IN THE SUPREME COURT

IN AND FOR THE STATE OF NEVADA

Tsun Young	)	
	)	
Appellant/Petitioner,	)	Supreme Court Case No. 78916
	)	
vs.	)	
	)	
Hard Rock Hotel and Casino	)	
and State of Nevada, *ex rel*	)	
Nevada Gaming Control Board	)	
	)	
Appellees/Respondents.	)	
_____	)	

On Appeal from the Eighth Judicial District Court
Clark County, Nevada

APPELLANT'S OPENING BRIEF ON APPEAL

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III. STATEMENT OF ISSUES PRESENTED FOR REVIEW

The following issues are in reference to the Decision of the hearing examiner adopted by the Nevada Gaming Control Board ("Board") and affirmed by the District Court.

A. When the word "patron" is used in a regulation, did the Nevada Gaming Control Board err when it creates and applies a unique definition at odds with the plain meaning for this common word with a universally accepted plain meaning?

B. Did the Board and District Court err in ignoring the standard in a regulation requiring that the Hard Rock know or should know that Appellant was not a patron, and instead, apply an impossible burden on the Appellant and many other tourists to prove he was a patron as a prerequisite to the casino's duty to redeem chips?

C. When the claim is for $30,000 of which a $20,000 debt is admitted, does the Decision err in determining that the claimant, having failed to prove the $30,000, is entitled to $-0- rather than the admitted $20,000 obligation?

D. Does the obligation to "promptly redeem" arise on presentment, or sometime after presentment.

E. When the obligation of a casino to pay is premised on whether or not the casino knows the claimant is a patron, does the Decision err in ignoring the

knowledge of the casino and shifting the burden to the claimant to prove that he is a patron?

IV. JURISDICTIONAL STATEMENT

Appellant appeals the district court's denial of Plaintiff's Petition for Judicial Review of a determination of the hearing examiner for the Nevada Gaming Control Board which disposed of the entire action. Jurisdiction with this Court is found at NRS 463.3668(1).

V. ROUTING STATEMENT

The present matter is at the edge of NRAP 17(a). Appellant contends that this matter should be retained by the Supreme Court under NRAP 17(12) as it involves as it raises and involves matters raising as a principal issue a question of statewide public importance. At issue is the construction of Nevada Gaming Control Board Regulation ("NGCBR") 12.060. The issues here are raised as a matter of first impression in this Court, As gaming and tourism are the States principle industries, and the regulations address the interaction between casinos and patrons regarding payment, there exists incredible importance to the questions implicated in the current appeal, including tourists' perceptions of Nevada versus other gaming destinations, and the assurance that gaming licensees and the Board address patrons and

visitors fairly and not undertake a course of rubber-stamping positions offered up by gaming licensees against tourists regardless of how outrageous.

VI. STATEMENT OF THE CASE

The structure of the proceedings leading to the current Appeal began with an admittedly erroneous decision for the casino on a patron dispute by a Board enforcement agent under NRS 463.362(3). Should the patron disagree with the agent's decision, as occurred here, on a proper petition the decision is reconsidered in a separate hearing. NRS 463.363. In this case that review was conducted by a "hearing examiner" in accord with NRS 463.110(4). The hearing officer rendered a decision which was affirmed and adopted by the Board. Decision, Appellant's App. ("Ap. App."), p. , at p. 5. Appellant filed a Petition for Judicial Review pursuant to NRS 463.3664. The District Court rendered its determination affirming the Decision of the Board without change or modification. Ap. App. . Thus, in context, it is the Decision of the hearing examiner adopted by the Board at issue in this appeal.

Appellant presented $30,000 in Hard Rock Hotel and Casino's ("Hard Rock") chips at its cage for redemption. Hard Rock refused to redeem the chips claiming that it could not verify Appellant's gaming activity supporting possession of $35,000.00 in chips. The Nevada Gaming Control Board ("Board") through an enforcement officer responded to this refusal as a patron dispute. NRS

463.361, *et seq*. The enforcement officer investigated the dispute and upheld the position of Hard Rock that it did not have to redeem the chips.

The Appellant filed a Petition for Hearing with the Board pursuant to NRS 463.363. In accord with the rules for such a proceeding, the Board's hearing examiner conducted a hearing. During the hearing the enforcement officer, on examination, confirmed that he had erred in his determination and that Appellant was entitled to have the chips redeemed at the time of presentment. Nonetheless, the hearing examiner confirmed the decision of the enforcement officer over the retraction at the hearing, and upheld the position of Hard Rock that it did not have to redeem the chips.

Appellant brought a petition for judicial review in accord with NRS 463.3662. The district court affirmed the hearing examiner. Decision, JA pp. . This appeal followed.

VII. STANDARD OF REVIEW

While NRS 463.3662 contains a standard of review for the district court on a petition for judicial review, NRS 463.3668 does not provide a standard of review for the appellate court reviewing the decision of the district court. In this sense, it appears that the standard of review is whether the district court erred in its decision under the standard of review applied by it.

The standard of review faced by the district court in its decision is that it was required to show deference to the Board and while applying the questions under NRS 463.3666(3)(a)-(e). That is, did the district court err in determining that none of the following occurred in the decision of the Board:

(a) A violation of constitutional provisions;
(b) The decision was in excess of the statutory authority or jurisdiction of the Board or the hearing examiner;
(c) The decision was made upon unlawful procedure;
(d) The decision was unsupported by any evidence; or
(e) The decision was arbitrary or capricious or otherwise not in accordance with law.

Also, material to this matter is also the fact that in its review of the Board decision through the district court, "this court is free to examine purely legal questions decided at the administrative level." *Redmer v. Barbary Coast Hotel & Casino*, 110 Nev. 374, 378, 872 P.2d 341, 344 (1994).

Finally, many of the issues here are purely legal (e.g., meaning of "patron" in a regulation). This Court reviews questions of law in an administrative determination *de novo*. *State v. Ludwick*, 440 P.3d 43, 45 (Nev. 2019)("In doing so, we review **questions of law de novo** . . .")(emphasis added).[1] Thus, a mixed

[1] In order that the Court not perceive the citation as disingenuous, the balance of the quoted sentence provides: "but "defer[] to [a hearing officer's] interpretation of its governing statutes or regulations **if the interpretation is within the language of the statute.**" (Emphasis added) This is not included above because this is a

standard of review applies to review of the present matter, with questions of law being subject to *de novo* review, and the balance being reviewed for arbitrary or capricious conclusions or clear error premised on a lack of any applicable evidence on factual review applied to the conclusions.

VIII. STATEMENT OF FACTS

1. Appellant, Tsun Young ("Young") was a rated player at Hard Rock with, at least, $335,000.00 in buy-ins at table games at Hard Rock. Decision, at p. 2, JA p. , Findings of Fact, ¶ 1.
2. On October 24, 2016, Young presented $30,000.00 in Hard Rock chips at the Hard Rock casino for redemption. Hard Rock. Decision, Ap. App. p. at p. 2, Findings of Fact, ¶ 1.
3. Hard Rock refused redemption, and Appellant initiated a patron dispute. Decision, Ap. App. p. at p. 1, ¶ 1.
4. Agent Naqui, an enforcement agent with the Board, responded to the patron dispute initiated by Young and undertook an investigation. *See* JA 007, ¶ 1.

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case where the interpretation is not within the language of the statute, and only the *de novo* review language applies.

5. As part of the investigation, Appellant provided a statement including a declaration to Agent Naqui noting in relevant part that the Appellant did not contend that he won the chips at a tournament. JA 376-378 and .
6. Per the affidavit provided to Agent Naqui, Young maintained that he was in possession of the chips through other gaming activity only tangentially related to the alleged tournament in that his expansive gaming on other Hard Rock games was to qualify for the tournament (over $1,000,000 wagered on games offered by Hard Rock in order to qualify for the tournament). Young Declaration, ¶¶ 5-11, JA pp. 376-377.
7. Agent Naqui acknowledged that Young never told him that he won the chips in a blackjack tournament, and provided a statement in conflict with such a conclusion, yet, despite this, Agent Naqui based his report on the basis that Young could not substantiate his claim that he won the chips at a blackjack tournament. Naqui Testimony, JA 81: 18-20, and Agent Naqui Report at p. 2, "Complaint," ¶ 2, JA 373. Note also that in this Report in stating Hard Rock's position, Hard Rock did not maintain that Young claimed he won the chips in a blackjack tournament. *Id*. Note also that Agent Naqui recalled that he was even expressly told at the onset that the chips did not come from a blackjack tournament by Young's lawyer at the scene. Agent Naqui Testimony, JA 81 and 82.

8. Agent Naqui admits under oath that he was mistaken in the basis for his Report in his assertion that Young claimed he won the chips in a tournament. Agent Naqui testimony, JA 82-83

9. Mr. Chad Conrad, Hard Rock's Vice President of Finance, acknowledged under oath that Young was a "patron" at the Hard Rock as well. 281: 20-22.

10. Agent Naqui admitted that Young was a "patron" at Hard Rock. Agent Naqui testimony, JA 87: 5-13. Agent Naqui Report, JA 374 at ¶ 3 ("Based on my investigation, I found that Young was a patron at the Hard Rock . . ..").[2]

11. Further, despite his report, on examination, Agent Naqui, the Board's enforcement agent, acknowledge that there is no correlation between how much is played and how much is held in chips. Agent Naqui testimony, JA 84-85: 21-3.

12. Hard Rock's own records show gambling buy-ins by Young of $731,699.50 over the relevant period. Of this, $362,800 were at table games, and presumably, therefore, with chips. JA 347-348. These same records show

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[2] Note that under the language of NGCBR 12.060(2)(c), as discussed below, mandated a conclusion in Agent Naqui's report that Young's chips be "promptly redeem(ed)."

an overall win at the table games demonstrating possession of, at least, $362,800 in Hard Rock chips placed at risk throughout the gaming.

13. Nonetheless, in his investigation and determination, Agent Naqui evaluated the Appellant's contentions as if he were claiming that he won the chips at a tournament. In fact, Agent Naqui expressly stated in his investigation that the statement by Young claimed that "Young that he acquired the chips during that specific blackjack tournament." Agent Naqui Report at p. 2, "Complaint," ¶ 2, JA 373. This was in error, and Young's statement provided the exact opposite of that which Agent Naqui asserted that upon which Young's claim was based. Compare Young Declaration, ¶¶ 5-11, JA 377-378.[3]

14. In the hearing before the hearing examiner, Agent Naqui confirmed that the Appellant was a "patron" of Hard Rock, admitted that he did not investigate the dispute actually at issue, and acknowledged that the Appellant's level of play substantiated Appellant being in possession of $30,000 in Hard Rock chips. That is, the very basis for his decision allowing Hard Rock to not redeem the chips was admitted by Agent Naqui to be in error, and at the

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[3] This Statement by Young included little other than this declaration attached as an exhibit/explanation. It was attached to the statement at JA 376.

time of the presentment of the chips, Hard Rock had not shown the prerequisites to denying redemption under NGCBR 12.060.

15. Agent Naqui also confirmed that from the information provided to him at the time of his investigation, the evidence indicated that Young could well have held the $30,000 in chips from play at the Hard Rock, and essentially, the only reason he denied payment was because he was mistaken in believing that Young had represented that the chips were part of a large win. Agent Naqui testimony, JA 91-92 at 92: 11-13 ("[Young] would have possibly $30,000 in his possession.").

16. Also, in support of its claim, Hard Rock personnel forwarded to Agent Naqui or the hearing examiner, a false list of the participants in the tournament to support the conclusion that Young was not in the tournament. It purported to be the list of participants, but did not include Mr. Paul Engstrom, the actual winner of the tournament at issue. That is, the list provided by Hard Rock to support claiming Mr. Young was prevaricating was demonstrably unreliable and even untrue. *See* Discussion at Transcript, JA 113-121.

17. Prior to this decision, Young took the deposition *duces tecum* of Hard Rock which also requested all documentation regarding the Appellant's play at Hard Rock. *Accord* Conrad questioning and testimony, JA 263-265.

18. At the hearing the Young presented the documentation upon which the hearing examiner relied although it had not been provided at the deposition. That is, the hearing examiner relied upon evidence which had been withheld from Young in discovery. *Id*.

19. Hard Rock's witness admitted that he could not have come to the conclusion that Young would not have been in possession of $30,000 in chips based on the evidence presented at the time of the dispute, but needed the information provided only on the eve of the hearing and not provided at the *duces tecum* deposition of that witness. JA 263-265.

20. Young duly objected to this springing evidence contradicting the earlier produced evidence, but was overruled by the hearing examiner. JA 258-263.

21. The hearing examiner issued his decision, and the Board affirmed that Decision. JA 7-11.

22. The Decision turns largely on the determination that the Appellant did not prove on the Appellant "did not acquire the six $5000.00 chips by game play at the Hard Rock." Decision, App. 7-11 at p. 3.

23. In the final review of the documents submitted by Hard Rock to Agent Naqui for his investigation , even Hard Rock's skewed records reference

that Young has $20,000 in outstanding Hard Rock chips as of the time of presentment. JA 419

IX. ARGUMENT

> The administrative state has the has the power to enforce its laws, as it alone has interpreted them, liberated from any meaningful review by the courts and often from any meaningful control by the [executive]. . . . It can truly be said that in the main the pursuits of everyday life, we are ruled by a one-branch government. And the 'experts' who run it are accountable to no one."

CONFRONTING THE ADMINISTRATIVE STATE, *Charles J. Cooper*, (National Affairs, Fall, 2019).

A. INTRODUCTION

Appellant contends that the decision of the district court was in error as the decision of the hearing examiner was 1) Unsupported by any evidence; 2) Arbitrary and Capricious, and 3) Not in accordance with the law. Each basis is at variance with the mandate found in NRS 463.3666(3)(d) and (e). As the Court reviews the following, two particular elements of the law apply to the facts and decision to be made, and here the hearing examiner and the district court failed to follow these mandates.

The first such law is found at Nevada Gaming Control Board Regulation ("NGCBR") 12.060(2), providing in relevant part:

> "A licensee that uses chips or tokens at its gaming establishment shall: . . . (c) Promptly redeem its own chips and tokens from its patrons by cash or check drawn on an account of the licensee; . . .."

The second provision appears at NGCBR 12.060(4), providing in relevant part:

> "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 . . .."

Additionally, an overriding concern is also found at NGCBR 12.060(1), providing in relevant part:

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

In the present matter, despite the fact that the enforcement agent and Hard Rock confirmed that the Appellant was a patron, and Plaintiff contended he was a patron, the hearing examiner determined, and the district court adopted, the conclusion that the Appellant was not a patron of Hard Rock. It is contended that this is not in accordance with the law under NRS 364.3666(3)(e).

B. APPELLANT WAS A PATRON OF HARD ROCK

The Board in adopting the hearing examiner's decision found that the Appellant failed to carry his burden of proof to establish he was a "patron" of Hard Rock. Board Decision, pp. 3-4. This puts the legal definition of "patron" in the context of the foregoing regulations directly at issue in this matter, and further,

this legal determination is an issue of first impression in this Court. In this sense, under the authority of NRS 463.3666(3)(e), *State v. Ludwick*, 440 P.3d 43, 45 (Nev. 2019) and *Redmer v. Barbary Coast Hotel & Casino*, 110 Nev. 374, 378, 872 P.2d 341, 344 (1994), should the Court agree that the Appellant was a "patron" of Hard Rock, a decision reversing the district court and correlatively the Board, is warranted.

The definition of "patron" adopted by the Board is as follows: A person is a "patron:" "[I]f he could prove by a preponderance of the evidence that the chips he had in his possession were acquired by game play at [the casino.] . . .. [I]f the chips cannot be verified, he would not have been considered a patron as the term is used in Regulation 12.060(4)." Board Decision at p.3, second full paragraph, JA p. . As shown below, this definition has no support under any law, is internally self-contradictory, and completely eradicates the express burden on the casino found in the applicable regulation. That is, this definition is legally erroneous for multiple reasons.

It is axiomatic and universal that in the construction of a statute or regulation, when the language "is clear and unambiguous," there is no construction to be undertaken, and the tribunal is to give "effect to the plain and **ordinary meaning** of the words . . .." *Davis v. Beling*, 128 Nev. 301, 311, 278 P.3d 501, 508-509 (2012)(emphasis added). Moreover, this rule is so sacrosanct

that even if the tribunal believes that the plain language of a law is at odds with the legislative scheme surrounding that law, the tribunal remains constrained to apply the plain language over the perceived intent. *Pope v. Motel 6*, 121 Nev. 307, 314, 114 P.3d 277, 282 (2005). Thus, when the regulation contains the common word "patron," it is to be given its ordinary and plain meaning, and tribunals are restrained from embarking on a search of non-existing ambiguities or hidden meanings beyond the face of the word.

In addition to that stated above, the Board Decision also allegedly clarifies that a "patron" as "a customer of a gaming establishment that obtained the chips "through a game, tournament, contest, drawing, promotion or similar activity."" Board Decision, p. 3, Was Young a "patron" at Hard Rock?, ¶ 1, JA . Contrarywise, the rest of the world defines patron as "[A] person who is a customer, client, or paying guest, esp. a regular one, of a store, hotel , or the like." Webster's College Dictionary (Random House 1990), and see Black's Law Dictionary, Fifth Ed., (West 1979)("A regular customer."); Oxford Living Dictionaries ("A customer of a shop, restaurant, etc., especially a regular one."); Miriam Webster ("[O]ne who buys the goods or uses the services offered especially by an establishment."). Clearly, through respected lexicography four deep, including the premier legal dictionary, "patron" has a plain and ordinary meaning.

Concerning the dictionary definitions above, the same is true in the limited case law applicable to the term. *See Peoria v. Henderson*, 39 Ill. App. 3d 762, 765, 350 N.E.2d 540, 542 (1976)(One who has made wagers at a gambling house is a patron of the gambling house); *Acker v. S.W. Cantinas, Inc.*, 586 A.2d 1178, 1181 (Del. 1991)(A "patron" is one who conveys an economic benefit through purchase on the business of another.); *Lehman Bros. v. Certified Reporting Co.*, 939 F. Supp. 1333, 1340 (1996)(Analogizing a "patron" to a customer); *Kottaras v. Whole Foods Mkt., Inc.*, 281 F.R.D. 16, 17 (D. D.C. 2012)(same). Clearly there exists a plain and ordinary meaning to patron. As a rated player with over $335,000 in confirmed wagers placed at table games at Hard Rock and over a million dollars placed at risk at the Hard Rock, Petitioner squarely fits and falls within that meaning. The Board, in excluding Petitioner from the class of persons referenced (patrons) clearly erred in the law through turning their decision on their flawed construction of the word.

It is also worthy to note that the definition of patron expressed is patently in conflict with reason. In stating that a patron, concerning chip redemption, is limited to one whom obtained the chips "through a game, tournament, contest, drawing, promotion or similar activity . . ..", the Board entirely ignored the regulatory scheme. Conspicuously absent is anyone who purchased the chips at the casino cage or at a table, but never lost so much as to put them at risk. Per the

express holding of the Board, a customer who purchases $5000 in chips, at a table or at the cage, but who becomes disenchanted with the gaming after wagering a mere $1000, is not a "patron" with reference to the remaining $4000, and the gaming licensee can refuse to cash these purchased chips. While this sounds ridiculous and outside of the Board's determination, that was exactly Youngs position, uncontradicted by evidence, as to where and how he acquired the bulk of the chips presented. *See* Young Affidavit at ¶¶ , JA .

This is especially evident concerning the basis of the decision being Young's failure to show that he won the chips. The Board Decision concludes, "Because Young could not show . . . that he earned the six specific $5000 chips through **game play** at the Hard Rock, he has not shown that he was a patron . . . for purposes of a chip dispute." Board Decision, p. 4 at ¶ 3, JA. Thus, the Board applied the very standard referenced, and chips purchased but never placed at risk in game play become unredeemable upon purchase. Clearly, such a standard is in conflict with justice and the intent of the regulatory scheme, and is unsupported and unsupportable as a standard for requiring gaming licensees to redeem chips.

It is also worth pointing out that this Court is in no way constrained by the Decision in overruling the Board's erroneous definition of "patron." Deference to the Board's decision is only warranted when the interpretation is within the language of the statute. Note 1, *supra*. This Court decides questions of law *de*

novo First, the authority relied upon in the decision is district court authority. Decision, p. 3, n.1.

C. REGARDLESS OF WHETHER OR NOT THE APPELLANT WAS A PATRON, HARD ROCK BREACHED A REGULATORY OBLIGATION TO REDEEM THE CHIPS PRESENTED

Under the law applied to all of the agreed-upon evidence, the obligation to redeem Appellant's chips was legally required, and Appellant is correlatively entitled to redemption in the patron dispute. The Board's decision ignores two legal truisms and requirements in reaching its determination that Hard Rock did not have an obligation to redeem.

First ignored is the temporal obligation to redemption. Redemption is required "promptly." NGCBR 12.060(2)(c). In context, this can only have one meaning, and that is unless subject to an exception, redemption is required on presentment. This timing is also confirmed in NGCBR 12.060(4), where this separate provision references "presentment" as the timing and event which triggers the obligation to redeem. Here, the redemption was refused on presentment. But Hard Rock and the Board claim an exception to the obligation to redeem.

The exception relied upon by the Board and Hard Rock is found at 12.060(4), mandating that a gaming licensee shall not redeem chips from the

presenter it "**knows or reasonably should know [that (s)he] is not a patron** of its gaming establishment . . .." (Emphasis added). The Board and Hard Rock entirely ignore the "knows or reasonably should know" language applicable at the time or presentment, and rewrite the statute to allow the Hard Rock to avoid payment on the question of whether the person presenting the chips is or is not a patron together with their strained definition of "patron." From a different perspective, this express burden upon the gaming licensee is transferred to the patron/claimant by the Board's Decision affirmed by the District Court. Specifically, the licensee's burden to "know or should know," without support or reason, becomes the claimant's burden to show by a preponderance of the evidence that he is in possession of chips through gaming activity. *See* Board Decision, p. 2, "ISSUE," ¶ 2, JA 373 ("Did the Petitioner prove that he acquired the six $5000 chips through game play at the Hard Rock?"). But the duty to redeem is not tied to the status of "patron," but rather, and expressly, the duty is tied to the gaming licensee's knowledge of the status of patron. In placing the question to be determined to be whether Appellant demonstrated that he was a patron, the Board and Hard Rock bastardize the express legal test under the statute.

To highlight, under the parlance of the decision below, it was Appellant's burden to show that he was a patron under the definition of patron, but the test is

entirely divorced from Appellant's status, and turns exclusively on the licensee's knowledge. That is, the Hard Rock is legally required to redeem unless it knows or should know that the Young is not a patron. NGCBR 12.060(2)(c) and (4). Thus, if Hard Rock knows or should know the Appellant **is** a patron, or doesn't know one way or another if the Young **is** a patron, the obligation is to "promptly redeem," and the Appellant was entitled to redemption. That presents the express and obviously applicable status of the applicable regulations, and the Board Decision completely ignored this test and inserted two inapplicable tests not found in any regulation, to wit: 1) Whether Appellant was actually a patron?; and 2) Did Young prove he acquired the chips through gaming activity?

Further, in this sense, is the temporal requirement concerning this knowledge. This also confirms that the redemption is to occur on presentment. Agent Naqui testified that at the time of presentment, Young's play supported him having the $30,000 in chips. Agent Naqui testimony, JA 91-92 at 92: 11-13. Hard Rock's employee testified that it could not be known if Young could or could not be holding $30,000 in chips at the time of presentment, but rather, that information could not be gleaned until additional information added after this matter commenced (and not at the time or even near the time, of presentment) was reviewed. JA 263-264. Thus, at the time of the presentment of the chips, Hard Rock did not, could not, and should not know that Young was not a patron. All the

evidence shows that every element of NGCBR 12.060 was met at the time of the presentment of the chips by Young, and the legal mandate that Hard Rock "shall promptly redeem" was fully effective. The only possible conclusion under the evidence is that Young was due redemption at the time of presentment, and the Board's Decision and the District Court's affirmance are patently contrary to the law.

D. THERE WAS NO EVIDENCE THAT YOUNG WAS NOT A PATRON, AND A WEALTH OF EVIDENCE THAT HE WAS A PATRON

As noted above, Hard Rock, the Board's enforcement agent Report, the Board's enforcement agent's testimony, the legal definition of "patron," the plain meaning or patron, and even Hard Rock's vice president's testimony all acknowledge that Young was a "patron" of Hard Rock. That is the only inquiry under the regulations concerning whether or not Hard Rock shall "promptly redeem" the chips presented by Young. The evidence is that Young met the prerequisites to redemption.

Against this are bare statements that he did not acquire the chips through gaming at Hard Rock, a standard found nowhere in the regulations. But these bare statements run directly afoul of someone who put up over $360,000 in chips to wager as Hard Rock's records indicate. The idea is contradicted by the fact that Hard Rock allegedly kept track of Young's wagering, but failed to mention at the

hearing or in any of its documents that Young confounded Hard Rock's expectations by over $67,000 in table play (chips) in his favor. The bare statements lack foundation and are, thusly, not evidence, while the foundation actually supports Young holding all, or even a multiple of, the chips presented. The only supportable conclusion under the evidence applied to the regulations is that the Hard Rock is, simply, taking Young's money.

E. THE ACTUAL DOCUMENTS PROVIDED BY HARD ROCK CONFLICT WITH THEIR CONCLUSION, ARE NOT EVIDENCE WHEN THE ACTUAL DOCUMENTS ARE EXAMINED, AND PROVE THAT YOUNG'S POSITION IS CORRECT

Hard Rock's position, in addition to being indecipherable in reference to the documents, is also contrary to the hard evidence presented. Simply, it is based on voodoo mathematics.

The record can be read forward and back, and any conclusion that the opinions from Hard Rock demonstrate that Young could not have held $30,000 in chips is insupportable. Absent from the calculations is any consideration for variance, or in other terms, luck or skill. It is all premised upon expectations gleaned from the general populace.[4] And even with that, and hundreds of

[4] A set which does not include Young, as Young was an advantage gambler.

thousands wagered, Hard Rock still admits that Young could be in possession of $20,000.00 from gaming activities at Hard Rock.

Exemplary of this are the Hard Rock's records of Young's play found at JA 48-50. In explanation of this record, the column labeled "Buy In" is the figure Young placed on the table at the onset of his gaming plus chips purchased. It is evident how ephemeral this figure is, as it cannot account for available chips in Young's pocket. The term "Theo. Win." represents Hard Rock's expectations of winnings/losses over the time played by Young, and is based on mathematics relying upon random generated hands (some casinos will also factor leakage into this amount such as expected player variation from perfect play). It does not consider, for example, a player's ability to remove perfect randomness through legal activities such as card counting, shuffle tracking, or hole-carding. And the "Win" column is an estimate of the casino's take over the session. A number in parenthesis shows the estimated loss to the casino over the session.

Per the table, looking to the theoretical percentage, Hard Rock should have won $66,801.97 from Young over the table games referenced on the charts. To the contrary, in accord with Young being an advantage gambler and thusly limiting randomness, summing up the wins and losses in the win column, through the recorded play at Hard Rock, Young did not lose $66,801.97, but rather, actually won a grand total of $450.00 at table games. That is, it is documented in the hard

evidence at the hearing that Young beat the expectations upon which Hard Rock relies by over $67,000. It appears that this represents chips for which the Hard Rock has not accounted. In this sense, the final result is that the evidence shows Young holding between $20,000 and $67,000 in chips at the time Hard Rock claimed he could not be in possession of $30,000.00. Clearly, in light of Hard Rock's own documentation, the only legitimate evidence showed that Young could well have had over $30,000 in chips at the time his cash-out was refused.

F. THE DECISION OF THE BOARD RESULTS IN AN ABSURDITY

Nothing in the regulations, or even the application of the regulations, addresses what happens to chips where the holder is not a "patron." And the only limitation is that the gaming licensee shall not redeem them on presentment. While running afoul of the regulation that the chips present a debt owed to their custodian, Hard Rock apparently maintains that they get to keep the value received for such chips.

Looking to the result, this behooves a casino to deny any presentment of chips for redemption. Like here, even if a patron presents the chips, per the hearing examiner's decision, it is the burden of the patron to demonstrate that he acquired the chips through gaming activities at the licensee's casino. This burden does not appear in the regulatory scheme, yet that is the holding. Which raises the question: How can any player ever meet this burden in the face of a denial by a

casino? All the records are held by the casino and can be manipulated by the casino. The player ordinarily has no receipts or other evidence of gaming. In short, if the licensee believes it could get away with it, and lacks a moral compass, any presentment of a large amount of chips by a player can be denied redemption, and per the decision, it is now the patron's burden to prove that he got the chips through gaming activities. Thus, the decisions here present the patron with an impossible burden, while giving a casino a chance to take a show and likely win.

Also, as to not redeeming the chips, obviously those chips were let out by the casino in some manner. It's a safe bet that Hard Rock has not escheated the $30,000 here to the State of Nevada. The Board decision authorized licensed theft against the lifeblood of our economy—tourists. This, simply, cannot be the right decision, and portends ill tidings for the future of the industry.

G. THE ADMITTED EVIDENCE OF HARD ROCK MANDATES PAYMENT OF AT LEAST $20,000 IN REDEMPTION OF FOUR OF THE CHIPS

Hard Rock's records acknowledge that even under their own reckoning the Young could support $20,000.00 still being held by him in chips. JA 419. That's four of the six chips at issue. As mentioned above, the test here is whether Hard Rock knows the Petitioner is not a patron. Even under the constructed definition of patron discussed above, Hard Rock, by this admission, could not know or reasonably suspect that the Petitioner is not a customer with respect to this

$20,000. Minimally, even if the Board's Decision is deemed appropriate in all other respects, Young has met his burden in showing that Hard Rock did not know and should not have reasonably known that Young was not a patron as to this $20,000.00, and Hard Rock's duty to promptly redeem applies. The Decision errs in, even under its own terms, not requiring Hard Rock to redeem four of the chips.

X. CONCLUSION

Young gambled hundreds of thousands of dollars in chips at the Hard Rock. Hard Rock and the Board's enforcement agent acknowledge he was a patron. The gaming records, at their most limited, and divorced from all of Hard Rock's other legerdemain show at least $20,000 in his possession. The hearing examiner, the Board, and the Hard Rock assume that all proceeds from gambling are governed by exact probabilities giving no credence to luck, standard deviations, or failing to see who holds how much at all times. And all of this is stacked together to allegedly demonstrate that Young was not a patron because he couldn't prove he won every chip at Hard Rock's tables - - a patent impossibility for any gambler. The Board's Decision and the District Court's affirmance are the personification of the regulatory state run amok, and here for a favored industry. There was no basis for the District Court affirmance or the Board's decision save for rubber-stamping a money grab for a licensee, and this case cries out for reversal as there was no evidence to support the decision, the decision was arbitrary and capricious,

and most importantly, the decision and the precepts under which the decision is generated are legally erroneous.

Dated this 29th day of October, 2019

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XI. CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 16 in fourteen point Times New Roman font.
2. I further certify that this brief complies with the volume limitations of NRAP 32(a)(7)(A)(ii) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 14,000 words, and does in fact, as calculated, contain 6078 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28€(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 29th day of October, 2019

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XII. ADDENDUM

Nevada Gaming Control Board Regulation 12.060

Use of chips and tokens.

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

2. A licensee that uses chips or tokens at its gaming establishment shall:

(a) Comply with all applicable statutes, regulations, and policies of Nevada and of the United States pertaining to chips or tokens;

(b) Issue chips and tokens only to patrons of its gaming establishment and only at their request;

(c) Promptly redeem its own chips and tokens from its patrons by cash or check drawn on an account of the licensee;

(d) Post conspicuous signs at its establishment notifying patrons that federal law prohibits the use of the licensee's tokens, that state law prohibits the use of the licensee's chips, outside the establishment for any monetary purpose whatever, and that the chips and tokens issued by the licensee are the property of the licensee, only; and

(e) Take reasonable steps, including examining chips and tokens and segregating those issued by other licensees to prevent the issuance to its patrons of chips and tokens issued by another licensee.

3. A licensee shall not accept chips or tokens as payment for any goods or services offered at the licensee's gaming establishment with the exception of the specific use for which the chips or tokens were issued, and shall not give chips or tokens as change in any other transaction.

4. 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, except that a licensee shall promptly redeem its chips and tokens if presented by:

(a) Another licensee who represents that it redeemed the chips and tokens from its patrons or received them unknowingly, inadvertently, or unavoidably;

(b) An employee of the licensee who presents the chips and tokens in the normal course of employment; or

(c) A person engaged in the business of collecting from licensees chips and tokens issued by other licensees and presenting them to the issuing licensees for redemption.

5. A licensee may redeem its chips and tokens if presented by an agent of the state gaming control board in the performance of his official duties or on behalf of another governmental agency.

6. A licensee shall not knowingly issue, use, permit the use of, or redeem chips or tokens issued by another licensee, except as follows:

(a) A licensee may redeem tokens issued by another licensee if:

(1) The tokens are presented by a patron for redemption to a cashier of the licensee's gaming establishment or, in the case of a location having slot machines operated by a licensed operator of a slot machine route, if a patron presents them to the operator's employee at the location; or

(2) The tokens are presented by a patron at a table game; and

(3) The licensee redeems the tokens with tokens of its own, separates and properly accounts for the redeemed tokens during the count performed pursuant to the licensee's system of internal control required by Regulation 6, and places the redeemed tokens in the table's drop box, if redeemed at a table game; and

(b) A licensee may redeem chips issued by another licensee if:

(1) The chips are presented by a patron for redemption at the cashier's cage of the licensee's gaming establishment;

(2) The chips are presented by a patron at a table game, and the licensee redeems the chips with chips of its own, places the redeemed chips in the table's drop box, and separates and properly accounts for the redeemed chips during the count performed pursuant to the licensee's system of internal control submitted pursuant to Regulation 6.050 or 6.060; or

(3) The chips are presented by a patron as payment on a race, pari-mutuel, or sports wager to a book located on the premises of the licensee which issued the chips; and

(c) An operator of a slot machine route or its employee may redeem tokens that are issued by the operator for use at another location.

7. Chips whose use is restricted to uses other than at table games or other than at specified table games may be redeemed by the issuing licensee at table games or non-specified table games if the chips are presented by a patron, and the licensee redeems the chips with chips issued for use at the game, places the redeemed chips in the table's drop box, and separates and properly accounts for the redeemed chips during the count performed pursuant to the licensee's system of internal control required by Regulation 6.

8. Tokens may be used only at gaming establishments operated by persons holding nonrestricted gaming licenses, including restricted locations at which gaming devices are operated by licensed operators of slot machine routes.

NRAP 17

Division of cases between the Supreme Court and the Court of Appeals

(a) ***Cases retained by the Supreme Court.*** The Supreme Court shall hear and decide the following:

(1) All death penalty cases;

(2) Cases involving ballot or election questions;

(3) Cases involving judicial discipline;

(4) Cases involving attorney admission, suspension, discipline, disability, reinstatement, and resignation;

(5) Cases involving the approval of prepaid legal service plans;

(6) Questions of law certified by a federal court;

(7) Disputes between branches of government or local governments;

(8) Administrative agency cases involving tax, water, or public utilities commission determinations;

(9) Cases originating in business court;

(10) Cases involving the termination of parental rights or NRS Chapter 432B;

(11) Matters raising as a principal issue a question of first impression involving the United States or Nevada Constitutions or common law; and

(12) Matters raising as a principal issue a question of statewide public importance, or an issue upon which there is an inconsistency in the published decisions of the Court of Appeals or of the Supreme Court or a conflict between published decisions of the two courts.

(b) ***Cases assigned to Court of Appeals.*** The Court of Appeals shall hear and decide only those matters assigned to it by the Supreme Court and those matters within its original jurisdiction. Except as provided in Rule 17(a), the Supreme Court may assign to the Court of Appeals any case filed in the Supreme Court. The following case categories are presumptively assigned to the Court of Appeals:

(1) Appeals from a judgment of conviction based on a plea of guilty, guilty but mentally ill, or nolo contendere (Alford);

(2) Appeals from a judgment of conviction based on a jury verdict that

(A) do not involve a conviction for any offenses that are category A or B felonies; or

(B) challenge only the sentence imposed and/or the sufficiency of the evidence;

(3) Postconviction appeals that involve a challenge to a judgment of conviction or sentence for offenses that are not category A felonies;

(4) Postconviction appeals that involve a challenge to the computation of time served under a judgment of conviction, a motion to correct an illegal sentence, or a motion to modify a sentence;

(5) Appeals from a judgment, exclusive of interest, attorney fees, and costs, of $ 250,000 or less in a tort case;

(6) Cases involving a contract dispute where the amount in controversy is less than $ 75,000;

(7) Appeals from postjudgment orders in civil cases;

(8) Cases involving statutory lien matters under NRS Chapter 108;

(9) Administrative agency cases except those involving tax, water, or public utilities commission determinations;

(10) Cases involving family law matters other than termination of parental rights or NRS Chapter 432B proceedings;

(11) Appeals challenging venue;

(12) Cases challenging the grant or denial of injunctive relief;

(13) Pretrial writ proceedings challenging discovery orders or orders resolving motions in limine;

(14) Cases involving trust and estate matters in which the corpus has a value of less than $ 5,430,000; and

(15) Cases arising from the foreclosure mediation program.

(c) ***Consideration of workload.*** In assigning cases to the Court of Appeals, due regard will be given to the workload of each court.

(d) ***Routing statements; finality.*** A party who believes that a matter presumptively assigned to the Court of Appeals should be retained by the Supreme Court may state the reasons as enumerated in (a) of this Rule in the routing statement of the briefs as provided in Rules 3C, 3E, and 28 or a writ petition as provided in Rule 21. A party may not file a motion or other pleading seeking reassignment of a case that the Supreme Court has assigned to the Court of Appeals.

(e) ***Transfer and notice.*** Upon the transfer of a case to the Court of Appeals, the clerk shall issue a notice to the parties. With the exception of a petition for Supreme Court review under Rule 40B, any pleadings in a case after it has been transferred to the Court of Appeals shall be entitled "In the Court of Appeals of the State of Nevada."

NRS 463.361

1. Except as otherwise provided in NRS 463.361 to 463.366, inclusive, and 463.780, gaming debts that are not evidenced by a credit instrument are void and unenforceable and do not give rise to any administrative or civil cause of action.

2. A claim by a patron of a licensee for payment of a gaming debt that is not evidenced by a credit instrument may be resolved in accordance with NRS 463.362 to 463.366, inclusive:

(a) By the Board; or

(b) If the claim is for less than $500, by a hearing examiner designated by the Board.

NRS 463.362

1. Whenever a patron and a licensee, or any person acting on behalf of or in conjunction with a licensee, have any dispute which cannot be resolved to the satisfaction of the patron and which involves:

(a) Alleged winnings, alleged losses or the award or distribution of cash, prizes, benefits, tickets or any other item or items in a game, tournament, contest, drawing, promotion or similar activity or event; or
(b) The manner in which a game, tournament, contest, drawing, promotion or similar activity or event is conducted,
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 indirectly involved in the dispute.

2. Whenever a dispute described in subsection 1 involves:

(a) At least $500, the licensee shall immediately notify the Board; or
(b) Less than $500, the licensee shall notify the patron of the patron's right to request that the Board investigate.

3. Upon being notified of a dispute, the Board, through an agent, shall conduct whatever investigation it deems necessary and shall determine whether payment should be made. The agent of the Board shall mail written notice to the Board, the licensee and the patron of the agent's decision resolving the dispute within 45 days after the date the Board first receives notification from the licensee or a request to investigate from the patron. The failure of the agent to mail notice of the agent's decision within the time required by this subsection does not divest the Board of its exclusive jurisdiction over the dispute.

4. Failure of the licensee to notify the Board or patron as provided in subsection 2 is grounds for disciplinary action pursuant to NRS 463.310 to 463.3145, inclusive.

5. The decision of the agent of the Board is effective on the date the aggrieved party receives notice of the decision. Notice of the decision shall be deemed sufficient if it is mailed to the last known address of the licensee and patron. The date of mailing may be proven by a certificate signed by an officer or employee of

the Board which specifies the time the notice was mailed. The notice shall be deemed to have been received by the licensee or the patron 5 days after it is deposited with the United States Postal Service with the postage thereon prepaid.

NRS 463.363

1. Within 20 days after the date of receipt of the written decision of the agent, the aggrieved party may file a petition with the Board requesting a hearing to reconsider the decision.

2. The petition must set forth the basis of the request for reconsideration.

3. If no petition for reconsideration is filed within the time prescribed in subsection 1, the decision shall be deemed final action on the matter and is not subject to reconsideration by the Board or to review by the Commission or any court.

4. The party requesting the hearing must provide a copy of the petition to the other party.

5. Within 15 days after service of the petition, the responding party may answer the allegations contained therein by filing a written response with the Board.

6. The Board shall schedule a hearing and may conduct the hearing as provided in subsection 4 of NRS 463.110, except that notice of the date, time and place of the hearing must be provided by the Board to both parties.

7. The hearing must be conducted in accordance with regulations adopted by the Commission.

NRS 463.3664

1. Upon written request of petitioner and upon payment of such reasonable costs and fees as the Board may prescribe, the complete record on review, or such parts thereof as are designated by the petitioner, must be prepared by the Board.

2. The complete record on review must include copies of:

(a) All pleadings in the case;

(b) All notices and interim orders issued by the Board in connection with the case;

(c) All stipulations;

(d) The decision and order appealed from;

(e) A transcript of all testimony, evidence and proceedings at the hearing;

(f) The exhibits admitted or rejected; and

(g) Any other papers in the case.

The original of any document may be used in lieu of a copy thereof. The record on review may be shortened by stipulation of all parties to the review proceedings.

3. The record on review must be filed with the reviewing court within 30 days after service of the petition for review, but the court may allow the Board additional time to prepare and transmit the record on review.

NRS 463.3666

1. The reviewing court may, upon motion therefor, order that additional evidence in the case be taken by the Board or the hearing examiner upon such terms and conditions as the court deems just and proper. The motion must not be granted except upon a showing that the additional evidence is material and necessary and that sufficient reason existed for failure to present the evidence at the hearing conducted by the Board or the hearing examiner. The motion must be supported by an affidavit of the moving party or his or her counsel showing with particularity the materiality and necessity of the additional evidence and the reason why it was not introduced in the administrative hearing. Rebuttal evidence to the additional evidence must be permitted. In cases in which additional evidence is presented to the Board or the hearing examiner, the Board or the hearing examiner may modify the decisions and orders as the additional evidence may warrant and shall file with the reviewing court a transcript of the additional evidence together with any modifications of the decision and order, all of which become a part of the record on review.

2. The review must be conducted by the court sitting without a jury, and must not be a trial de novo but is confined to the record on review. The filing of briefs and oral argument must be made in accordance with the rules governing appeals in civil cases unless the local rules of practice adopted in the judicial district provide a different procedure.

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

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

NRS 463.3668

1. Any party aggrieved by the final decision in the district court after a review of the decision and order of the Board or the hearing examiner may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution in the manner and within the time provided by law for appeals in civil cases. The appellate court of competent jurisdiction shall follow the same procedure thereafter as in appeals in civil actions, and may affirm, reverse or modify the decision as the record and law warrant.

2. The judicial review by the district court and the appellate court of competent jurisdictìon afforded in this chapter is the exclusive method of review of any actions, decisions and orders in hearings held pursuant to NRS 463.361 to 463.366, inclusive. Judicial review is not available for extraordinary common-law writs or equitable proceedings.

3. The party requesting judicial review shall bear all of the costs of transcribing the proceedings before the Board or the hearing examiner and of transmitting the record on review.

XIII. CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2019, I caused to be served the above Respondents' and Cross-Appellants' Answering Brief on Appeal and Opening Brief on Cross-Appeal through the electronic filing system maintained by this Court upon the following counsel for Appellant:

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