IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
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Tsun Young,

Appellant/Petitioner,

v.

Hard Rock Hotel and Casino, and State of Nevada, *ex rel*, Nevada Gaming Control Board,

Appellees/Respondent.

Case No. 78916

District Ct No. A-18-775062-J

On Appeal from the Eighth Judicial District Court

RESPONDENT'S, NEVADA GAMING CONTROL BOARD, ANSWERING BRIEF

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ROUTING STATEMENT

Pursuant to NRAP 17(b)(9), this case is presumptively assigned to the Court of Appeals given that it is an appeal of an administrative decision made by Respondent, the Nevada Gaming Control Board (hereinafter "BOARD"). Contrary to Appellant, TSUN YOUNG'S (hereinafter "YOUNG"), assertion, this case does not raise any issues of statewide public importance warranting review by the Supreme Court under NRAP 17(a)(12).

In his routing statement, YOUNG fails to include a clear statement of the relevant issue or citations to the record where the issue was raised although required by NRAP 28(a)(5). Further, YOUNG'S appeal of the BOARD'S decision is purely personal and has no significant importance beyond him. The issues raised by this appeal are simply whether the BOARD acted arbitrarily and capriciously or not in accordance with the law and whether the BOARD'S decision is unsupported by any evidence. These are not issues of statewide importance. Further, to the extent YOUNG seeks to influence this Court with considerations of policy, any such issues are the province of the BOARD and Nevada Gaming Commission – those agencies designated by the Nevada Legislature to set policy for the gaming industry. *See Sengel v. IGT*, 116 Nev. 565, 574, 2 P.2d 258, 263 (2000) ("The State Legislature, in enacting the legislative scheme of which NRS

463.3666 is a part, has empowered the Nevada Gaming Control Board, not this court, to make these policy decisions.").

STATEMENT OF THE ISSUES

A. Was the decision of the BOARD denying payment of $30,000 to YOUNG arbitrary and capricious or otherwise not in accordance with the law?

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

STATEMENT OF THE CASE

This case began on October 24, 2016 as a dispute between YOUNG and the Hard Rock Hotel and Casino (hereinafter "HARD ROCK") over the HARD ROCK'S refusal to cash six $5,000 gaming chips that were presented by YOUNG for redemption. Joint Appendix (hereinafter "JA") 372–375 and 377–379. A BOARD Enforcement Division agent responded to the HARD ROCK and, in accordance with NRS 463.362, conducted an investigation. JA 372–375.

The HARD ROCK refused to cash the six $5,000 chips presented by YOUNG because his game play did not support that YOUNG acquired the chips through gaming at the HARD ROCK. *Id.* On November 23, 2016, the BOARD'S Enforcement Division notified YOUNG that, as a result of the investigation, the HARD ROCK was not obligated to pay the disputed amount. JA 370.

On December 15, 2016, YOUNG filed a Petition for Reconsideration with the BOARD requesting a hearing in accordance with NRS 463.363. A BOARD hearing examiner conducted a hearing and subsequently recommended to the

members of the BOARD that the decision denying payment to YOUNG be affirmed. JA 007–011. On May 3, 2018, the members of the BOARD unanimously accepted the hearing examiner's recommendation and entered an Order affirming the decision to deny payment to YOUNG. JA 011. YOUNG filed his Petition for Judicial Review on May 23, 2018. JA 001–003. On April 29, 2019, the District Court entered an Order on the Petition for Judicial Review again affirming the BOARD'S decision. JA 638–639.

STATEMENT OF RELEVANT FACTS

In 2011, YOUNG attempted to redeem $44,000 in chips from the HARD ROCK that consisted of six $5,000 chips and fourteen $1,000 chips. However, the HARD ROCK, in accordance with applicable gaming regulations, refused to redeem the chips until it could determine where YOUNG obtained them. JA 008, JA 198, JA 242, and JA 246. A patron dispute was not initiated at that time. JA 202.

On October 24, 2016, YOUNG again sought to redeem six $5,000 chips at the HARD ROCK. JA 007, JA 372–375, and JA 377–379. However, the HARD ROCK refused to cash the chips because, again, the HARD ROCK could not verify where YOUNG had obtained the chips. JA 007 and JA 380. The BOARD was contacted and a BOARD Enforcement Division agent responded to the HARD ROCK to conduct an investigation. JA 370–375. Based on his investigation, the

BOARD agent determined that redemption of the six $5,000 chips to YOUNG was not substantiated by YOUNG'S play and concluded that the HARD ROCK'S decision to deny payment was appropriate. JA 370.

YOUNG then requested a hearing before a BOARD hearing officer to review the BOARD Enforcement Division's decision. JA 316–318. On October 24, 2017 and on January 22, 2018, a BOARD hearing officer conducted a hearing where additional evidence and argument were considered. JA 007.

Evidence introduced during the BOARD'S hearing showed that YOUNG wagered at the HARD ROCK from 2008 to 2011. JA 008 and JA 377–379. In fact, YOUNG was a rated player at the HARD ROCK and had total table game buy-ins of $335,300 over the period from July 2008 to January 2011. JA 008 and JA 229. YOUNG insists that he obtained the six $5,000 chips through his gaming activities at the HARD ROCK. JA 377–378. However, YOUNG did not provide any specifics as to exactly when or how he obtained the six $5,000 chips. JA 007–011 and JA 377–379. Rather, YOUNG testified that during his play at the HARD ROCK, he would generally hide chips in his pocket to make the HARD ROCK believe that he had lost more money in hopes of getting better comps. JA 216–217.

There was no dispute that YOUNG had previously gambled at the HARD ROCK. In fact, the HARD ROCK had extensive records regarding YOUNG'S

play at the HARD ROCK. JA 227–238. However, the HARD ROCK'S records, which show all of YOUNG'S chip transactions, do not support that YOUNG could be in possession of any $5,000 chips. JA 238–40. Further, the HARD ROCK disputed YOUNG'S claim that he had the ability to conceal $5,000 chips from the HARD ROCK during his game-play and presented evidence that YOUNG would be unable to possess six $5,000 HARD ROCK chips without the HARD ROCK'S knowledge because such chips are tracked. Specifically, the HARD ROCK'S Vice President of Finance testified that "[s]omeone with $5,000 chips is watched closely. It's not a transaction that's missed for a $5,000 chip." JA 302.

After taking into consideration the evidence provided by the HARD ROCK regarding chips redemption and chips relinquished, no more than $20,000 worth of chips could be in YOUNG'S possession for redemption. JA 238. In fact, the evidence showed that the amount of chips that could potentially be in YOUNG'S possession would likely be less than $20,000, given that tips and small denomination redemptions under $3,000 are not tracked by the HARD ROCK. JA 239–240.

Consequently, the BOARD hearing officer found that YOUNG failed to meet his burden under NRS 463.364(1) and recommended that the BOARD agent's decision to deny payment should be affirmed. JA 007–011.

SUMMARY OF ARGUMENT

The BOARD'S decision to deny payment of $30,000 to YOUNG was not arbitrary or capricious and was in accordance with the law, including Nev. Gaming Comm'n Reg. 12.060(4), given that YOUNG, for purposes of redeeming the chips, was not the patron who had acquired the six $5,000 chips.

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

STANDARD OF REVIEW

In seeking reconsideration of the BOARD agent's decision, YOUNG had the burden of showing by a preponderance of the evidence that the decision should be reversed or modified. *See* NRS 463.364(1) and Nev. Gamming Comm'n Reg. 7A.160.

On judicial review of the BOARD'S final decision that affirmed the agent's decision, NRS 463.3666 sets forth the standard of review. Specifically, NRS 463.3666(3) provides:

> 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 of 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.

In addition, "a reviewing court should affirm a decision of the Board which is supported by *any evidence whatsoever* . . . ." *Sengel*, 116 Nev. at 570, 2 P.3d at 261 (emphasis in original).

Finally, the court is to show "great deference to a Nevada Gaming Control Board decision on appeal. An order of the Nevada Gaming Control Board will not be disturbed unless it is arbitrary, capricious or contrary to the law." *Redmer v. Barbary Coast Hotel & Casino*, 110 Nev. 374, 378, 872 P.2d 341, 344 (1994) (citations omitted). However, "this court is free to examine purely legal questions decided at the administrative level." *Id.*

YOUNG challenges the BOARD'S decision on the basis that it is arbitrary or capricious or otherwise not in accordance with the law and that it is unsupported by any evidence. JA 509.

ARGUMENT

Following an evidentiary hearing, the BOARD determined that the BOARD Enforcement Division agent correctly resolved the dispute between YOUNG and

the HARD ROCK when the agent concluded that YOUNG was not entitled to payment of $30,000. The BOARD'S decision is not arbitrary or capricious or otherwise not in accordance with the law. Further, the BOARD'S decision is supported by more than sufficient evidence.

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

1. The BOARD correctly concluded that YOUNG failed to establish he was entitled to redeem six $5,000 chips from the HARD ROCK.

Nev. Gaming Comm'n Reg. 12.060(4) provides in relevant part that "[a] licensee shall not redeem its chips or tokens if presented by a person who the licensee knows or reasonably should know is not a patron of its gaming establishment . . . ." The HARD ROCK complied with this regulation and the BOARD'S decision upholding the denial of payment to YOUNG is in keeping with the BOARD'S historical interpretation of this regulation.

YOUNG presented six $5,000 chips to the HARD ROCK seeking to exchange them for $30,000 cash. JA 007, JA 373 and JA 377–379. However, the HARD ROCK refused to cash the chips because YOUNG'S play at the HARD ROCK did not support that he was properly in possession of the chips. *Id*. In other words, the HARD ROCK concluded that YOUNG could not have come into possession of the chips through his gaming activities at the HARD ROCK.

Subsequently, a BOARD Enforcement Division agent responded to the HARD ROCK to resolve the dispute between YOUNG and the HARD ROCK, conducted an investigation, and concluded that the HARD ROCK'S refusal to cash the chips was appropriate given that YOUNG'S play did not substantiate the transaction. JA 370–375.

After a hearing where YOUNG had the burden pursuant to NRS 463.364 to show that the BOARD agent's decision should be reversed, the BOARD affirmed the agent's decision to deny payment. JA 007–011. Ultimately, YOUNG was not a patron for purposes of cashing the chips and the HARD ROCK acted in compliance with Nev. Gaming Comm'n Reg. 12.060(4).

There is nothing in the record to suggest that the BOARD acted arbitrarily or capriciously or contrary to the law. As pointed out by the BOARD'S hearing examiner, the BOARD has historically interpreted the law as precluding a casino from cashing chips from patrons who did not acquire those chips through their gaming activities. JA 009. Further, as indicated by the BOARD agent in his report, "[t]he licensee's decision to deny payment for the $30,000 in casino chips was commensurate with the established industry practice standards and common practice." JA 374.

The BOARD'S interpretation of who qualifies as a patron also aligns with the provisions of NRS 463.362(1)(a) which gives the BOARD jurisdiction over

patron disputes regarding "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 . . . ." In other words, the provisions of NRS 463.362 contemplate that YOUNG must establish that he obtained the six $5,000 chips through his gaming activities.

YOUNG disagrees with the BOARD'S interpretation of Nev. Gaming Comm'n Reg. 12.060(4). However, the BOARD'S historical interpretation is proper and in accordance with the law, which must be given deference. *See Redmer*, 110 Nev. at 378, 872 P.2d at 344 ("This court shows great deference to a Nevada Gaming Control Board decision on appeal.").

2. YOUNG'S interpretation of Nev. Gaming Comm'n Reg. 12.060(4) would lead to an absurd result and frustrate the purposes behind the regulation.

YOUNG relies on an assertion of the plain meaning of the word "patron" and argues that because he was a patron of the HARD ROCK in the past, he qualifies as a patron for purposes of cashing the six $5,000 chips. YOUNG'S position is convenient for him, but is a simplistic view of Nevada's gaming regulations that leads to an absurd result frustrating legitimate regulatory purposes.

While courts are to give effect to the plain meaning of statutes and regulations, that canon of statutory construction has limitations. "[W]e construe

unambiguous statutory language according to its plain meaning unless doing so would provide an absurd result." *Simmons Self-Storage Partners, LLC v. Rib Roof, Inc.*, 130 Nev. 540, 546, 331 P.3d 850, 854 (2014), *as modified on denial of reh'g* (Nov. 24, 2014) (citations omitted). The Court in *Simmons Self-Storage* went on to state that "this court interprets 'provisions within a common statutory scheme "harmoniously with one another in accordance with the general purpose of those statutes" ' to avoid unreasonable or absurd results and give effect to the Legislature's intent." *Id*.

Accepting YOUNG'S argument would absurdly allow any patron of the HARD ROCK, regardless of whether the patron engaged in gaming, to have the ability to redeem gaming chips. Such an interpretation would open the door for gaming chips to be more freely exchanged and frustrate the purposes behind Nev. Gaming Comm'n Reg. 12.060. During a November 2010 hearing before the Nevada Gaming Commission regarding amendments to Nev. Gaming Comm'n Reg. 12.060, then BOARD Chairman Neilander explained the rationale behind the regulation and stated the following:

> The regulations have been in place for some time. There were a number of reasons it was adopted. We didn't want chips to be 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.

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

Nev. Gaming Comm'n Reg. 12.060(4) must be read in harmony with Nev. Gaming Comm'n Reg. 12.060(2)(d), which further supports the conclusion that chips are not to be used as currency through its requirement that a licensee "[p]ost 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 . . . ." If gaming chips are allowed to be transferred amongst people without limitation, they would effectively become currency and invite fraudulent activity. Therefore, Nevada's gaming regulations place strict limits on the use and circulation of gaming chips.

Allowing YOUNG to cash chips that he did not acquire through his gaming at the HARD ROCK would be incongruous with the BOARD'S historical interpretation of the law and frustrate the purposes behind Nevada's gaming regulations.

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

Given the restrictions placed on the redemption of gaming chips through Nev. Gaming Comm'n Reg. 12.060, the BOARD considered whether YOUNG

was a patron for purposes of redeeming the chips. However, YOUNG was unable to meet his burden to show that he obtained the six $5,000 chips through gaming at the HARD ROCK and was thus a patron who could redeem the chips. In fact, the evidence indicates otherwise.

The HARD ROCK'S Vice President of Finance reviewed the HARD ROCK'S records regarding YOUNG and confirmed during his testimony that those records did not substantiate the redemption of six $5,000 chips to YOUNG. JA 225–226. Significantly, it was meaningful to the BOARD'S hearing examiner that the HARD ROCK tracks "anytime a $5,000 chip was given to a patron." JA 10. *See also* JA 227, 289, and 302–303. Further, the tracking of $5,000 chips could not be circumvented by a customer "because the chips would have been accounted for before it was physically given to a customer." JA 10.

Ultimately, YOUNG was in possession of HARD ROCK chips that are of a significant value at $5,000 apiece. The HARD ROCK understandably and prudently keeps track of such chips because of their high value. Despite YOUNG'S efforts to convince the BOARD that he came into possession of the six $5,000 chips through his game play at the HARD ROCK, he was unsuccessful

. . .

. . .

. . .

because the evidence instead supports that YOUNG did not obtain the chips from the HARD ROCK[1].

Further, any argument by YOUNG that he is at the very least entitled to the redemption of four of the $5,000 chips because that would align with the HARD ROCK'S records that he could have up to $20,000 in chips is without any support in the record. Again, the evidence supports that YOUNG should not be in possession of any $5,000 chips and that any chips that he may possess would be in smaller denominations and something less than $20,000. JA 239. YOUNG did not present for redemption $20,000 in chips and he did not present for redemption any denomination of chip other than $5,000 chips.

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

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[1] In his brief, YOUNG also argues that the BOARD'S decision must be overturned because it results in the HARD ROCK keeping the value of the six $5,000 chips. However, YOUNG ignores that the HARD ROCK continues to have an obligation to redeem the chips if and when presented by the patron who actually obtained them through their gaming activities. In addition, any such argument is beyond the scope of review as set forth in NRS 463.3666(3) and is essentially a policy argument within the authority of the BOARD and Nevada Gaming Commission. *See Sengel*, 116 Nev. at 574, 2 P.2d at 263 ("The State Legislature, in enacting the legislative scheme of which NRS 463.3666 is part, has empowered the Nevada Gaming Control Board, not this court, to make these policy decisions.").

CONCLUSION

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

The BOARD respectfully requests that the District Court's decision to affirm the BOARD'S decision similarly be affirmed.

Dated: November 27, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on November 27, 2019.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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CERTIFICATE OF COMPLIANCE

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 Microsoft Word 2010 14 pt. Times New Roman type style.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 3,078 words.

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(e)(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: November 27, 2019.

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