

IN THE SUPREME COURT OF THE STATE OF NEVADA

TSUN YOUNG,

Appellant,

v.

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

Respondents.

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RESPONDENT LVHR CASINO, LLC'S¹ ANSWERING BRIEF

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¹ LVHR Casino, LLC is the formal entity that owns the Hard Rock Hotel and Casino.

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Appellant LVHR Casino, LLC is a Delaware limited liability company registered to do business in Nevada. There are no parent corporations or publicly held companies that own 10% or more of this party's stock.

2. Marla Hudgens and Mary Tran of LEWIS ROCA ROTHGERBER CHRISTIE have represented Respondent LVHR Casino, LLC in this matter.

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

DATED: December 16, 2019

Lewis Roca Rothgerber Christie

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ROUTING STATEMENT

Respondent LVHR Casino, LLC (“Hard Rock”) disagrees with the Routing Statement submitted by Appellant Tsun Young (“Young”) in his Opening Brief. *See* Appellant’s Opening Brief (“AOB”) at 2. Pursuant to NRAP 28(i), joins in the Routing Statement as outlined in the Nevada Gaming Control Board’s (the “Board”) Answering Brief filed on November 27, 2019. In short, this is an administrative agency case *not* involving a tax, water, public utilities commission matter, or other issue of statewide importance. Accordingly, it is presumptively assigned to the Court of Appeals. *See* NRAP 17(b)(9).

STATEMENT OF THE ISSUES

1. Is a gaming licensee required to redeem any amount of chips presented by a customer without the legal right to verify the customer’s play or otherwise dispute the payout pursuant to NRS 463.362?
2. Given the extensive documents and testimony in the record, is there “any” evidence to support the Board’s final decision?

STATEMENT OF THE CASE

This is an administrative appeal arising from a final administrative decision of the Board made after an evidentiary hearing

(the “Decision”). (1 JA 11.) The Board’s Decision was subsequently affirmed by the district court. (4 JA 638-39.)

The Decision involves a patron dispute brought by Young under NRS 463.362 after the Hard Rock declined to redeem six casino chips each worth \$5,000, for a total of \$30,000. (*Id.*; *see also* 4 JA 372-75, 377-79.) The Board’s investigative unit, a Board hearing examiner, and ultimately the Board itself all upheld the Hard Rock’s decision to decline redemption. (4 JA 370; 1 JA 7-11.)

Following exhaustion of these administrative remedies, Young petitioned the eighth district court of Nevada for judicial review on May 23, 2018. (1 JA 1-3). The district court again affirmed the Board’s Decision and Hard Rock’s decision to decline redemption. (*Id.*) On April 29, 2019, the district court entered an order affirming the Board’s Decision and denying Young’s petition for judicial review. (4 JA 638-39.) Young appealed to this Court.

STATEMENT OF THE FACTS

A. Young and his Play at the Hard Rock

Young is unemployed and apparently earns a living off of various investments. (2 JA 189-90.) Young was a rated player at Hard Rock and

first gambled at the casino in Las Vegas in 2008. (3 JA 382-83.) From 2008 through 2011, Young gambled during sporadic weekends—Hard Rock has records showing that he gambled a totally of 23 days during the four-year period. (*Id.*) When he did gamble, however, Young played both slot machines and table games. (*Id.*)

Young’s “buy-ins” (the amount of money he paid to gamble) were tracked for both slot machine and table games. (*Id.*) Hard Rock’s tracking system is sophisticated and allows the casino to determine a number of factors including (a) the nature of the buy in (cash, credit, re-playing chips, etc.), (b) the length of play at any given table or machine, (c) whether the player won or loss during that playing session, and (d) the value of the win or lost. (*See, e.g., id.* at 429-463.) This tracking system also allows the Hard Rock to determine whether a player seeking to redeem casino chips is in lawful possession of those chips. (*Id.*)

B. 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). (3 JA 384-85, 403.) The Hard

Rock refused to redeem the chips because it could not verify Young's play in the amount he sought to redeem. (*Id.*) Concerns about 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.*)

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 403.)

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

From 2011 and until 2016, Young did not gamble at the Hard Rock. But on October 24, 2016, Young attempted again to redeem chips, this time only \$30,000—6 chips worth \$5,000 each—not \$44,000. Due to the high dollar amount of chips to be redeemed, the casino shift manager was called to verify the transaction. (3 JA 380.) The shift manager ultimately denied Young's transaction because Young's casino play was not commensurate with the amount of chips to be redeemed,

and Young's player's account noted Petitioner was a banned patron.

(Id.)

This time, however, Young brought an attorney with him to the Hard Rock and had a statement prepared in advance of any rejection by the Hard Rock. (3 JA 377-79.) 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.)*

In light of Hard Rock's decision to deny redemption, Young requested assistance of the Board. Board Agent Dan Nuqui investigated the matter. *(Id. at 372-75.)* As part of his investigation, Agent Nuqui obtained the surveillance report, reviewed Young's rated player information, and reviewed records from the tournament. *(Id.)* After his investigation, Agent Nuqui determined Petitioner was not entitled to redeem the disputed amount in large part because his player records did not substantiate a \$30,000 payout. *(Id. at 320.)*

On November 23, 2016, the Board informed Young that, pursuant to its investigation, Hard Rock was not obligated to award the \$30,000 in dispute. Young filed a request for reconsideration. *(Id. 316-18.)*

D. Evidentiary Hearing Before a Hearing Examiner

An evidentiary hearing on Young's Petition for Reconsideration took place on October 24, 2017, and January 22, 2018. During the evidentiary hearing, Hard Rock walked through several spreadsheet that included all information related to Young's play. (3 JA 382-463.) The spreadsheets showed the total amount of play, the "Buy In Detail" to show the type of buy-in for Young's play (e.g., cash, chips, credit, etc.), and "Chip Transactions," which represents a summary of the data to demonstrate the amount of chips Young could have in his possession based on his play. (*Id.*)

According to the data, Young could have *no more than* \$20,000 in chips in his possession. (*Id.*; *see also id.* at 238-39) This amount does not include or account for chips that Young would likely have used for dealer tips, server tips, or non-logged chip redemptions. (*Id.*) In other words, it was unlikely that Young could even have \$20,000 in chips.

During the hearing, Young attempted to defend why Hard Rock's records would show only \$20,000 in chips even though he's sought to redeem as much as \$44,000. (*Id.* at 216-17.) When asked whether Hard Rock "could have possibly tracked all your winnings and losses," Young

answered “no,” explaining that, “[a]ny time I had the chance, I would stick chips in my pocket. My goal was to make them think I lost money to invite me back, plus better comps. Hoping to get better comps.” (*Id.* at 216 (emphasis added).) In other words, Young testified that he purposefully hid chips from Hard Rock to garner better benefits for himself. (*Id.* at 216-17.)

According to Hard Rock’s Chief Financial Officer, however, even if Young hid some chips while he played, it is still not possible for him to have six, \$5,000 chips. (*Id.* at 302.) Chips in such high denominations would not escape the Hard Rock’s pit bosses and security team, who would know if those chips were being systematically hidden. (*Id.*) They are recorded when handed to the player. And, if Young received the chips because he “colored up” (traded in smaller denominations for larger ones) doing so would have then been recorded in Young’s player records. (*Id.*) Thus, Young’s theory that he had possession of the chips because he had concealed them from Hard Rock is a logistical impossibility.

Also suspicious was Young’s inability to explain why in 2011, he sought to redeem \$44,000 in chips, whereas in 2016, he sought only to

redeem \$30,000 in chips. At the hearing, he testified (untruthfully) that \$30,000 in chips were six, \$5,000 chips and the remaining \$14,000 was comprised of smaller denominations (\$1 or \$5 etc.) that he did not keep track of. (*Id.* at 244-45.) Surveillance reports, however, clearly showed that of the \$44,000 in chips he sought to redeem in 2011, \$14,000 worth were in \$1000 denominations. (*Id.* at 245.) Young has no explanation where those chips are.

E. The Board's Decision

Following the evidentiary hearing, the hearing examiner recommended to the Board that it affirm Hard Rock's decision not to pay out the \$30,000 in chips. (1 JA 7-11.) The Board unanimously accepted the recommendation. (*Id.*)

F. The District Court Affirms the Board's Decision

On May 23, 2018, Young filed a petition for judicial review asking the district court to reverse the Board's Decision. The district court heard oral argument from the parties and ultimately denied the petition for judicial review and affirmed the Board's Decision. (4 JA 638-39.) Young timely appealed to this Court.

ARGUMENT

Pursuant to NRAP 28(i), the Hard Rock adopts the arguments made by the Board in its Answering Brief. As outlined therein, the Board reasonably and appropriately interpreted Nevada law and its regulations to allow the Hard Rock to dispute Young's chip redemption.

Furthermore, the Board's Decision should be upheld under NRS 463.3666(3) because any other result would ignore the very statute that triggered this case in the first place—NRS 463.362, governing patron disputes— and protects both licensees and those who gamble at their facilities. A contrary interpretation would open the door to possible financial crimes and abuse. Accordingly, there is no justifiable basis to overturn the Board's Decision. This Court should affirm it.

A. STANDARD OF REVIEW

Young bears the burden of proof in this case. *See* NRS 463.3666(3). Under NRS 463.3666(3), he must show that the Decision of the Board 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 un-lawful procedure; (d) Unsupported by any evidence;

or (e) Arbitrary or capricious or otherwise not in accordance with law.

Id.

Young argues that the Board's Decision is arbitrary or capricious or contrary to law, NRS 463.3663(e), and it is not supported by any evidence, NRS 463.3663(d). (AOB at 12.) Young has not and cannot meet this burden. The Board's reading and application of the law is correct, and the Decision is supported by the evidence. The Decision should be upheld.

1. The Board's Decision is Not Contrary to Law

Young contends that this case turns on the interpretation of Board regulations, specifically, the definition of "patron." Young's believes that his only obligation as a rated player is to present casino chips to the cage. Once presented, he claims that Hard Rock *must* redeem them under Board regulations because he is a "patron", and Hard Rock has no right to dispute the redemption. (AOB at 12-13.) He is wrong.

A gaming licensee such as Hard Rock is specifically permitted to dispute cash payouts under NRS 463.362. Young's position would nullify that statute and render it superfluous. Moreover, Young's position would make it impossible for gaming licensees to comply with

the entirety of their obligations to comply with state and federal laws and policies, particularly those designed to combat financial crime.

a. Patron Disputes are Authorized under Statute

Young's argument is premised upon his belief that a gaming licensee is never permitted to dispute a patron payout and *must* redeem chips presented by a patron. This is not true.

NRS 463.362 entitled "Resolution of disputes" provides, in pertinent part:

1. **Whenever** a patron and 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;

. . .

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.

. . .

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.

(Emphasis added.)

Young admits that this case began with a patron dispute brought under NRS 463.362. (AOB 3.) As outlined, the statute specifies a *process* for a gaming licensee to dispute a payout with a patron. The necessary criteria or steps include (1) the presence of unresolved dispute, (2) “whatever investigation” the Board deems necessary, and (3) a determination of whether payment should be made.

There is no dispute that the Board in this instance complied with NRS 463.362: a dispute arose between Hard Rock and Young, the Board investigated the dispute by reviewing Hard Rock’s records, and the Board made a determination in favor of Hard Rock because its records shows Young redemption attempt was not commensurate with his play. This alone demonstrates the Board’s compliance with Nevada law. Nevada law allows the Board to do “whatever investigation” it deems necessary under the circumstances. The statute does not say that a licensee may never dispute a patron payout; rather, the statute governs the process to be followed when such a dispute arises.

In other words, if there is a *process* for patron disputes to be resolved through an investigation, then a customer like Young is not

entitled to redeem casino chips as a matter of law simply because they are presented at the casino cage. Put simply, the Legislature enacted a statute related to patron disputes because it recognized that a person cannot simply present chips for redemption and demand the licensee redeem them without any right of verification.

Accordingly, the Board's Decision is not legally erroneous. A gaming licensee is absolutely entitled to challenge the distribution of cash in the form of a chip redemption, and the Board complied with NRS 436.362 to resolve Young's dispute.

b. Regulation 12 Applies in the Absence of a Patron Dispute

Young disregards NRS 463.362 and relies on Board regulations governing casino chips and tokens generally. Specifically, Young claims that the Hard Rock *must* redeem any chips he presents under Board Regulation 12.060(2) and (4). (AOB 12-17.)

Regulation 12.060(2) directs a gaming licensee to “[p]romptly redeem its own chips and tokens from its patrons by cash or check drawn on an account of the licensee,” and Regulation 12.0604 forbids a licensee from redeeming a chips if they are presented by a person “who the licensee knows or reasonably should know is not a patron of its

gaming establishment. Young claims that he was a “patron” because he was a customer of the Hard Rock, and that because he was a customer, Hard Rock has no right to verify his play under Board Regulations.

But Regulation 12 is only intended to cover scenarios where there is no dispute over a patron’s possession or authority to have casino chips or tokens. In the absence of any dispute, a licensee must immediately redeem chips presented—it cannot, for example, delay such redemption.

Where there is a dispute, however, NRS 463.362 and *its* accompanying regulations (Gaming Regulation 7) apply. That statute, as explained above, outlines the process to be followed, including that a licensee must notify the Board of any dispute and the Board must conduct “whatever investigation” it deems necessary. NRS 463.362.

c. Regulation 12 Cannot Nullify NRS 463.362

Young’s interpretation of Regulation 12 conflicts with the spirit and intent of NRS 463.362 and would strip gaming licensees of a statutory right to dispute a cash payout in the rare occasions where doing so is necessary. *State, 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”). Indeed, under Young’s theory of this case, patron disputes could never occur; a licensee would be bound by law to redeem chips as a matter of course without any right to dispute the payout. But the Legislature intended the opposite.

As stated, NRS 463.362 specifically presents a resolution process for patron disputes. The Board cannot interpret its regulation in a way that creates a conflict with statute or the rights afforded to those contemplated under such statute. *See, e.g., Jerry’s Nugget v. Keith*, 111 Nev. 49, 54, 888 P.2d 921, 924 (1995) (stating that “administrative regulations cannot contradict the statute they are designed to implement”). Under Young’s theory, licensees lose also lose *their* statutory right to an investigation in the event of a dispute.

d. Young’s Position Conflicts with Other Licensee Obligations

Importantly, Young also ignores that gaming licensees are obligated to follow Nevada and federal laws and policies. Nev. Gaming Comm. Reg. § 12.060(2)(a). Young’s position would result in the Hard Rock’s (and other licensees’) inability to meet other legal obligations designed to prevent fraud, money laundering, the redemption of

someone else's chips (e.g., theft) and other financial crimes. In other words, Hard Rock has legal obligations to more than just an individual customer.

For example, casinos like the Hard Rock with gross gaming revenues that exceed \$1 million are financial institutions subject to the Bank Secrecy Act, which are designed to prevent financial crime, including money laundering and terrorism. 31 C.F.R. § 1021.320 *et seq.* Under 31 C.F.R. § 1021.320, Hard Rock *must* report certain transactions that the casino suspects might involve funds derived from illegal activities or to evade other laws. These requirements prevent Hard Rock from simply redeeming \$30,000 to any customer presenting chips where internal records don't substantiate his play.

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

Accordingly, the Board did not err in concluding that Hard Rock was not required to redeem chips from Young where its records did not substantiated his play, and the Board acted properly in its investigation under NRS 463.362. The narrow way that Young reads the regulation divorced from NRS 463.362 would mean that any customer could play \$10 at a single game and come back later with \$30,000 in chips demanding redemption. That is unsupported and illogical.

2. There is at least *Some* Evidence that Young Could Not Have \$30,000 in Chips

Young must prove there is not not “any” evidence supporting the Board’s decision; a burden he cannot meet. See NRS 463.3666(3)(d) (allowing an agency decision to be overturned if it is “unsupported by any evidence.”). As explained in *Sengel v. IGT*, 116 Nev. 565, 570, 2 P.3d 258, 261 (2000):

NRS 463.3666(3)(d) uses the word ‘any’ instead of ‘substantial,’ indicating that a reviewing court should affirm a decision of the Board which is supported by *any 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.

In his Opening Brief, Young spends a great deal of time discussing Hard Rock's purported "voo doo mathematics" in order to argue there is *no* evidence to support the Board's Decision. (AOB 22-24.) But such an exercise is futile.

The Board's Decision was based on extensive records before a hearing examiner, who also heard testimony from the Hard Rock. (3 JA 382-463.) In particular, the hearing examiner heard from Chad Konrad, Hard Rock's Vice President of Finance, who confirmed that Hard Rock's records did not show that Young could have possession of six chip worth \$5,000. (*See, e.g.*, 225-226.) That testimony and corresponding documentary evidence is at least *some* evidence supporting the Board's Decision even if Young disagrees with it.

More importantly, regardless of the mathematics undertaken by Young, the evidence shows that six, \$5,000 chips could not have escaped the Hard Rock's tracking system. For example, testimony from the Mr. Konrad confirms that the Hard Rock scrupulously tracks chips in denominations of \$5,000; they cannot be simply hidden by a customer seeking more "comps." (2 JA 10, 227, 289, and 302-303.) Thus, even if somehow the math added up to justify Young's possession of \$30,000,

there is at least *some* evidence that Young could not have six, \$5,000 chips. Accordingly, the Board's decision and the district court's order should be affirmed.

Conclusion

The Nevada Gaming Control Board followed Nevada law and its own regulations when it investigated a patron dispute between Hard Rock and Young by reviewing Hard Rock's records, and made a determination that chip redemption was not required. The Board's Decision was properly made and the district court's order affirming the Decision should be upheld.

DATED this 16th day of December, 2019.

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RULE 28.2 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:

[x] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Century Schoolbook font, size 14.

2. 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 either:

[x] Proportionately spaced, has a typeface of 14 points or more, and contains 4,383 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(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: December 16, 2019

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Lewis Roca Rothgerber Christie LLP, and that the forgoing **Answering Brief** was filed electronically with the Supreme Court of Nevada on the 16th day of December, 2019. Electronic Service of the forgoing document shall be made in accordance with the Master Service List as follows:

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