering Brief for fail-
3 ing to include a table of contents and table of authorities. The failure causes no prejudice to Mr.
4 Young and this Court should refuse to grant such punitive sanction.

5 Nevertheless, a Table of Contents and Table of Authorities are attached hereto as **Exhibit**
6 **A** to correct the filing error.

7 DATED this 30th day of November, 2018.

8
9 LEWIS ROCA ROTHGERBER CHRISTIE LLP

10 

11 By: _____

12 Marla J. Hudgens (NV Bar No. 11098)
13 *Attorney for Respondent Hard Rock Hotel &*
14 *Casino*

CERTIFICATE OF SERVICE

Pursuant to Rule 5(b) of the Nevada Rules of Civil Procedure, I hereby certify that on the 30th day of November 2018, I served a true and complete copy of the foregoing **HARD ROCK HOTEL AND CASINO'S SUPPLEMENT TO ANSWERING BRIEF** upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules:

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

Robert A. Nersesian
NERSESIAN & SANKIEWICZ
528 South Eighth Street
Las Vegas, NV 89101
Attorneys for Petitioner


An Employee of Lewis Roca Rothgerber Christie

EXHIBIT A

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Cases

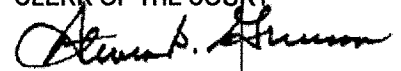
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31 C.F.R. § 1021.320	7
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1 BREF

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2 Nevada Bar No. 2762

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Attorneys for Petitioner

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

8 Tsun Young)

9 Petitioner,)

10 vs.)

11 Nevada Gaming Control Board and)
12 Hard Rock Hotel and Casino ,)

13 Respondents.)

) Case No.: A-18-775062-J

) Dept. No.: 14

) GCB Case No. 2016-8570-LV

14)
15 **BRIEF IN REPLY TO HARD ROCK'S OPPOSITION TO REQUEST**
16 **TO STRIKE THE BRIEF OF HARD ROCK**

17 Respondent, Hard Rock ("Respondent") filed a brief absent material and required
18 elements (table of contents and table of authority). Respondent did this despite notice through the
19 rules and further notice, through the format of the brief to which it was responding, that the brief
20 its brief was non-compliant with these requirements

21
22 It is expressly within the discretion of this court to "strike" such an offending brief.
23 NRAP 28(j) as applied through EDCR 2.15(e). Petitioner raised the failure in its opening brief,
24 and considering the breadth of authority under NRAP 28(j), this was a proper forum to present
25 the position. The proper response is to address the request in the response brief on the petition.
26 To correct its error, Hard Rock has filed a phantom document. It should not be considered,
27
28

1 Petitioner raised a valid point, and the brief of Respondent should be stricken.

2 DATED this 22d day of January, 2019

3 NERSESIAN & SANKIEWICZ

4 /s/ Robert A. Nersesian

5 Robert A. Nersesian

6 Nev. Bar # 2762

7 528 S. 8th St.

8 Las Vegas, NV 89101

9 (702) 385-5454

10 vegaslegal@aol.com

11 *Attorneys for Petitioner*

12 **CERTIFICATE OF SERVICE**

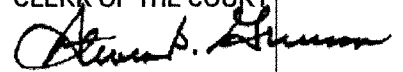
13 I hereby certify that on the 22d day of January, 2019, pursuant to NRCP 5(b) and
14 EDCR 8.05(f), the above referenced BRIEF IN REPLY TO HARD ROCK'S OPPOSITION TO
15 REQUEST TO STRIKE THE BRIEF OF HARD ROCK was served upon Respondents Hard
16 Rock and the Nevada Gaming Control Board via e-service upon their respective counsel through
17 the Eighth Judicial District Court e-filing system, and that the date and time of the electronic
18 service is in place of the date and place of deposit in the mail.

19 Michael Somps
20 Senior Deputy Attorney General
21 Attorney General's Office
22 5420 Kietzke Lane, Suite 202
23 Reno, Nevada 89511
24 *Attorneys for Respondent*
25 *Nevada Gaming Control Board*

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28 201 E. Washington Street, Suite 1200
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Attorneys for Respondent
Hard Rock Hotel and Casino

/s/ Rachel Stein

An employee of Nersesian & Sankiewicz



1 ORD

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 TSUN YOUNG,

Case No.: A-18-775062-J
Department 14

6 Petitioner,

7 vs.

8 NEVADA GAMING CONTROL BOARD;
9 and HARD ROCK HOTEL AND CASINO,

10 Respondent(s).

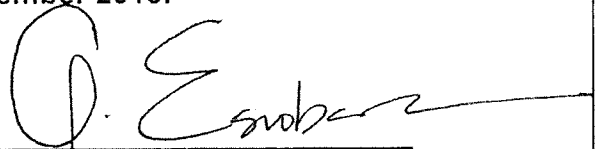
12 ORDER SETTING HEARING RE PETITION FOR JUDICIAL REVIEW

13 Good cause appearing, it is hereby

14 ORDERED that this matter is set for hearing on January 15, 2019, at the
15 hour of 9:30 a.m., in the District Court Department 14 in the Regional Justice
16 Center, 200 Lewis Avenue, 14th Floor in Courtroom 14C, Las Vegas, Nevada,
17 for further proceedings. Your presence is required.
18

19 Failure to appear may result in dismissal of the case.

20 DATED this 14 day of December 2018.



23 ADRIANA ESCOBAR
24 DISTRICT JUDGE
25 DEPARTMENT 14
26
27

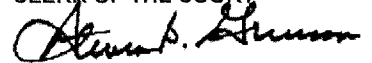
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

TSUN YOUNG,)	CASE NO. A-18-775062-J
)	
Petitioner,)	DEPT NO. XIV
)	
vs.)	
)	
NEVADA GAMING CONTROL BOARD,)	
et al,)	
)	
Respondents.)	Transcript of
)	Proceedings

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE

PETITION FOR JUDICIAL REVIEW

TUESDAY, JANUARY 29, 2019

APPEARANCES:

FOR THE PETITIONER: ROBERT A. NERSESIAN, ESQ.

FOR THE RESPONDENTS: MICHAEL P. SOMPS, ESQ.
MARLA J. HUDGENS, ESQ.

RECORDED BY: SANDRA ANDERSON, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

1 LAS VEGAS, NEVADA, TUESDAY, JANUARY 29, 2019, 11:04 A.M.

2 (Court was called to order)

3 THE COURT: Okay. Jerry, page 4?

4 THE MARSHAL: Yes, Your Honor.

5 THE COURT: Okay. Very good. This is -- I hope I am
6 pronouncing it right. Is it Tsun Young versus --

7 MR. NERSESIAN: Tsun Young. Tsun.

8 THE COURT: Tsun Young. Okay. Tsun Young versus the
9 Nevada Gaming Control Board, and this is a petition for judicial
10 review. And state your appearances for the record, please.

11 MR. NERSESIAN: Robert Nersesian, 2762, for --

12 THE COURT: Okay.

13 MR. NERSESIAN: -- the petitioner.

14 MR. SOMPS: Mike Soms with the Attorney General's
15 office here on behalf of the Gaming Control Board.

16 MS. HUDGENS: And Marla Hudgens, Bar No. 11098, on
17 behalf of the Hard Rock.

18 THE COURT: Okay. Very good. Okay. Welcome. I
19 guess this is your --

20 MR. NERSESIAN: Yes, Your Honor. Your introduction
21 said that this is versus the Nevada Gaming Control Board.

22 THE COURT: I'm sorry.

23 MR. NERSESIAN: And actually it's versus Hard Rock.

24 THE COURT: You know, I'm actually reading what they
25 give me in the calendar.

1 MR. NERSESIAN: Okay.

2 THE COURT: So -- so thank you for the correction.
3 It's versus Hard Rock, not the Nevada Gaming --

4 MR. NERSESIAN: The correction is -- is material here
5 to what I'm telling you.

6 THE COURT: Okay.

7 MR. NERSESIAN: Because the Board filed a brief, and
8 in our briefing we requested that it be stricken because it was
9 sitting as a judicial body in a petition for judicial review.
10 It is in essence an appeal, and the opposing party in that
11 judicial proceeding, the patron dispute before the Board, was
12 the Hard Rock.

13 THE COURT: Right.

14 MR. NERSESIAN: So the Board is sitting here today as
15 you would sit on an appeal to the court of appeals or the Nevada
16 Supreme Court. And, Your Honor, you don't file a brief and they
17 shouldn't be filing a brief, either, specifically standing up
18 for their decision which is to be determined under the law is
19 establishing at this stage a bias for that decision, and that's
20 not the function of a judicial body. And we cited case law to
21 that effect, too. So we would ask that their brief not be
22 considered, and that was the first part of our responsive brief.

23 THE COURT: Counsel.

24 MR. SOMPS: Thank you. Thank you, Your Honor. In
25 response to that I think it is appropriate for the Court to

1 consider the Board's brief, and I think there's a number of
2 reasons for that. One, and the most obvious being is that the
3 petitioner named the Gaming Control Board as a respondent. I
4 think for that reason alone gives the Board the ability to file
5 a brief.

6 But beyond that, I think the legislature has
7 recognized that the Board could be a potential party in a
8 proceeding such as that. And you can look at NRS 463.3662(3).
9 And it says in there that copies of the petition must be served
10 upon the Board and all other parties of record. So, again, the
11 legislature, I think, anticipated that the Board could be a
12 potential party.

13 And beyond that, look, the petitioner has challenged
14 the Board's interpretation of a gaming regulation. So I think
15 that it would be in the Court's interest to hear the Board's
16 view on that. If the Court is inclined to consider Mr.
17 Nersesian's request, I think the statute -- that same statute
18 further down gives this Court the ability to consider a friend
19 of the Court brief. If that's more appropriate for you, that's
20 fine. Again, our focus is getting -- getting to you the Board's
21 view of this matter.

22 THE COURT: Okay. This is NRS 463 --

23 MR. SOMPS: 463.3662(4).

24 THE COURT: -- 3662(4). Okay. For the purposes --
25 anything else, Mr. Nersesian?

1 MR. NERSESIAN: No, Your Honor.

2 THE COURT: Okay. Let's see, I'm going to allow it

3 pursuant to counsel's argument, okay.

4 MR. SOMPS: Thank you, Your Honor.

5 THE COURT: Okay. Go on, Mr. Nersesian.

6 MR. NERSESIAN: Yes, Your Honor. This has been

7 thoroughly briefed.

8 THE COURT: It has.

9 MR. NERSESIAN: Pardon?

10 THE COURT: It has.

11 MR. NERSESIAN: Yes. So I don't want to belabor the

12 Court's time, and as other people have said repeatedly here,

13 obviously you're prepared and you've been through this stuff.

14 THE COURT: Okay. So I'll be honest with you. I am

15 prepared, but this is a -- and I've -- I've spent five and a

16 half years in administrative law, but -- so I understand a lot

17 of how that works, but I think that this is a little bit unique

18 and I wouldn't mind hearing more argument on it.

19 MR. NERSESIAN: Okay.

20 THE COURT: And I am prepared, but I -- but I welcome

21 your input. It can't hurt me in my decision, so -- okay.

22 MR. NERSESIAN: I wasn't --

23 THE COURT: I'm here to serve. I'm here to serve, and

24 I'd rather have more, you know, make sure I understand

25 everything really well.

1 MR. NERSESIAN: Okay. Well, I wasn't going to not
2 argue.

3 THE COURT: No, I know. I know.

4 MR. NERSESIAN: But I --

5 THE COURT: We had -- we had a trial for -- how long
6 was it?

7 MR. NERSESIAN: Six days.

8 THE COURT: Yeah. Okay.

9 MR. NERSESIAN: Your Honor, before I go into the
10 argument, I want to apologize in advance for the double
11 negatives that this regulatory scheme is forcing me to put
12 before the Court. I find it somewhat confusing, and I'm sure as
13 I try to verbalize it, I will fall short at times and it will be
14 hard for the Court to follow, as well.

15 And the first double negative or confusing part I want
16 to bring up is this idea that somehow it is my client's burden
17 to show that he got this exact money from Hard Rock because
18 there is no statute, there's no regulation, there's no law that
19 says he has to do that. The law says that the Hard Rock must
20 promptly redeem the chips, which means when presented, and then
21 there's the caveat which has been conflated and confused by the
22 Board and the parties preventing Mr. Young from collecting this
23 money.

24 That caveat is unless the casino knows, knows or has
25 reasonable cause to know or should know that the patron is -- or

1 that the person presenting the chips is not a patron, okay.
2 That's a burden that exists and arises when Mr. Young walks up
3 to the cage and says here's 30,000 in chips. Only if they don't
4 know that he is a patron, only if they know that he is not a
5 patron are they authorized not to cash the chips.

6 So let's go to that point in time. Mr. Young
7 presented the chips. They refused. A Gaming Control agent was
8 called for a patron dispute to come out and investigate. That
9 Gaming Control Board enforcement agent, Agent Naqui, N-A-Q-U-I,
10 appeared and investigated. The Hard Rock provided him with
11 records, which I think you'll find at page 357 to 360 of the
12 record, that supported their claim that they purportedly did not
13 know -- or, I'm sorry. See, it is difficult. That they
14 purportedly did know that Mr. Young was not a patron.

15 We also, Mr. Young also presented a history which
16 expressly stated that this had nothing to do with money won at a
17 tournament. Nonetheless, the Hard Rock affirmatively
18 represented to Mr. Naqui that the money, the chips, Mr. Naqui --
19 not Mr. Naqui, Mr. Young was representing to them that this was
20 money he won at a tournament. It was not and never was and it
21 was money that he acquired playing to qualify for a tournament.
22 It had nothing to do with tournament proceeds.

23 And when you look at the records I just cited, you
24 will see a clump of huge wagers approaching \$300,000 in a short
25 period of time to qualify for this tournament. He bought in for

1 100 and he wagered \$300,000, okay. And on that they say, the
2 Hard Rock says to Agent Naqui, he says he got this money at a
3 tournament. He didn't get the money at a tournament. He wasn't
4 even in the tournament. But the records they hand over show
5 that he was a big player, that he was throwing lots of money
6 around that casino for the very reason of qualifying for that
7 tournament.

8 In addition, I believe the records, if not those other
9 records, show that there are hundreds of thousands of dollars
10 more wagered on slot machines, and the actual number of wagers
11 is much closer to a million than it is the number that they gave
12 so he qualifies for the tournament.

13 Agent Naqui gets an affidavit from Mr. Young that says
14 that this has nothing to do with the tournament and explains
15 where the money came from, and then a decision comes back that
16 says that Mr. Young represented that this was tournament
17 proceeds and there's no evidence he was in the tournament, which
18 was patently wrong by the agent.

19 Now, here's where the important part comes in. It was
20 wrong because he never said he got the money that way, and
21 that's what Mr. Naqui was representing in his decision. From
22 there, we examine Mr. Naqui at the hearing. And Agent Naqui
23 fully admits that he had misapprehended the facts, that it was
24 indeed represented that Mr. Young had not won the money at a
25 tournament from where the money was wagered, and that -- and

1 this is what he says, two critical things about that
2 investigation, which is the time at which Hard Rock's obligation
3 to promptly pay was extant. He says one --

4 THE COURT: What was that? I'm sorry.

5 MR. NERSESIAN: At the time Hard Rock's duty to pay
6 was extant.

7 THE COURT: Okay.

8 MR. NERSESIAN: Mr. -- or Agent Naqui says two things
9 important at the hearing. One, I was mistaken about where the
10 money supposedly came from. I understood that I -- I understood
11 that I was addressing tournament proceeds, and I see very
12 clearly that none of this has to do with tournament proceeds.
13 And, in fact, I was informed that this has nothing to do with
14 tournament proceeds. And, again, the records support that
15 that's the case, too. The records they provided to Agent Naqui.

16 The second thing he says, and it is critical, is in
17 looking at the money that Mr. Young put in play at the table
18 games, there was evidence that that money came from the Hard
19 Rock and he was a patron that should have been paid.

20 That being said, we ended up -- I mean, this whole
21 thing should have been over when Mr. Young was at the Hard Rock.
22 Now, turning to the next factor, and that is this whole thing
23 about a patron. Patron is not a hard word. You have a person
24 there that has put hundreds of thousands of dollars through that
25 casino, including approximately 300,000 in table game play.

1 And with that, the Hard Rock conflates the word --
2 well, first, let me digress there. With that, the Hard Rock's
3 witness admitted that Mr. Young was a, quote, patron, close
4 quote. Hard Rock's attorneys, in their papers, referred to Mr.
5 Young as a, quote, patron, close quote. Agent Naqui confirmed
6 that in light of the records he saw, etcetera, that Mr. Young
7 was a patron.

8 Yet, we get a definition of patron, which turns from
9 one word to a person who can demonstrate positively that they
10 got these chips from the Hard Rock. That's never the test,
11 never was the test, that's not what patron says. It's not a
12 hard word.

13 Now, they go -- the -- the casino goes to great
14 lengths, together with the Board, curiously, to say that the
15 idea that they're a patron can only mean that they have to show
16 that this money came from this source, particular money, not a
17 status of the individual, but a status of the money. The
18 regulation speaks to the status of the individual. They add an
19 entire layer to the relevant inquiry in order to come up with a
20 reason to keep this money.

21 Now, they're also wrong about this being the only
22 reason it would say patron. There's a very good reason rather
23 than say that that's what the guy has to show. People who
24 gamble in casinos don't have the wherewithal, the evidence, or
25 the ability to prove where that money came from, when it was

1 paid, how they acquired it.

2 There's a hundred tables in there. They move around.
3 Mr. Young was wagering very big money and was moving around, as
4 indicated by the very records, okay. If you require -- if you
5 require of the patron that which Hard Rock is saying the statute
6 requires, then you are giving casinos free reign to, and I have
7 no other way to say this, just steal money because people can't
8 show what they're saying the statute requires them to show, and
9 nobody could ever be expected to.

10 They said patron for a reason. The patron for a
11 reason was to provide some modicum of an assurance that this
12 person is somebody who plays at your casino. But to conflate
13 and exaggerate the word patron to say you must positively show
14 by a preponderance of the evidence who handed you those chips,
15 when they were handed to you, what table you won them at,
16 etcetera, etcetera, etcetera, which is the requirement that the
17 Board is trying to put before Mr. Young, is certainly not
18 something the regulations would have required.

19 And for another reason, too. The Gaming Control
20 Board, above all, is a consumer protection agency. It was
21 enacted for the gamblers and the honesty of the business to
22 assure that casinos followed the practices and couldn't take
23 money that didn't belong to them. There was a case earlier --
24 geez, I'll supply the cite if the Court wants it, but I would
25 have to go back to my office, where a casino just plain refused

1 to play a keno jackpot. It went to the Supreme Court.

2 This was the case that said there is no private right
3 of action on a gambling debt and the patron can't sue,
4 therefore, we don't even have jurisdiction to order the casino
5 to pay it back because we don't decide the legal contracts.
6 That was the impetus for enacting the patron dispute law to make
7 sure that casinos couldn't do just that, but that is what the
8 defense -- or the casino and the Board's argument turns this
9 statute into.

10 It turns it into an ability for the casino to just say
11 no and keep the money, which raises -- just as an aside, Your
12 Honor, it raises a curious perspective here. That's 35 grand,
13 or 30 grand. Hard Rock knows that somebody won it, even if you
14 take them at their word that they believe it wasn't the
15 plaintiff or the petitioner. It's never going to be collected.
16 That's money that doesn't belong to Hard Rock, but with this
17 entire perspective being carried out, Hard Rock gets to keep it.

18 I have not heard a word about them escheating any of
19 this money to the state, and I functionally guarantee that
20 that's not their intent. I certainly -- you know, so what that
21 works out here, if you carry this to its natural conclusion, is
22 theft. And certainly nothing in the regulations, which were
23 constructed as consumer protection regulations, would allow for
24 such a result.

25 Now, as to some other things that are in the brief,

1 the briefs that I'll point out, the Board claims that, well,
2 there's all this evidence that Hard Rock tracks the chips. No,
3 there isn't. If Hard Rock tracks the chips, there would be one
4 piece of evidence here that they would present and haven't. Who
5 got these chips if it wasn't my client? They track the chips.
6 They know where they are at all times. According to that set of
7 proofs, wouldn't that require them to say, okay, these aren't
8 your client's chips, they're John Smith's chips? They never
9 said that. They can't say that. They don't track the chips.
10 They make -- they just don't.

11 Then to another thing, even with their best efforts,
12 let me point out how this got to where it is, okay. We showed
13 the \$300,000 in wagering. And, clearly, as the hearing
14 approached, that supported Mr. Young's position that he could,
15 and, indeed, as a patron, should even have \$30,000 in chips. We
16 did discovery. We took the deposition of the person most
17 knowledgeable. We got all the records at 357 through 360, but
18 not much else.

19 And there -- the records that they presented, this was
20 a duces tecum request, Your Honor. The records that they
21 presented did not match the set they gave Agent Naqui, it did
22 not match the set that was produced at the deposition. On the
23 eve of the hearing it shows up and there's a whole extra column
24 added in that supports their position just out of nowhere.

25 And it wasn't provided to Agent Naqui, and it wasn't

1 provided to us. It only showed up at the hearing, and certainly
2 that would have been incompetent evidence, but in the nature of
3 the way that got together, it also shows that it didn't exist
4 the first time when Agent Naqui got the records, or the second
5 time when we got the records. And yet the Gaming Control Board
6 hearing examiner relies on that production to reach his
7 conclusion.

8 And even with that third column, what does Hard Rock
9 say? Well, he couldn't be under our records holding more than
10 \$20,000 in chips. Now, let's go back for a second to that
11 regulation. It is promptly redeem unless they know the person
12 is not a patron. That acknowledgement that he could have
13 \$20,000 in chips on the best day is an acknowledgement that they
14 don't know that he doesn't.

15 And here's the double negatives again, they don't know
16 that he doesn't have \$20,000 in chips gotten from the Hard Rock
17 as a patron. How can they meet the statute? We've met our
18 burden of proof, and this is where it gets really confusing, the
19 plaintiff's burden of proof, the petitioner's burden of proof is
20 to show by a preponderance, not that he got the chips from the
21 Hard Rock, but to show by a preponderance that the Hard Rock did
22 not know he was not a patron. See?

23 It's -- but that's applying the regulation. We have
24 to show what that -- that he -- we have to show that Hard Rock
25 didn't follow the regulation, which is they didn't promptly

1 redeem while knowing that Mr. Young was not a patron. They
2 never knew he wasn't a patron. They admitted he was a patron.
3 That's the exact language from the statute, too, and they
4 conflate the burden by -- by -- by taking out that whole second
5 step where the determination is made on the knowledge of Hard
6 Rock, not the demonstration of the plaintiff, petitioner.

7 So with that, he should have been paid while he was at
8 the window under the regulations. He should have been paid on
9 the decision of Agent Naqui, had Agent Naqui applied the proper
10 standard, which he acknowledged was the -- which he acknowledged
11 he did not. And he should have been paid on the decision of the
12 hearing examiner, but instead the decision goes off and creates
13 law where a law already exists. It created a whole new
14 definition with items that have never been included in the word
15 in order to define a patron.

16 And even in their briefs they apply the wrong
17 standard, that being that it is our burden that we must show
18 that he won the chips there, an impossible standard which this
19 state would never impose in protection of consumers. Again, his
20 burden was to show that Hard Rock did not know he wasn't a
21 patron. I apologize that that's how the statute is written, but
22 that's when their duty arises, only if they know that he is not
23 a patron are they allowed to withhold payment.

24 And we have an admission right here that for \$20,000
25 they did not know one way or the other whether he -- if he was a

1 patron, and, therefore, they could not know that he was not a
2 patron and the duty to pay arose. Does Your Honor have any
3 questions?

4 THE COURT: Not -- not at this time. I may have some.

5 MR. NERSESIAN: Thank you.

6 THE COURT: Thank you.

7 I'm sorry. Go on, counsel.

8 MR. SOMPS: Would you like to hear from the Board or
9 the Hard Rock first?

10 THE COURT: Hard Rock first.

11 MS. HUDGENS: Okay. Your Honor, this Court should
12 uphold the Board's decision for at least three reasons. The
13 first reason is that the Board did not error or commit any error
14 in law in determining that Mr. Young was not a patron for the
15 purposes in the Nevada Gaming Regulations at issue here.

16 Second, the Board did not error in relying upon the
17 evidence that showed that Mr. Young could not have had \$30,000
18 in chips in \$5,000 increments. And, third, the Board did not
19 error in dismissing Mr. Young's argument that he hid or, quote,
20 unquote, ratholed chips which would explain why the Hard Rock's
21 records do not show that his play was commensurate with \$30,000.

22 On my first point, the Board has substantial
23 discretion to interpret its own regulations, including terms and
24 phrases. The Board has historically interpreted the term patron
25 as a person that obtained chips through a game tournament,

1 contest, drawing, promotion, or other similar activity. This
2 makes sense.

3 Millions of people travel through Nevada casinos each
4 year. And to define patron as simply a customer or client would
5 mean that there's no differentiation between those who gamble
6 and those who don't. Because both categories are technically
7 clients and customers of casinos. Both gaming regulations and
8 Nevada statutes that cover gaming infer that the chips a patron
9 -- or in order to be a patron, the chips that person has must
10 have been acquired through some type of winning or wagering at
11 the casino.

12 Most importantly, NRS 463.362 is the patron dispute
13 statute. It provides a process where a patron and a licensee
14 can resolve their dispute over, quote, alleged winnings, alleged
15 losses, or distribution of cash, etcetera. When this type of
16 dispute occurs, the licensee is obligated to notify the Board,
17 and the Board then, through an agent, quote, shall conduct
18 whatever investigation it deems necessary and shall determine
19 whether payment should be made.

20 In other words, the statute is drafted in a way that
21 ensures fairness to both the licensee and to a player who is
22 seeking payment by allowing the Board the discretion to conduct
23 its own investigation to determine if the payment should be
24 made. Mr. Young's proffered interpretation, however, limits the
25 Board and suggests that only the Board -- the only thing the

1 Board can look at is whether the person seeking redemption of
2 chips was a client or a customer and that's it.

3 This means that anyone in this particular courtroom
4 can go to a casino, wager, let's say, 10 -- \$10,000, and then
5 come back later with \$30,000 in chips and demand redemption, and
6 then that licensee is obligated to pay it out without further
7 investigation. That would put licensees in a position where
8 they cannot meet all of their legal obligations, both federal
9 and state.

10 One of the important federal laws that is at play here
11 is a licensee's duty under the bank secrecy act to report
12 suspicious transactions and to prevent when it has reason to
13 believe that there could be incidences of money laundering.

14 In this case the Board conducted an investigation, and
15 it include -- it concluded that Mr. Young's request to redeem
16 \$30,000 was not commensurate with its play. This investigation
17 was done using extensive records from the Hard Rock. There's no
18 dispute that Mr. Young is not like any other ordinary player.
19 He did wager a significant amount of money at the Hard Rock over
20 a short period of time.

21 However, because he was wagering a significant amount
22 of money, his funds, both in and out, were tracked very
23 scrupulously by the Hard Rock, as it is customary in the
24 industry. At the hearing, the vice president for finance of the
25 Hard Rock walked the hearing examiner through Mr. Young's

1 records, and explained how Hard Rock's tracking system worked,
2 explained the various computerized systems that go into tracking
3 chips.

4 And through these records it showed that at most Mr.
5 Young could have had \$20,000 worth of chips. And even having
6 \$20,000 worth of chips is very unlikely because what the records
7 don't show, for example, are dealer tips, server tips, these
8 types of non-tracked items that are very customary, especially
9 among high rollers. So in this regard, there was at least some
10 evidence that the hearing examiner reviewed. That's all that is
11 required under NRS 463.366(3) in order to affirm the Board's
12 decision.

13 Mr. Nersesian made a few representations on the
14 record. I just want to clarify in this regard. First, just
15 wagering \$300,000 doesn't necessarily mean that a player has
16 \$30,000 left over in his hands at the end of the day. These
17 records are very sophisticated.

18 And what they show is if you start off, for example,
19 with \$100,000 in chips, if you continue to play those chips, the
20 Hard Rock tracks what you're playing versus what you're
21 redeeming and when you color up. In other words, you're taking
22 smaller denominations and receiving larger chips. So because of
23 these types of records, an allegation of a high wager does not
24 result in records showing that his play was commensurate with
25 possession of \$30,000 when he tried to redeem them in 2016.

1 The other thing that makes this a curious case is that
2 Mr. Young attempted to redeem these chips in 2011. He was
3 refused at that point in time for a similar reason. The chips,
4 the Hard Rock could not track these chips, but at that time it
5 was \$44,000. When he came back five years later, he only had
6 \$30,000 in chips.

7 And so at the hearing I asked him what happened to the
8 other \$14,000. And Mr. Young couldn't explain it. He told me
9 that they were in small denominations, such as \$1 or \$5 chips,
10 things of this nature, and that they were somewhere at his
11 house. The video footage from surveillance shows, however, that
12 when he attempted to redeem that \$44,000 in chips, the \$14,000
13 that we don't see now at issue in this particular matter were
14 accumulated in \$1,000 chips. That's what --

15 MR. NERSESIAN: Objection --

16 MS. HUDGENS: -- the surveillance --

17 MR. NERSESIAN: -- Your Honor.

18 MS. HUDGENS: -- shows.

19 MR. NERSESIAN: I'm going to -- this is so far outside
20 of the record. I have never gotten video surveillance of that
21 \$44,000 cash, and she's citing it to you as proof.

22 MS. HUDGENS: Can I address this?

23 THE COURT: You can address what he said, yes.

24 MS. HUDGENS: So there are records that we went
25 through extensively at the hearing where it talks about what

1 video surveillance showed. So it showed in 2011 when there was
2 \$44,000 at issue, six chips were in \$5,000 denominations, and 14
3 chips were in \$1,000 denominations.

4 Mr. Nersesian asked Mr. Conrad, vice-president of
5 finance at Hard Rock, how do you know this? He said, that's
6 what these documents show. He asked, how, Mr. Conrad, would you
7 know anything about video surveillance? And Mr. Conrad answered
8 that he was on the supervisory board for all security and
9 surveillance issues at the Hard Rock, as well, in his
10 vice-president role.

11 THE COURT: And has that -- so has that been made
12 available to Mr. Nersesian?

13 MS. HUDGENS: That was absolutely made available --

14 THE COURT: Okay.

15 MS. HUDGENS: -- and that was at issue and discussed
16 during the hearing.

17 THE COURT: Okay. Very good. Thank you.

18 MR. NERSESIAN: It also was not provided on the
19 deposition duces tecum request, but only showed up at the
20 hearing, Your Honor, one. And, two, the -- the video, which
21 apparently exists, so this is all hearsay, the video that
22 purportedly exists has never been provided, didn't even know
23 there was one, and now we're looking at spoliation on top of
24 everything else.

25 THE COURT: Okay. Let -- let's move forward on this.

1 MS. HUDGENS: And that issue, that is --
2 THE COURT: And your point is taken. I'm taking
3 notes --
4 MS. HUDGENS: Right.
5 THE COURT: -- on this. And I'm happy -- I actually
6 asked for a CD of this so I can review it again, so -- okay.
7 MS. HUDGENS: The portion, just to make it --
8 THE COURT: [Coughing]. Excuse me. Go ahead.
9 MS. HUDGENS: Just very quick, and I can leave this
10 aside because it's not truly at heart here --
11 THE COURT: Okay.
12 MS. HUDGENS: -- is that the surveillance sheet that
13 I'm talking about was in Agent Naqui's original records. And
14 then I'll leave that aside.
15 I will make one point about the records and how they
16 were presented to Mr. Nersesian. There were a set of records
17 that were provided to Agent Naqui. There were more records that
18 were provided to Mr. Nersesian before a deposition.
19 During the deposition, significant questions arose as
20 to those records, and so the Hard Rock produced more to Mr.
21 Nersesian before the hearing. I don't remember exactly the time
22 frame, but it was at least a few days before that. Then the
23 hearing was continued at least once, so there was time in
24 between both when he received the records and the time that he
25 had an opportunity to cross-examine Mr. Conrad.

1 In short, in this procedural posture, Mr. Young has a
2 very high burden of proof. Mr. Young has not met this burden
3 for the reasons I expressed earlier, which is that the Board
4 properly interpreted its own regulations, that there is evidence
5 showing that the Board arrived at the correct result, and that
6 Mr. Young's rebuttal on this point that he hid chips and so,
7 therefore, the Hard Rock could not track them cannot be accepted
8 by this Court for any number of reasons, the most important of
9 which is if you choose to hide chips, you can't later come back
10 and say, well, that's because I hid them. Otherwise, it would
11 create a huge problem for the rest of the population that
12 gambles and says, well, here I am to redeem \$30,000 in chips, I
13 have been hiding them this whole time.

14 THE COURT: This is the thing that's called --

15 MS. HUDGENS: Ratholing.

16 THE COURT: Ratholing. I'm not, obviously, a gambler,
17 but let me understand what that means. Ratholing in that
18 industry, or in the gaming industry, is some sort of a title or
19 whatever we want to call it, that it means that somehow has a
20 chip here and brings it up to the table? No?

21 MS. HUDGENS: What happens is --

22 THE COURT: I want to understand what it -- what it
23 actually --

24 MR. NERSESIAN: I can explain, Your Honor.

25 THE COURT: Well, she can explain, too, Mr. Nersesian.

1 Thank you.

2 MS. HUDGENS: While a player is playing, he or she
3 might put chips in his or her pocket --

4 THE COURT: Okay.

5 MS. HUDGENS: -- or to the side or take them up to
6 their room in the middle of play. And the idea is to hide money
7 from the casino in order to garner more comps. Because
8 typically the casinos will issue more comps to those people who
9 are playing more money and also losing more money. So that's
10 essentially the description, and Mr. Nersesian, I'm sure, will
11 correct me if I'm wrong on that.

12 THE COURT: Okay. So but these are actual chips that
13 are not on the table at that moment, they're -- they're brought
14 in from a pocket or --

15 MS. HUDGENS: It's not always necessarily that they're
16 brought out. It's that as soon as they are presented to the
17 player --

18 THE COURT: They're --

19 MS. HUDGENS: -- the player then --

20 THE COURT: -- put away.

21 MS. HUDGENS: -- would put them into --

22 THE COURT: Okay. I see. Okay.

23 MS. HUDGENS: -- you know, whatever --

24 THE COURT: Thank you.

25 MS. HUDGENS: -- maybe a pocket or --

1 THE COURT: I'm sorry. I just don't know all of these
2 definitions.
3 MS. HUDGENS: It's okay.
4 THE COURT: All right. Go on.
5 MS. HUDGENS: So with this I would submit, Your Honor,
6 that the Board's decision should be affirmed under NRS
7 463.366(3).
8 THE COURT: Thank you, counsel.
9 Go on, please.
10 MR. SOMPS: Thank you, Your Honor. A lot has been
11 discussed at this point and I don't want to -- to waste your
12 time. If there's any questions you have --
13 THE COURT: We --
14 MR. SOMPS: -- I'll be happy to answer it.
15 THE COURT: You are never wasting my time.
16 MR. SOMPS: But I guess --
17 THE COURT: I serve this county, and I mean that
18 sincerely, so --
19 MR. SOMPS: There's two main points that, on behalf of
20 the Board, I'd like to make. And I guess beyond that, anything
21 that's been brought up, if you have questions, I can --
22 THE COURT: Okay.
23 MR. SOMPS: -- try to answer that. The first -- the
24 first argument of the Board, of course, has to do with what is a
25 proper interpretation of a Gaming Commission regulation, and

1 then the second part of the Board's argument is taking that
2 interpretation and taking that regulation and applying it to the
3 evidence, what is the proper outcome.

4 So first focusing on the regulation, and the
5 regulation that's most relevant here is Gaming Commission
6 Regulation 12.060(4). And that regulation says that the Hard
7 Rock is required to redeem gaming chips unless it knows or
8 reasonably should know the person presenting the chips is not a
9 patron of the Hard Rock. So that's what the regulation says.

10 And the evidence that was before the hearing officer
11 was that the Hard Rock didn't redeem the chips because Mr.
12 Young's play didn't substantiate that he should be in possession
13 of those chips.

14 THE COURT: Okay. I really do understand the English
15 language, but what do you mean by that? Can you repeat that
16 last sentence?

17 MR. SOMPS: Well, that -- that his -- in looking at
18 his history he couldn't justify that he was properly in
19 possession of -- remember, these are six \$5,000 chips.

20 THE COURT: Okay. So in looking at his history, is
21 that -- that -- I just want to try to translate it into
22 something I --

23 MR. SOMPS: Right.

24 THE COURT: -- understand.

25 MR. SOMPS: Right. I think that's accurate.

1 THE COURT: Can you say the entire sentence?
2 MR. SOMPS: Well, let me -- let me just say this.
3 THE COURT: Okay.
4 MR. SOMPS: In other words --
5 THE COURT: I'm really serious. I --
6 MR. SOMPS: In other words, Mr. Young wasn't the
7 patron for purposes of redeeming the chips.
8 THE COURT: Okay. Got it.
9 MR. SOMPS: Now --
10 THE COURT: That seems a little bit more --
11 MR. SOMPS: Okay. And so -- so the Hard Rock refused
12 to redeem it. And in the Board's view, that's an appropriate
13 application of the regulation to those circumstances. Now, of
14 course, Mr. Nersesian disagrees with that, and in his view, in
15 the petitioner's view, since Mr. Young was a patron in the past,
16 he's a patron, essentially, forever. And that is not what the
17 Board thinks is an appropriate application of the -- of the
18 regulation.
19 Everyone agrees that he was a patron in the past, but
20 that doesn't mean he qualifies as a patron for redeeming the
21 chip -- redeeming these chips, six \$5,000 chips. The problem is
22 following the petitioner's logic, in the Board's view, could
23 lead to a ridiculous result.
24 And just to restate really what Ms. Hudgens has
25 already raised, it raises the potential for a person who has,

1 say, gambled at Black Jack and has won \$20, \$100, whatever, or
2 who has -- has stayed at the Hard Rock Hotel, who has patronized
3 a restaurant, they, therefore, qualify as a patron and
4 regardless of where they get, say, six \$5,000 gaming chips, they
5 are now entitled to go and redeem them.

6 That's not the historical interpretation that the
7 Board has applied to the regulation. And, in fact, it
8 frustrates what the Board's purposes are in adopting that
9 regulation. I pointed that out in the Board's brief, but it has
10 to do with an effort to make sure that chips aren't treated as
11 currency, it's an effort to make sure that there's a limitation
12 on the amount of fraudulent activity that does tend to occur.

13 So those reasons and those justifications would be
14 undermined with Mr. Young's interpretation. So that's -- the
15 Board would ask that you defer to the Board as appropriate of an
16 interpretation of one of their regulations.

17 Going on to the second point, and, frankly, this isn't
18 as important as the first one, but I think that the hearing
19 officer's decision should be upheld based on the evidence that
20 was presented. It was Mr. -- it was Mr. Young's burden to show
21 that the Board agent's decision should be overturned. That was
22 Mr. Young's burden at the hearing. And for the hearing officer,
23 that burden wasn't met.

24 With the hearing officer, Mr. Young was unable to
25 establish that he obtained his chips through gaming activities.

1 The hearing officer was presented with evidence and accepted
2 that evidence that the Hard Rock tracks these chips, keeps track
3 -- keeps track of them, and wouldn't have lost track of a fact,
4 potential or alleged fact, that Mr. Young was in possession of
5 six \$5,000 chips. It's just this high denomination value for
6 these chips it would be hard to believe that the Hard Rock would
7 lose track of them.

8 So those are the Board's main arguments. Again, I'm
9 happy to try and answer any questions you have. I guess there's
10 one more point I'd like to make, and it's in regards to Mr.
11 Nersesian pointing out that the \$20,000 or up to \$20,000 in
12 chips that apparently Mr. Young could potentially be in
13 possession of.

14 I just want to remind the Court that, and stop me if
15 you already know this, but the ability of the Court in these
16 circumstances where we are right now is to affirm the decision
17 of the Board, to remand for further proceedings before the
18 Board, or to reverse the decision. Under the statute, there's
19 no ability to modify the decision. Again, if you have any
20 questions, I'll be happy to try and answer them.

21 THE COURT: Well, the good news is I was on the
22 Taxicab Authority for five and a half years, all administrative
23 law, and the Public Utilities Commission during the energy
24 crisis for about five years, so I'm fairly familiar with
25 administrative --

1 MR. SOMPS: Okay. Thank you.
2 THE COURT: -- law, thank God.
3 MR. SOMPS: Thank you.
4 THE COURT: But I'm -- but I'm okay with you reminding
5 me of that.
6 MR. SOMPS: Okay.
7 THE COURT: It's not a problem.
8 MR. SOMPS: Thank you.
9 THE COURT: Okay. All right. I -- before I hear from
10 Mr. Nersesian, I have a few questions. You may have answered
11 them already, but a few questions to ask. And I don't know if
12 this is the time to discuss it. It may not be, but I think --
13 MR. NERSESIAN: Is this to me?
14 THE COURT: Yes, Mr. Nersesian. Is there a reason for
15 waiting to redeem the chips? From a practical reason, given
16 everything we've heard.
17 MR. NERSESIAN: Yes, there's a perfectly practical
18 reason. It's not in the record, but the practical reason is --
19 THE COURT: But it's something that -- it's practical.
20 MR. NERSESIAN: The practical reason is he already
21 tried to -- first of all, and some of this is in the record.
22 Mr. Young stopped coming to Vegas because he started raising a
23 family in Los Angeles shortly or right after this -- right after
24 these events. And he stayed home for children and he, frankly,
25 stopped gambling.

1 The other reasons are, and this was just acknowledged,
2 in 2011 he presented those chips, including six \$5,000 chips in
3 2011, and was refused. What didn't happen there? The casino
4 was absolutely required, absolutely required to notify the
5 Gaming Control Board of the dispute then in 2011 and have them
6 investigate it.

7 You just heard the acknowledgement that when there is
8 a dispute about cashing chips, we have to contact the Board.
9 They didn't. But you have before you a \$30,000 -- 40 -- what
10 they say is a \$40,000 dispute, and they just said we're not
11 cashing your chips, go away. He did. He's got a drawer full of
12 chips. What does he do? Sometime in the future he talks to a
13 lawyer because, frankly, Your Honor, the lawyer he talks to is
14 all over the Internet and gaming law.

15 THE COURT: That would be you?

16 MR. NERSESIAN: Yes. Okay. So he went to --

17 THE COURT: By the way, I don't -- I don't --

18 MR. NERSESIAN: He went to look --

19 THE COURT: I haven't seen you on the Internet, but I
20 remember this from the other trial.

21 MR. NERSESIAN: Okay. So he looks on the Internet,
22 who can help me, I've got this drawer full of chips, and he goes
23 and gets a lawyer. And now it comes up, and this time, contrary
24 to the representations, it is not that they notified the Gaming
25 Control Board because that's what they have to do. They

1 notified the Gaming Control Board because some attorney told
2 them you better get the Gaming Control Board out here, you don't
3 have a choice. Both times it should have been voluntary. It
4 never was.

5 THE COURT: Okay. So let -- let's -- I have a few
6 questions because I really want to give this a lot of thought.
7 So -- so you were saying that in 2011 when Mr. Young came back
8 to try to cash the chips, there was a --

9 MR. NERSESIAN: That's approximate to when he was
10 playing, too, Your Honor.

11 THE COURT: He -- I'm sorry?

12 MR. NERSESIAN: That's approximate to when -- no, it
13 isn't.

14 THE COURT: I thought he --

15 MR. NERSESIAN: He had some small play after that, but
16 it's not when the chips were largely acquired.

17 THE COURT: Okay.

18 MR. NERSESIAN: But he came in 2011 to cash out all
19 his chips.

20 THE COURT: All right. And he was refused cashing
21 those chips?

22 MR. NERSESIAN: Right.

23 THE COURT: The -- the six chips for \$5,000?

24 MR. NERSESIAN: And as Ms. --

25 THE COURT: Or the \$44,000.

1 MR. NERSESIAN: Yeah.

2 THE COURT: Okay. All right. And was the Gaming
3 Control Board immediately --

4 MS. HUDGENS: I don't know that answer, Your Honor. I
5 don't think so. However, that -- that is not at issue with
6 respect to this petition for judicial review.

7 THE COURT: Understood. I just want to get the
8 general lay of the land here.

9 MS. HUDGENS: Right. And -- and I don't know the
10 details of that particular opportunity.

11 THE COURT: It's not in the records.

12 MS. HUDGENS: Right.

13 THE COURT: Okay.

14 MR. NERSESIAN: If it had, Your Honor, there would
15 have been a record that is called gaming onsite, and it would
16 have been produced in the duces tecum request but was not.

17 THE COURT: Okay. Thank you. All right. Then,
18 again, he was trying to redeem \$30,000. Ms. -- is it Ms. -- I'm
19 sorry.

20 MS. HUDGENS: Hudgens.

21 THE COURT: Hudgens. I'm sorry. Ms. Hudgens, 30 --
22 he was trying to redeem the 30,000 instead of the 44,000, and
23 when asked why not the 44,000, he -- I'm paraphrasing, it was
24 your -- your -- the understanding of your employer that the
25 other 14,000 he indicated perhaps were in his home or --

1 MS. HUDGENS: Not exactly.
2 THE COURT: No.
3 MS. HUDGENS: So he attempted to redeem 44,000 in
4 2011.
5 THE COURT: Right.
6 MS. HUDGENS: Then he came back in 2016 attempting to
7 redeem 30,000. I didn't ask him what happened to the other
8 \$14,000 until the hearing later.
9 THE COURT: Oh, okay.
10 MS. HUDGENS: So I don't think that that was a topic
11 that discussed during the --
12 THE COURT: Understood.
13 MS. HUDGENS: -- investigation.
14 THE COURT: Okay. I think you mentioned that. Thank
15 you.
16 All right. Okay. What about, Mr. Nersesian, you were
17 saying that at the beginning, you started off, and also in your
18 pleadings, that the Hard Rock was not tracking the chips.
19 MR. NERSESIAN: Yes.
20 THE COURT: I think -- I think what I heard --
21 MR. NERSESIAN: Here's --
22 THE COURT: Because that is a big -- a big
23 discrepancy. I -- I think that if one party is tracking the
24 chips and they have a certain way of doing it -- I want -- I
25 want to know from both of you. I don't want to give you my --

1 but I'm very open about the questions. I'm not trying, you
2 know, or making you go here. I just really want to know some of
3 these details.

4 MR. NERSESIAN: Your Honor, if you look at the record
5 at -- and it's too small for me to read here, but I think you've
6 got bigger copies. But they will be hard to read, nonetheless.

7 THE COURT: What page?

8 MR. NERSESIAN: I'm getting it.

9 THE COURT: Okay.

10 MR. NERSESIAN: All the records from 32 -- my pages
11 are sticking. I'm sorry.

12 THE COURT: That's okay. Believe me, I understand how
13 these things can happen, okay.

14 MR. NERSESIAN: 26 to 32, and also --

15 MS. HUDGENS: I think perhaps the --

16 MR. NERSESIAN: There's other records in here.

17 MS. HUDGENS: -- the easiest way to find them is --

18 THE COURT: Yes.

19 MS. HUDGENS: -- it's actually --

20 THE COURT: I don't -- I have a copy there, but I
21 haven't made --

22 MS. HUDGENS: Sure.

23 MR. NERSESIAN: Here's -- here's the -- here's the
24 deal, Your Honor. You will see plenty of payouts in the
25 numerical records provided by Hard Rock that are greater than

1 \$5,000 where they are cashing out a sum in excess of \$5,000.
2 For Hard Rock's testimony here, they're redeeming or coloring up
3 or doing whatever it is to redeem these chips while tracking the
4 \$5,000 chips.

5 And if they are tracked, then where are they? Because
6 their records don't say two \$5,000 chips, a \$1,000 chip, two
7 \$100 chips, and a \$2 chip. It just says we cashed him out for
8 \$21,150, or whatever the numbers would be. I made that one up.
9 But you'll see plenty of --

10 THE COURT: Okay.

11 MR. NERSESIAN: -- plenty of transactions --

12 THE COURT: Right.

13 MR. NERSESIAN: -- in excess of \$5,000, and nobody
14 tracks those chips. How else do we know that they're not
15 tracked the way that they're saying? They haven't told us where
16 they are or where they came from.

17 THE COURT: Okay. Well, that --

18 MR. NERSESIAN: Here are these chips right here, six
19 \$5,000 chips, they're saying they weren't Mr. Young's.

20 THE COURT: Okay.

21 MR. NERSESIAN: Whose were they?

22 THE COURT: Well --

23 MR. NERSESIAN: Obviously they're not tracked.

24 THE COURT: So my next question is if the chips had
25 serial numbers -- do they have serial numbers? And, if so, what

1 do these serial numbers indicate when they were run?

2 MS. HUDGENS: So the Hard Rock isn't tracking an
3 individual chip. In other words, this chip is No. 1 through
4 whatever million or billion of chips that they could possibly
5 have. What they track is amounts going in and out in the value
6 of whatever that buy-in is. So whether it's cash, chips,
7 credit, this sort of thing.

8 So if you look at the records that start on 368,
9 there's a column all the way to the far right end that says
10 either chips or cash, promo, which would be promotional type
11 chips, or it says nothing. And where it says nothing is where
12 the -- where the money is being recycled. In other words, you
13 with this money and you keep playing the money that you've won,
14 if that makes sense.

15 So each of these transactions, what the Hard Rock can
16 do is when it has a view of the player records, it can click on
17 each transaction and determine what -- how -- what the buy-in
18 detail was for that transaction, what type of funds were used,
19 that type of thing.

20 Then it separately tracks the redemptions, and some of
21 those details you can see in -- let's see here, I think it
22 starts about page 400, maybe a few pages after that. So it's
23 not correct to say that the chips were not tracked. They were
24 absolutely tracked, just not individual chips as if they had a
25 separate serial number and that type of thing.

1 THE COURT: Okay.

2 MS. HUDGENS: That would be really --

3 THE COURT: You've answered --

4 MS. HUDGENS: -- impossible to do.

5 THE COURT: -- my question. Thank you.

6 All right. And then, I don't know if I should really

7 ask this, but I would ask it, and if you don't think it's

8 appropriate to answer now, then don't, okay.

9 MR. NERSESIAN: Okay.

10 THE COURT: Okay. I'm just trying to get as much

11 information from you while you're here. Excuse me. So if the

12 petitioner didn't get the chips from the Hard Rock, where did he

13 get them? Understanding that he played -- I know it's not your

14 biggest player, I'm sure, but a significant amount. I thought

15 it was 300 and something thousand.

16 MR. NERSESIAN: I think it's 286 --

17 THE COURT: Or 286.

18 MR. NERSESIAN: -- and won another 24.

19 THE COURT: I don't know.

20 MR. NERSESIAN: So over 300 grand.

21 THE COURT: Over 300, okay, in a fairly short amount

22 of time. Where would he get these chips? I mean, would it be

23 that unusual for him to have -- when you have an amount of over

24 300,000 and you end up with six chips for 5,000, is that --

25 MS. HUDGENS: So --

1 THE COURT: Do you see what I'm saying?

2 MS. HUDGENS: Yes, and I'm going to try to answer your
3 question quickly, but just provide a little detail.

4 THE COURT: Okay.

5 MS. HUDGENS: The \$300,000 that I think Mr. Nersesian
6 is referring to is the amount wagered, in other words, it's
7 played. But that doesn't mean that that's all in a person's
8 hand at any given time. That's also recycling money. You're
9 playing craps, and as you win, you keep playing the same chips
10 that you're winning. So all of those chips weren't in his hand
11 necessarily at any point in time.

12 So the second part of your question is if he didn't
13 win these chips or have these chips through wagering, where did
14 he get them from, and that's the crux of this case.

15 THE COURT: Right.

16 MS. HUDGENS: We don't know. And so the problem is,
17 and I think this is a problem both for the Hard Rock's own
18 federal obligations and for the Board is to make sure that these
19 chips aren't being used as currency somewhere else outside the
20 Hard Rock. In other words, there is exchange between two people
21 that know one another where they're using the actual chips as
22 currency for some other separate transaction.

23 In other words, some type of money laundering is
24 usually the largest concern, some sort of fraudulent transfer
25 and the chips are -- are the funds that are received in -- in

1 exchange. So that's the million dollar question, or I guess in
2 this case, the \$30,000 question --

3 THE COURT: Right.

4 MS. HUDGENS: -- is where did the chips come from, and
5 Hard Rock doesn't know. And so really the issue was if -- if
6 they can't substantiate the play, if the records don't show how
7 this individual had \$30,000, from the Hard Rock's perspective,
8 it doesn't even have the authority to pay this out under certain
9 federal obligations, and that's one primary reason why the Board
10 had to get involved, so that it could do the investigation.

11 And if the Board said you've got to pay this money
12 out, you know, then the Hard Rock would have done that
13 willingly. Obviously, this is a very unique situation. And in
14 the grand scheme of things, it's not that much money at stake.
15 But there are multiple layers of obligations for the Hard Rock.
16 It can't just start handing out what is a substantial amount of
17 money to an individual person.

18 THE COURT: I understand.

19 Mr. Nersesian, anything else?

20 MR. NERSESIAN: I'd like to reply to their arguments.

21 THE COURT: Yes, you may.

22 MR. NERSESIAN: Okay. The first one is this last
23 thing, okay. That's what they said in their opposition brief,
24 okay. We have federal obligations. I, in my reply, pointed out
25 that to the extent they have federal obligations, nothing here

1 prevented any compliance with any of it. Their obligation is to
2 file a CTR. And indeed by refusing to cash the chips, no CTR is
3 filed, and things are kept secret from the government. If a CTR
4 is filed, the government gets everything they're supposed to.

5 Also, how does Gaming and the Hard Rock -- if Gaming
6 says pay them, we'll pay them. Well, she's citing federal
7 obligations where she purports the state that we should not --
8 Hard Rock is stating federal obligations, which she says purport
9 to say they can't pay them, okay. The Nevada Gaming Control
10 Board wouldn't have any jurisdiction to order payment over a
11 federal obligations. This is a ruse, Your Honor. It doesn't
12 exist, especially in this respect.

13 I would like to point out that we cited the authority
14 that said this argument is no good. She stood up here today and
15 said, again, by federal regulations and federal statutes, we
16 can't pay this money. What's the cite? You have the cites that
17 say that more than anything they're required to pay it. There's
18 nothing in here, and there is no law, federal or otherwise, that
19 says there's any obligation on their part that they can't
20 fulfill very easily.

21 They file hundreds of CTRs every day. And my client
22 was perfectly willing to give them any information necessary for
23 a CTR. He was there with his identification and his players
24 card, okay. They had the information they needed, and they
25 could have complied with every federal regulation and it's a red

1 herring.

2 Next, she just said it all. Where did he get them?
3 We don't know. If she doesn't know where they got them, she
4 doesn't know whether or not they got them from Hard Rock. The
5 statute says promptly pay, unless you know that they weren't
6 from Hard Rock, unless you know he was not a patron. He was a
7 patron. Hundreds of thousands of dollars.

8 Then some -- some points to highlight. This lack of a
9 video, in 2011 they knew there was a dispute. They didn't call
10 the Gaming Control Board, but we heard today they knew there was
11 a dispute. There's supposedly video evidence of this. That is
12 spoliation. They were on notice, and that video isn't here.

13 The gentleman -- I'm sorry. Your name is?

14 MR. SOMPS: Mike Soms.

15 MR. NERSESIAN: Mr. Soms stated it was Mr. Young's
16 burden to show that the agent's decision was in error. The
17 agent's decision, Agent Naqui's decision. What does the
18 evidence show that his decision was in error? Agent Naqui
19 swore, one, my decision is in error. Two, here is the mistake I
20 made. And, three, there was play that demonstrated that Mr.
21 Young was a patron for the purposes of the statutes and supports
22 his possession of those chips.

23 Both sides of that equation are there. To say that we
24 didn't carry our burden to show that the agent was wrong when
25 the agent is looking at the hearing examiner going I was wrong

1 is to present an impossible burden because, obviously, he was
2 wrong and he said he was wrong.

3 As to ratholing, Your Honor, a little bit further
4 explanation, I will correct something. Here's what ratholing
5 is. And, yes, sometimes it is to garner greater comps because
6 showing a loss is a methodology of having the casino -- if the
7 casino perceives you're losing, they're going to be nicer to you
8 because they want you to lose more. If the casino perceives
9 you're winning, they don't even want you there if you're good at
10 it.

11 The evidence shows that Mr. Young was \$24,000 up.
12 They never show that he was 24,000 up, but he was. He said so.
13 He swore to it. Their records don't show that. He was putting
14 money in his pocket, and it's not as difficult as it sounds,
15 okay. It is -- it doesn't come with them, it doesn't
16 necessarily go with them, it's not out of play, it's just in a
17 pocket.

18 If there's three stacks of chips in front of a guy and
19 he picks them up and he's doing, you've seen it at tables all
20 the time, people shuffling their chips, etcetera. So when he
21 puts them back down, there's one less there and it goes in his
22 pocket. That's all it is. And it's to pull money out of the
23 visualization of the casino.

24 It is not cheating in any way. Nobody had alluded
25 that it is. It is not a scam. It is money management, and the

1 casino -- the casino is frustrated that many people are able to
2 thwart them at their surveillance, but the idea that they are
3 able to thwart them at their surveillance and the whole reason
4 they are surveilling are belied by the fact that people do this
5 regularly and it's published in many books on advantage
6 gambling, as well, and Mr. Young testified he was an advantage
7 gambler, which is not -- also not illegal.

8 THE COURT: Understood. I think we have to wrap it
9 up --

10 MR. NERSESIAN: I understand.

11 THE COURT: -- Mr. Nersesian, so I'll give you a
12 couple more minutes and I need to let my very patient staff take
13 a break. I have the best --

14 MR. NERSESIAN: Pardon me?

15 THE COURT: I have the best department. They're so
16 patient and they're -- and happy on top of everything else.

17 MR. NERSESIAN: Okay. Chips are not acquired by
18 winning or wagering. They are acquired by winning, wagering, or
19 purchasing. When you go to a casino cage and ask for \$5,000 in
20 chips and give them \$5,000 and you'll get a chip. When you're
21 at a table and you put 5,000 down there, they will give you
22 5,000 in chips. They'll ask you do you want thousands,
23 hundreds, or whatever, but that's not wagering, and that is
24 not --

25 THE COURT: Winning.

1 MR. NERSESIAN: -- winning.

2 THE COURT: It is purchasing?

3 MR. NERSESIAN: It's buying them. That's how you buy
4 in.

5 THE COURT: Okay.

6 MR. NERSESIAN: And Mr. Young testified, and the
7 records show that his buy-in was 100 grand. 100 grand. To take
8 them at their word, somehow he should have zero. He certainly
9 -- he was qualifying for a tournament to use, again, Ms.
10 Hudgens' representation about things churning and being re-bet,
11 etcetera. Somebody qualifying for a tournament, which was
12 undisputed, is not going to throw in their whole bank roll of
13 100 grand to play in a tournament with 200 grand. They're
14 keeping money, and that's what he was doing, and it's shown by
15 those records.

16 They say they track scrupulously. Then how can they
17 tell at the time Agent Naqui, we don't -- none of this money
18 came from Hard Rock, and then turn around and say three years
19 later, a year and a half later in a brief, up to \$20,000 of this
20 money came from Hard Rock. They don't track scrupulously, and
21 in this case they tracked not at all, but came up with the
22 figures after the fact to be able to keep the \$30,000.

23 They -- the argument, again, conflated the burden of
24 proof. Mr. Young does not have to show that -- that he got this
25 money from Hard Rock. Hard Rock has to -- he has to show that

1 Hard Rock did not know that he wasn't a patron. That's the only
2 statute.

3 Which takes us to what was being said about -- well,
4 there was this other thing about the historical application of
5 the rule. Where is the cite? The only cite they cited, we
6 responded to. I was the attorney on that case. That case had
7 nothing to do with what they said, and that's presented.
8 Where's the cite today? There's no cite. There is no
9 historical application.

10 So, finally, what is the proper basis for the decision
11 here? The Board and Hard Rock have asked --

12 THE COURT: I'm sorry. Repeat the last part?

13 MR. NERSESIAN: The Board and Hard Rock have actually
14 asked you to base your decision not on what you read and what
15 the law says. They are asking you to base your decision on what
16 they say the law says. Well, Your Honor can read, patron is in
17 there. We explain why a patron, even if it's in a more general
18 sense -- or a patron as a more general sense, which is what is
19 written, still provides information to the Hard Rock and still
20 provides a relationship that they must know exists before they
21 can pay.

22 It's a relationship. That relationship exists. Not
23 one word in that statute has anything to do with denominations,
24 chips, amount -- or it has to do with cashing chips, but
25 denominations or what is paid and not paid. They want to know,

1 and the regulation wants to assure that they have established
2 before they pay out money that they know there is a relationship
3 with the payee.

4 The Board, while they have great discretion and
5 construction, etcetera, cannot, because these are clear,
6 unambiguous regulations, can't rewrite the law for what they
7 wish it said. Thank you.

8 THE COURT: Thank you. All right. I appreciate the
9 thorough briefing that everyone has done. You've done a great
10 job. And perhaps some of my questions were a bit sophomoric,
11 but I'm not a gambler, so I really wanted to understand some of
12 the -- the jargon and how it works.

13 What I'm going to do, first of all, I would like a
14 courtesy copy of the record, okay.

15 MR. NERSESIAN: A what?

16 THE COURT: A courtesy copy of the record.

17 MR. NERSESIAN: Oh. Okay.

18 THE COURT: The 500-page record, because I'm going to
19 go through it again. I'm going to give this a lot of my time
20 because I think this is very important. They all are, but this
21 is unique and very, very important.

22 What I'm going to do is I'm going to be very busy with
23 trials and everything else, so I'd like to do this. I'd like --
24 I'd like to arrange a written decision for you, but I prefer
25 that you -- I want to have a date for you to come just in case I

1 haven't been able to do it, and I'll be ready with everything on
2 the bench, okay. If I can get it out before, then I'll vacate
3 the status check or the continuation. And if not, then I'm
4 going to ask you to come back, okay, so that it won't take
5 longer.

6 MS. HUDGENS: And, Your Honor, just one request.

7 THE COURT: Yes.

8 MS. HUDGENS: I came in from Phoenix. I'll let Mr.
9 Somps --

10 THE COURT: Okay.

11 MS. HUDGENS: -- speak for himself, but if I could
12 attend by telephone for that particular purpose.

13 THE COURT: Sure you can.

14 MS. HUDGENS: Okay. Thank you.

15 THE COURT: That's not a problem.

16 MR. SOMPS: And I came in from Reno.

17 THE COURT: Okay. Okay. Can we have two Court Calls?

18 MR. NERSESIAN: I'll be here.

19 THE COURT: Can we have two Court Calls? Okay. Very
20 good. As long as -- as long as we can arrange it, I'm happy to
21 do it, okay. When I was on the Public Utilities Commission, on
22 voting days, if I was on vacation, I would call in from Rome, so
23 -- and it was long before Court Call, but it was -- it was a
24 less formal -- but still, I would sign my cases there and call
25 in from Rome. All right. So --

1 MR. SOMPS: Your --
2 THE COURT: Pardon?
3 MR. SOMPS: Your Honor, just on the record, and I'm
4 sorry if I'm just not familiar, but that has been filed with the
5 Court.
6 THE COURT: I know, but a courtesy copy here is really
7 important because that's 500 pages --
8 MR. SOMPS: Okay.
9 THE COURT: -- approximately. And so --
10 MR. SOMPS: I'd be happy to --
11 THE COURT: -- it's something -- it's required with --
12 with pleadings.
13 MR. SOMPS: Okay.
14 THE COURT: So that would be great.
15 MR. SOMPS: Could I just email it to your clerk or --
16 THE COURT: No, actually, I want --
17 MS. HUDGENS: Are you asking for a printed copy?
18 THE COURT: -- I want the printed copy.
19 MR. SOMPS: Printed. Okay.
20 THE COURT: Because that way I can, you know, really
21 get into it, make notes, and --
22 MR. SOMPS: Okay.
23 THE COURT: -- I'm going to be reading all of it. I
24 mean, that's what I'm supposed to do, so -- it's harder for me
25 to take notes on the computer.

1 MR. SOMPS: Sure.

2 THE COURT: And, also, I'll probably be taking this
3 home on weekends. So if I push this -- if I -- I'm trying to
4 make sure that this is good for everyone. I'd like to tell you
5 30 days, but I don't think I'll be ready with it in 30 days
6 because of what I have coming up. I would like to set this in
7 60 days.

8 MR. NERSESIAN: Okay.

9 THE COURT: Would that work?

10 MR. NERSESIAN: Sure.

11 MR. SOMPS: Yes.

12 THE COURT: Okay. So what is a good -- Mr. Nersesian,
13 does everyone have their -- is everyone available? And Court
14 Call is fine. Madam Clerk and Ms. Anderson, our recorder, will
15 -- can give you more information on that, okay. So 60 days
16 would be --

17 THE CLERK: April 2nd at 9:30.

18 THE COURT: Okay. Why don't we make it at 10:00 so
19 that they don't have to wait as long, or maybe 10:30.

20 THE CLERK: Sure.

21 THE COURT: 10:30. That way you don't have to wait
22 for the entire --

23 MR. NERSESIAN: 10:30. Okay.

24 THE COURT: Okay. All right.

25 MR. SOMPS: Thank you.

1 MR. NERSESIAN: All right. Thank you.
2 THE COURT: It's been a pleasure. And --
3 MR. NERSESIAN: Do I understand, Mr. Somps, that
4 you're going to supply this to her?
5 MR. SOMPS: I could, although it might be easier for
6 you to do it.
7 MR. NERSESIAN: Well, it's easier for me, but -- I'll
8 -- I'll get it to her, but I was looking at the idea that -- you
9 know something, though, I hate -- Ms. Hudgens has --
10 MS. HUDGENS: I'm happy to provide it.
11 THE COURT: Thank you.
12 MS. HUDGENS: We can print it for you and present
13 it --
14 THE COURT: I appreciate it.
15 MS. HUDGENS: -- to your chambers.
16 MR. NERSESIAN: She has the earliest generation.
17 THE COURT: Okay.
18 MR. NERSESIAN: She does.
19 THE COURT: It's been a pleasure having you here.
20 MS. HUDGENS: Thank you very much.
21 THE COURT: It really has.
22 MR. SOMPS: Thank you.
23 MR. NERSESIAN: Some of this stuff is getting hard to
24 review because it keeps getting submitted, so --
25 THE COURT: Well, if you have an earlier generation,

1 that's great. Okay. Thank you for your patience for waiting
2 until the end, but I thought we would take more time and so
3 that's why I made sure to wait --

4 MR. SOMPS: Thank you, Your Honor.

5 THE COURT: -- so that we didn't have other people.

6 MS. HUDGENS: Thank you very much.

7 MR. NERSESIAN: Thank you.

8 THE COURT: Thank you very much. Have a good day.

9 (Proceedings concluded at 12:24 p.m.)

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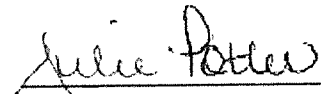
CERTIFICATION

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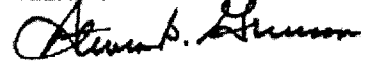
AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
Kingman, AZ 86402
(702) 635-0301



JULIE POTTER
TRANSCRIBER



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

TSUN YOUNG,)	CASE NO. A-18-775062-J
)	
Petitioner,)	DEPT NO. XIV
)	
vs.)	
)	
NEVADA GAMING CONTROL BOARD,)	
et al,)	
)	
Respondents.)	Transcript of
)	Proceedings

BEFORE THE HONORABLE ADRIANA ESCOBAR, DISTRICT COURT JUDGE

PETITION FOR JUDICIAL REVIEW

TUESDAY, APRIL 2, 2019

APPEARANCES:

FOR THE PETITIONER: ROBERT A. NERSESIAN, ESQ.

FOR THE RESPONDENTS: MICHAEL P. SOMPS, ESQ.
MARLA J. HUDGENS, ESQ.

RECORDED BY: SANDRA ANDERSON, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

1 LAS VEGAS, NEVADA, TUESDAY, APRIL 2, 2019, 9:40 A.M.
2 (Court was called to order)
3 THE COURT: All right. This is Young v. Nevada Gaming
4 Control Board. Do I have counsel present for that?
5 THE CLERK: Counsel?
6 THE RECORDER: They're both on Court Call.
7 THE COURT: They're both on Court Call?
8 THE CLERK: Counsel on Court Call, the Judge is
9 calling your case.
10 THE COURT: Good morning. This is Young v. Nevada
11 Gaming Control Board. I'd like appearances, please, for the
12 record.
13 MS. HUDGENS: Good morning --
14 MR. SOMPS: Good morning.
15 MS. HUDGENS: -- Your Honor, this is --
16 MR. SOMPS: Go ahead.
17 MS. HUDGENS: I apologize. This is Marla Hudgens on
18 behalf of the Hard Rock.
19 MR. SOMPS: Good morning, Your Honor. This is Mike
20 Soms on behalf the Gaming Control Board.
21 THE COURT: Okay. Do we have Mr. Nersesian here?
22 Okay. My understanding is that he called and thought it was at
23 10:30?
24 THE LAW CLERK: Yeah.
25 THE COURT: So he's under the impression that it's at

1 10:30, which is actually -- that was my impression. Counsel, I
2 apologize for the impasse in communication. I'd like to have
3 you call back at 10:30. Did you hear me, please?

4 MS. HUDGENS: Sure, not a problem.

5 THE COURT: Okay. Thank you. I'm going to go ahead
6 and trail this --

7 MS. HUDGENS: Thank you.

8 THE COURT: -- until 10:30.

9 (Case trailed at 9:41 a.m., until 11:17 a.m.)

10 THE COURT: I'm sorry for trailing this, but it was my
11 understanding that we were starting at 10:30 and now it's 11:15.
12 Sorry about that. This is -- I believe it's Tsun Young versus
13 Nevada Gaming Control Board. Your appearances for the record,
14 please. Do I have counsel on Court Call?

15 THE CLERK: Yes.

16 MR. SOMPS: Your Honor, this is Mike Somps with the
17 Attorney General's office here on behalf of the Gaming Control
18 Board.

19 THE COURT: Okay. Very good. And I believe Ms. --

20 MS. HUDGENS: And, Your Honor, this is Marla Hudgens
21 on the phone on behalf of Hard Rock Hotel and Casino.

22 THE COURT: Okay. And I set this today for a
23 decision, and I've -- I have some notes to make sure I hit
24 everything. All right. I've given this a lot of thought. This
25 Court, the decision is this Court denies the petition and

1 affirms the decision of the Gaming Control Board.

2 With respect to the law in Sengel v. IGT, the Court
3 held that a reviewing court should affirm a decision of the
4 Board which is supported by any evidence whatsoever.

5 Additionally, the court in Redmer v. Barbary Coast held that the
6 district court is to show great deference to the Gaming Control
7 Board on appeal and should not disturb the decision unless it is
8 arbitrary, capricious, and contrary to the law.

9 The findings of this Court are as follows. This Court
10 finds that the Board's decision is supported by evidence and its
11 decision is not arbitrary, capricious, or contrary to the law,
12 specifically concerning petitioner's unredeemed chips. The
13 records shows that it is highly unlikely that the petitioner is
14 in possession of 30,000 worth of chips.

15 Moreover, the evidence states from the Hard Rock
16 indicates that the petitioner could be in possession of chips
17 that are worth -- I'm not sure exactly how much, possibly
18 20,000. But I do believe that the findings of the Gaming
19 Control Board trump these things. While it might be true that
20 the Hard Rock cannot determine the exact amount, Mr. Young's
21 game play, from what I understood, does not substantiate the
22 chips.

23 Further, chips that, from what I heard, that --
24 anyway, I'm just affirming all of the information that the --
25 all the facts, as I indicated before, that were reviewed by the

1 Gaming Control Board. So the Board's decision prohibiting
2 petitioner from redeeming his chips is supported by evidence.
3 The Court affirms the decision.

4 Concerning petitioner's request to strike the Hard
5 Rock's brief for lack of table of authorities or contents, the
6 Court denies the request. My policy is to hear the case on the
7 merits. I try to hear every case on the merits pursuant Young
8 v. Ribeiro. And then -- so this decision is affirmed and the
9 petition is denied.

10 MR. NERSESIAN: There was also the motion to strike
11 the Board's brief because a judicial body does not get to brief
12 on appeal.

13 THE COURT: Right. And, frankly, I'm going to have to
14 defer that one and take a look at it again. It was more --
15 more --

16 MR. NERSESIAN: Well, it would be moot considering the
17 decision you already made --

18 THE COURT: Right.

19 MR. NERSESIAN: -- Your Honor, so I don't --

20 THE COURT: Okay.

21 MR. NERSESIAN: -- want to belabor it any longer.

22 THE COURT: Okay.

23 MR. NERSESIAN: But okay.

24 THE COURT: Okay. Thank you for bringing that up, Mr.
25 Nersesian.

1 All right. I'd like the Attorney General's Office to
2 please prepare the order, and make sure that Mr. Nersesian has a
3 chance -- I hope I'm pronouncing your name right.
4 MR. NERSESIAN: You always do, Your Honor.
5 THE COURT: Okay. I don't know. To take a look at
6 that with respect to form and content. And please -- please
7 make sure it's provided in Microsoft Word, okay.
8 MR. NERSESIAN: Okay. Thank you.
9 THE COURT: Thank you.
10 MR. SOMPS: Thanks, Your Honor.
11 THE COURT: Have a good day, counsel.
12 MS. HUDGENS: Thank you, Your Honor.
13 (Proceedings concluded at 11:21 a.m.)
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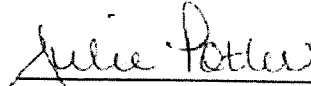
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AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
Kingman, AZ 86402
(702) 635-0301



JULIE POTTER
TRANSCRIBER

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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11 **Telephone: (775) 687-2124**
12 **Facsimile: (775) 850-1150**
13 **Email: 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,**)
17 **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;

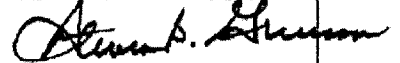
21 **THE COURT HEREBY FINDS:**

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



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7 Email: Msomps@ag.nv.gov
Attorneys for Respondent, the Nevada Gaming Control Board

9
10
11 **DISTRICT COURT**
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)		
CASINO,)		
16 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 //

24 //

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28 //

AFFIRMATION

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

Dated: This 30th day of April 2019.

AARON D. FORD
Attorney General

By: 
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Senior Deputy Attorney General
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Attorneys for the Respondent
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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 30th 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

INDEX OF EXHIBITS

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Number of Pages</u>
1	File-stamped <i>Order on the Petition for Judicial Review</i>	2

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**
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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,**)
17 **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).**

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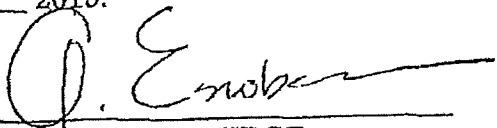
1 3. The Board's findings and its decision are supported by the evidence in that
2 Petitioner's game play at the Hard Rock does not support that he was properly in
3 possession of the six (6) \$5,000 chips. The Hard Rock presented evidence to show how it
4 tracks game play, and it presented evidence 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 24th 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
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7 Telephone: 702-385-5454
8 Facsimile: 702-385-7667
9 *Attorneys for Petitioner*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

NOTICE OF APPEAL

16 NOW COMES Petitioner/Appellant, Tsun Young, by and through their attorneys,
17 Nersesian & Sankiewicz, and herewith appeal, pursuant to NRAP 4(a)(2) and NRAP 3A(a), the
18 Order on Petition for Judicial Review subject to a Notice of Entry of Order dated April 30, 2019.
19 Further, this Notice of Appeal is filed under the directives of NRS 463.3668, and addresses an
20 affirmance of an Order of the Nevada Gaming Control appealed by Petitioner/Appellant to the
21 District Court.

22
23 DATED this 29th day of May, 2019

24 **NERSESIAN & SANKIEWICZ**

25 /s/ Robert A. Nersesian

26 Robert A. Nersesian
27 Nev. Bar # 2762
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*Attorneys for Respondent
Hard Rock Hotel and Casino*

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