

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

CASINO CONNECTION INTERNATIONAL
LLC, A GEORGIA LIMITED LIABILITY
COMPANY, Appellant,
vs.
NEVADA LABOR COMMISSIONER, A
NEVADA ADMINISTRATIVE AGENCY,

No. 82683

Electronically Filed
Apr 19 2021 04:46 p.m.

DOCKETING Elizabeth Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

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

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 25
County Clark Judge Kathleen Delaney
District Ct. Case No. A-19-805612-J

2. Attorney filing this docketing statement:

Attorney Eric R. Olsen Telephone 725-777-3000
Firm Garman Turner Gordon LLP
Address 7251 Amigo St., Suite 210, Las Vegas, NV 89119

Client(s) Casino Connection International, LLC

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

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

Attorney Andrea Nicols Telephone 775-687-2100
Firm Nevada Attorney General
Address 5420 Kiestzke Lane, Suite 202, Carson City, NV 89511

Client(s) Nevada Labor Commissioner

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

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

- Child Custody
- Venue
- Termination of parental rights

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

N/A

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

Casino Connection v Nevada Labor Commissioner and Buyachek; A-19-805612-J: Order Denying Judicial Review was entered February 23, 2021.

John Buyachek Jr v Casino Connection, Before the Nevada Labor Commissioner; NLC-18-0003559. Findings of Fact Conclusions of Law and Order entered October 18, 2019. Which was appeal by Casino Connection to the Eighth Judicial District Court by Petition for Judicial Review filed by Casino Connection on November 28, 2019.

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

Appellant sought judicial review, or alternatively a writ of mandamus and/or prohibition of Findings of Fact, Conclusions of Law, and Order issued by the Nevada Labor Commissioner on October 18, 2019, in the above-referenced matter.

The district court ordered the Findings of Fact, Conclusions of Law, and Order affirmed, and ordered that the Petition for Judicial Review or, in the Alternative Petition for Writ of Mandamus and/or Prohibition, filed herein on November 18, 2019, be denied.

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

1. An abuse of discretion occurred at the administrative and district court levels because the record does not contain substantial evidence supporting the administrative decision that 12.5% commission was due to claimant after his departure from the company.
2. The hearing officer abused her discretion and acted in a arbitrary manner with regard to the interpretation of the contract, and the district court failed to address this interpretation of the contract which must be reviewed de novo.

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

N/A

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

N/A

Yes

No

If not, explain:

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

Reversal of well-settled Nevada precedent (identify the case(s))

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

If so, explain: The determination of commissions due under a contract is an issue of every increasing importance in the changing economy, and more guidance is required from the court on the language of commission agreements and their interpretation.

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

Please see Sec. 12 above.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

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

N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from February 20, 2021

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

17. Date written notice of entry of judgment or order was served February 23, 2021

Was service by:

Delivery

Mail/electronic/fax

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

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

NRCP 50(b) Date of filing _____

NRCP 52(b) Date of filing _____

NRCP 59 Date of filing _____

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

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

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

Delivery

Mail

19. Date notice of appeal filed March 25, 2021

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

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

SUBSTANTIVE APPEALABILITY

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

(a)

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

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

This is an appeal from a final judgment denying judicial review of an administrative decision.

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

(a) Parties:

Casino Connection International, LLC
Nevada Labor Commissioner

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

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

Appellant sought judicial review of a Labor Commissioner hearing award of commissions at 12.5%, even though claimant left its employ and did not complete tasks necessary to receive commissions, which Appellant had to pay a replacement 5% commissions to complete. The district court denied review.

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

Yes

No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

Yes

No

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

Yes

No

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

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

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

VERIFICATION

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

Casino Connection Inc.
Name of appellant

Eric R. Olsen
Name of counsel of record

April 19, 2021
Date

/s/ Eric R. Olsen
Signature of counsel of record

Clark County Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 19th day of April, 2021, I served a copy of this completed docketing statement upon all counsel of record:

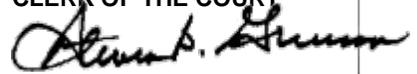
- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Aaron D. Ford/Andrea Nichols
Office of the Attorney General
100 North Carson St
Carson City, NV 89701-4717

Shannon Chambers
Office of the Labor Commissioner - State of Nevada
3300 W. Sahara Ave., Suite 225
Las Vegas, NV 89102

Dated this 19th day of April, 2021

/s/ CM Wrangham
Signature



1 GARMAN TURNER GORDON LLP
ERIC R. OLSEN
2 Nevada Bar No. 3127
Email: colsen@gtg.legal
3 650 White Drive, Suite 100
Las Vegas, Nevada 89119
4 Tel: (725) 777-3000
Fax: (725) 777-3112

CASE NO: A-19-805612-J
Department 25

5 *Attorneys for Respondent Casino Connections*
6 *International, LLC*

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 CASINO CONNECTION INTERNATIONAL,
10 LLC., a Georgia limited liability company,

11 Petitioner,

12 v.

13 NEVADA LABOR COMMISSIONER; a
14 Nevada Administrative Agency, and JOHN
BUYACHEK, JR., an individual,

15 Respondents.

CASE NO.
DEPT. NO.

PETITION FOR JUDICIAL REVIEW OR,
IN THE ALTERNATIVE, PETITION FOR
WRIT OF MANDAMUS AND/OR
PROHIBITION

16
17 1. This is a petition brought by Casino Connection International, LLC, ("CCI") to
18 obtain relief from the Nevada Labor Commissioner's ("Labor Commissioner") October 18, 2019
19 determination that, *inter alia*, CCI owes John Buyachek, Jr. ("Buyachek") unpaid commissions,
20 along with the attendant penalty. CCI requests that the Court grant judicial review and exercise
21 its authority under the Nevada Administrative Procedure Act ("APA"), NRS Chapter 233B, to
22 vacate the Labor Commissioner's decision. Alternatively, if for some reason the Court concludes
23 that it is precluded from granting relief under the APA, CCI requests that the Court issue a writ
24 of mandamus and/or prohibition which vacates the Labor Commissioner's decision and instructs
25 the Labor Commissioner to dismiss the underlying administrative complaint. A copy of the
26 Findings of Fact, Conclusions of Law and Order ("Decision") is attached as Exhibit 1.

27 ///

1 **THE PARTIES**

2 2. Petitioner CCI is a Georgia limited liability company, authorized to do business,
3 and doing business, in Clark County, Nevada.

4 3. Respondent Labor Commissioner is an administrative agency created by the State
5 of Nevada pursuant to NRS Chapter 607. The Labor Commissioner issued the Order from which
6 CCI seeks relief.

7 4. Respondent John Buyachek (“Buyachek”) is an individual making a claim for
8 wages.

9 **JURISDICTION AND VENUE**

10 5. The Court has jurisdiction to consider CCI’s request for review under the
11 provisions of NRS 223B.130 and NRS 607.215; and this Petition has been filed within thirty
12 days of the date on which the Order was issued and served. In addition, because CCI would not
13 otherwise have a plain, speedy, and adequate remedy in the ordinary court of law by which it
14 could obtain relief from the Order, the Court has jurisdiction to review the Order and issue a writ
15 of mandamus and/or prohibition in accordance with NRS 34.160 and NRS 34.330.

16 6. The Eighth Judicial District Court is the proper venue for this action. Both the
17 underlying administrative action and the Order concern work which was performed in Clark
18 County.

19 **PROCEDURAL HISTORY**

20 7. On October 23, 2018, Buyachek initiated the action against CCI by filing a claim
21 with the Labor Commissioner for wage payments that were allegedly unpaid and due.

22 8. Specifically, Buyachek’s claim is comprised of commissions he alleges are due on
23 revenues collected by CCI through October 2018. Buyachek filed his claim October 23, 2018
24 for the time period of May 10, 2018 to October 22, 2018. As such, the Hearing Officer only
25 directly considered commissions claimed by Buyachek for the time period of May 10, 2018 to
26 October 22, 2018. In fact, it is Buychek’s claim that commissions on contracts entered into while
27 he was employed by CCI were payable through February 2019, even though his employment
28 ended in early May 2018.

1 9. This matter commenced on October 23, 2018, when Buyachek filed a claim for
2 wages with the Labor Commissioner, against CCI, for \$64,442.57 in claimed commissions; for
3 the time period of May 10, 2018 to October 22, 2018. The Labor Commissioner commenced an
4 investigation into the allegations and on February 5, 2019, Investigator Ballard issued a
5 determination for the limited time period of May 9, 2018 to June 30, 2018. Investigator
6 Ballard's determination found \$11,554.21 in wages due; assessed a penalty \$1,485.00 payable to
7 Buyachek pursuant to NRS 608.040; and assessed an administrative penalty in the amount of
8 \$5,000.00 for violations of NAC section 608.120 – Payment of Commissions. CCI made a
9 timely payment and Investigator Ballard reduced the \$5,000.00 administrative penalty to
10 \$1,000.00. Buyachek, however, filed an objection to the determination, on the grounds that it
11 did not address the entire time period of his wage claim. On July 18, 2019, a pre-hearing
12 conference was held. No resolution was reached, and a hearing date was set.

13 10. A hearing took place on October 8, 2019.

14 11. The Labor Commissioner, through the Hearing Officer, issued the Order on
15 October 18, 2019.¹

16 12. The Order concluded that by not paying on revenue due and collected after
17 Buyachek's departure from the company, Petitioner violated NAC 608.120(1) and NAC
18 608.040. It then ordered that:

- 19 a. Casino Connection International, LLC, owes John Buyachek Jr. \$42,244.00 in unpaid
20 commissions, for the time period of May 10, 2018 to October 22, 2018;
- 21 b. Casino Connection International, LLC, is assessed a penalty pursuant to NRS section
22 608.040 in the amount of \$1,980.00 payable to John Buyachek Jr.
- 23 c. Payment in the gross amount of \$44,224.00 should be remitted to the Office of the
24 Labor Commissioner in the name of John Buyachek Jr. within 15 days of issuance of
25 this order.
- 26 d. The Order does not preclude Claimant (Buyachek) from attempting to collect unpaid

27
28 ¹ Served October 21, 2019.

1 commissions for the time period after October 23, 2019.

2 13. CCI now files this petition for review of the Order.

3 **GROUND FOR RELIEF**

4 14. CCI is entitled to relief from the Order

5 15. The Labor Commissioner's determination that CCI violated NAC 608.120 and
6 NAC 608.040, and that it owes 12.5% commissions to Buychek on revenues due and collected
7 after his departure from the company is erroneous and contrary to both fact and law.

8 16. The first question before this court is of statutory construction, namely, whether
9 the hearing officer properly interpreted the wage statutes applicable to this case. "[A] reviewing
10 court may undertake independent review of the administrative construction of a statute."²

11 17. The second question before this court is one of a lack of substantial evidence,
12 namely, whether, by excluding and/or disregarding evidence that Buyachek knew of and agreed
13 to terms that he would not receive commissions on revenues due and paid by on contracts after
14 his departure from the company, and/or that any commissions would be reduced by the 5% paid
15 to others to administer any open contracts, the hearing officer lacked substantial evidence to
16 support her findings and conclusions. A court's review "determine[s], based on the
17 administrative record, whether substantial evidence supports the administrative decision."³

18 18. On those grounds, CCI is entitled to relief from the Order, because the hearing
19 officer's legal and factual determinations are erroneous in light of the record and prevailing law,
20 and because it is arbitrary, capricious and characterized by an abuse of discretion.

21 19. Alternatively, if for some reason the Court determines it is precluded from
22 vacating the decision in accordance with NRS 233B.130, CCI is nevertheless entitled to relief
23 through a writ of mandamus or prohibition. CCI has filed this petition and seeks immediate
24 relief, because it has no other plain, speedy, and adequate remedy in the ordinary course of law.

25
26 ² *Coast Hotels and Casinos, Inc. v. Nevada State Labor Com'n*, 117 Nev. 835, 34 P.3d 546
27 (2001).

28 ³ *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801, 805 (2006).

PRAYER

Petitioner Prays:

A. That the Court vacate the ruling of the Labor Commissioner and find for CCI that no wages are due to Buyachek from CCI.

B. That the Court instruct the Labor Commissioner to dismiss the administrative complaint and take no further action or investigation regarding the allegations raised by Buyachek.

C. That the Court award Petitioner its attorney fees and costs; and

D. That the Court order all other appropriate relief.

Dated this 18th day of November, 2019.

GARMAN TURNER GORDON LLP



ERIC R. OLSEN
Nevada Bar No. 3127
650 White Drive, Suite 100
Las Vegas, Nevada 89119
Attorneys for Petitioner

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the ___ day of November, 2019, the foregoing **PETITION FOR**
3 **JUDICIAL REVIEW** was submitted electronically for filing and/or service on. Electronic
4 service via e-mail of the foregoing document shall be made in accordance with the E-Service

5 List as follows:⁴

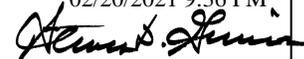
6 Mary M. Huck
7 Takia Ballard
8 Office of the Labor Commissioner - State of Nevada
9 3300 W. Sahara Ave., Suite 225
10 Las Vegas, NV 89102
11 thallard@labor.nv.gov

12 John Buyachek, Jr.
13 4776 Desert Vista Road
14 Las Vegas, NV 89121
15 jbchek@aol.com

16 
17 An employee of GARMAN TURNER GORDON

18 4815-6288-4525, v. 2

19
20
21
22
23
24
25
26 _____
27 ⁴ Pursuant to Administrative Order 14-2, dated May 9, 2014, service by electronic means is mandatory in the Eighth
28 Judicial District Court. Further, pursuant to EDCR 8.05(a), each party who submits an E-Filed document through
the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D); and, pursuant to EDCR
8.05(d), users who register with the electronic filing system are deemed to consent to receive service electronically.



CLERK OF THE COURT

1 **ODJR**
2 **AARON D. FORD**
3 Attorney General
4 **ANDREA NICHOLS** (Bar No. 6436)
5 Senior Deputy Attorney General
6 Office of the Attorney General
7 100 N. Carson Street
8 Carson City, NV 89701-4717
9 (775) 684-1218 (phone)
10 (775) 688-1156 (fax)
11 ANichols@ag.nv.gov

12 Attorneys for Nevada Labor Commissioner

13 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF**
14 **THE STATE OF NEVADA IN AND FOR CLARK COUNTY**

15 **CASINO CONNECTION**
16 **INTERNATIONAL, LLC.**, a Georgia
17 limited liability company,

18 Petitioner,

19 v.

20 **NEVADA LABOR COMMISSIONER;** a
21 Nevada Administrative Agency, and
22 **JOHN BUYACHEK, JR.**, an individual,

23 Respondents.

Case No. A-19-805612-J

Dept. No. 25

ORDER DENYING CASINO
CONNECTION INTERNATIONAL,
LLC'S PETITION FOR JUDICIAL
REVIEW OR, IN THE ALTERNATIVE,
PETITION FOR WRIT OF MANDAMUS
AND/OR PROHIBITION

24 This matter came before the Court on January 12, 2021, for hearing on Petitioner,
25 Casino Connection International, LLC's, Petition for Judicial Review of the Findings of
26 Fact, Conclusions of Law and Order issued by Respondent, Nevada Labor Commissioner,
27 on October 18, 2019. Petitioner, Casino Connection, LLC, was represented by Eric R. Olsen
28 of Garman Turner Gordon, LLP and Respondent, Nevada Labor Commissioner, was
represented by Andrea Nichols, Senior Deputy Attorney General.

Petitioner filed its Opening Brief on November 2, 2020. Respondent, Nevada Labor
Commissioner, filed its Reply Memorandum of Points and Authorities on December 2, 2020,
and Petitioner filed its Reply Brief on January 4, 2021. In addition to the Briefs this Court
considered the Transcript, filed herein on September 1, 2020, and the Remainder of the
Administrative Record on Appeal filed herein on September 3, 2020.

///

1 Having carefully read and considered the filings and having heard and considered
2 the arguments of counsel, the Court hereby makes the following Findings of Fact,
3 Conclusions of Law and Order:

4 **FINDINGS OF FACT**

5 This matter commenced on October 23, 2018, when John Buyachek, Jr. (“Mr.
6 Buyachek”) submitted a claim for wages to the Office of the Labor Commissioner (“OLC”)
7 for unpaid commissions during the period of May 10, 2018 to October 22, 2018.¹ The OLC
8 commenced an investigation and the OLC’s Investigator issued a determination for the
9 limited time period of May 9, 2018 to June 30, 2018.² Mr. Buyachek objected because the
10 determination did not address the entire time period.

11 The matter was heard on October 8, 2019, by the Deputy Labor Commissioner
12 serving in her capacity as Hearing Officer.³ On October 18, 2019, the Hearing Officer issued
13 Findings of Fact, Conclusions of Law and Order.⁴ Respondent, Casino Connection,
14 International, LLC (“Casino Connection”) filed its Petition for Judicial Review or, in the
15 Alternative Petition for Writ of Mandamus and/or Prohibition, on November 18, 2019.

16 This Court’s review is conducted pursuant to NRS 233B.135 which states,

- 17 1. Judicial review of a final decision of an agency must be:
18 (a) Conducted by the court without a jury; and
19 (b) Confined to the record.

20 In cases concerning alleged irregularities in procedure before an
21 agency that are not shown in the record, the court may receive
22 evidence concerning the irregularities.

23 2. The final decision of the agency shall be deemed reasonable
24 and lawful until reversed or set aside in whole or in part by the
25 court. The burden of proof is on the party attacking or resisting
26 the decision to show that the final decision is invalid pursuant to
27 subsection 3.

28 3. The court shall not substitute its judgment for that of the
agency as to the weight of evidence on a question of fact. The
court may remand or affirm the final decision or set it aside in

1 ROA 000001-16.

2 ROA 000381-82.

3 Appointed pursuant to NAC 607.310(1).

4 ROA 000381-387.

1 whole or in part if substantial rights of the petitioner have been
2 prejudiced because the final decision of the agency is:

- 3 (a) In violation of constitutional or statutory provisions;
- 4 (b) In excess of the statutory authority of the agency;
- 5 (c) Made upon unlawful procedure;
- 6 (d) Affected by other error of law;
- 7 (e) Clearly erroneous in view of the reliable, probative and
8 substantial evidence on the whole record; or
- 9 (f) Arbitrary or capricious or characterized by abuse of
10 discretion.

11 4. As used in this section, “substantial evidence” means
12 evidence which a reasonable mind might accept as adequate to
13 support a conclusion.

14 The Hearing Officer found in relevant part that Mr. Buyachek was employed by
15 Casino Connection for the time period of September, 2015 to May, 2018.⁵ On September
16 19, 2015, Mr. Buyachek and Casino Connection signed the Formal Offer of Employment⁶,
17 which contained a brief section regarding commissions:

18 5% commission will be paid on existing sales you will be
19 managing. 12% commission will be paid on any new sales you
20 make. Commissions are paid on collected net revenues the
21 month following the collections. Commissions are paid in equal
22 installments-divided by the number of paychecks that month.
23 While you are receiving your draw, only commissions that exceed
24 your draw will be paid.⁷

25 The Hearing Officer made further factual findings and concluded that Mr.
26 Buyachek’s, “contracts from May 10, 2018 to October 22, 2018 was \$337,952.60. 12.5% of
27 this amount would be \$42,244.07.”⁸ The Hearing Officer ordered Casino Connection to pay
28 this amount and assessed an additional penalty pursuant to NRS 608.040 for Casino
Connection’s failure to pay commissions when they became due as required by NAC
608.120.⁹

///

///

⁵ ROA 000382.

⁶ *Id.* The parties’ offer and acceptance is in the Record on Appeal at ROA 000092, ROA 000141, ROA 000146 and ROA 000169.

⁷ ROA 000382-383.

⁸ ROA 000383-84.

⁹ ROA 000384-385.

1 **CONCLUSIONS OF LAW**

2 Petitioner, Casino Connection challenges the Hearing Officer’s application of NAC
3 608.120. Pursuant to NRS 608.012 wages includes commissions owed to an employee. NRS
4 608.180 charges the Labor Commissioner with enforcement of this statute.¹⁰ NAC 608.120
5 requires an employer to pay each commission to the employee when the commission
6 becomes payable pursuant to an agreement. In light of this statutory scheme, the Court
7 finds no merit in Petitioner’s challenge to the regulation either on its face or as applied.

8 Petitioner argues that Mr. Buyachek had the burden of proving his claim as objector
9 to the Labor Commissioner’s original determination and that the Hearing Officer
10 improperly shifted the burden of proof to Casino Connection. The Court concludes that Mr.
11 Buyachek met the burden of showing that he was entitled to 12.5% commission.

12 Lastly, Casino Connection argues that, since it was required to pay another
13 employee 5% to manage existing sales, Mr. Buyachek’s commissions should be reduced by
14 this amount. There is no evidence that the 12.5% gets reduced by 5%. Substantial evidence
15 supports the Hearing Officer’s determination that, “based on the terms of the agreement
16 the parties mutually entered into, the Claimant [Mr. Buyachek] should have continued to
17 receive commissions even after he was terminated from his employment; he had completed
18 the sale.”¹¹

19 Considering the totality of the record, the Hearing Officer’s Decision is sound and is
20 supported by substantial evidence.

21 There is no basis to remand or to set aside the Decision in whole or in part.

22 Casino Connection has failed to show that its rights have been prejudiced.

23 The Decision is not: In violation of constitutional or statutory provisions; In excess
24 of the statutory authority of the agency; Made upon unlawful procedure; Affected by other
25 error of law; Clearly erroneous in view of the reliable, probative and substantial evidence
26 on the whole record; Nor arbitrary or capricious or characterized by abuse of discretion.

27 ¹⁰ Additionally, NRS 607.160 requires the Labor Commissioner to enforce all labor laws of the state of
Nevada.

28 ¹¹ ROA 000385.

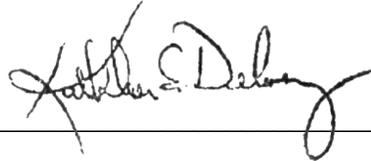
1 Casino Connection's Alternative Petition for Writ of Mandamus and/or Prohibition
2 must also be denied. Such relief is only available if no adequate and speedy legal remedy
3 exists. Because a petition for judicial review is an adequate and speedy legal remedy a writ
4 of mandamus and/or prohibition is not appropriate to challenge the OLC's Decision. *Kay*
5 *v. Nunez*, 122 Nev. 1100, 1104-05 (2006).

6 THEREFORE, IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of
7 Law, and Order issued by the Nevada Labor Commissioner on October 18, 2019, in the
8 above-referenced matter, is AFFIRMED.

9 IT IS FURTHER ORDERED that the Petition for Judicial Review or, in the
10 Alternative Petition for Writ of Mandamus and/or Prohibition, filed herein on November
11 18, 2019, is DENIED.

12 **IT IS SO ORDERED**

Dated this 20th day of February, 2021



278 FC7 B114 8F98
Kathleen E. Delaney
District Court Judge

13
14
15
16
17
18
19 Respectfully submitted by:

20 AARON D. FORD
Attorney General

21 By: /s/ Andrea Nichols
22 ANDREA NICHOLS (Bar No. 6436)
23 Senior Deputy Attorney General
24 Office of the Attorney General
100 N. Carson Street
Carson City, NV 89701-4717

25 *Attorneys for Respondent,*
26 *Nevada Labor Commissioner*

Approved by:

GARMEN TURNER GORDEN LLP

/s/ Eric R. Olsen
ERIC R. OLSEN (Bar No. 3127)
7251 Amigo street, Suite 210
Las Vegas, NV 89119

27 *Attorneys for Petitioner,*
28 *Casino Connection, LLP*

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Casino Connection International
LLC, Petitioner(s)

CASE NO: A-19-805612-J

7 vs.

DEPT. NO. Department 25

8
9 Nevada Labor Commissioner,
Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Denying Judicial Review of Administrative Decision was served
15 via the court's electronic eFile system to all recipients registered for e-Service on the above
entitled case as listed below:

16 Service Date: 2/20/2021

17 Catherine Rowe

crowe@gtg.legal

18 Eric Olsen

eolsen@gtg.legal

19 Andrea Nichols

anichols@ag.nv.gov

20

21

22

23

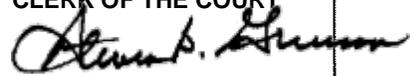
24

25

26

27

28



1 **NEOJ**
2 AARON D. FORD
3 Attorney General
4 ANDREA NICHOLS (Bar No. 6436)
5 Senior Deputy Attorney General
6 Office of the Attorney General
7 100 N. Carson Street
8 Carson City, NV 89701-4717
9 (775) 684-1218 (phone)
10 (775) 688-1156 (fax)
11 ANichols@ag.nv.gov

12 Attorneys for Nevada Labor Commissioner

13
14 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF**
15 **THE STATE OF NEVADA IN AND FOR CLARK COUNTY**

16 CASINO CONNECTION
17 INTERNATIONAL, LLC., a Georgia
18 limited liability company,

19 Petitioner,

20 v.

21 NEVADA LABOR COMMISSIONER; a
22 Nevada Administrative Agency, and
23 JOHN BUYACHEK, JR., an individual,

24 Respondents.

Case No. A-19-805612-J

Dept. No. 25

**NOTICE OF ENTRY OF ORDER
DENYING CASINO CONNECTION
INTERNATIONAL, LLC'S PETITION
FOR JUDICIAL REVIEW OR, IN THE
ALTERNATIVE, PETITION FOR WRIT
OF MANDAMUS AND/OR
PROHIBITION**

25
26 PLEASE TAKE NOTICE that on February 20, 2021 the above-entitled Court
27 entered its Order *Denying Casino Connection International, LLC's Petition for Judicial*
28 *Review, or in the Alternative, Petition for Writ of Mandamus and/or Prohibition.* A copy of
said Order is attached as Exhibit "A."

Dated this 23rd day of February 2021.

AARON D. FORD
Attorney General

By: /s/ Andrea Nichols _____
ANDREA NICHOLS
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 23rd of February 2021, I filed the foregoing document the *Notice of Entry of Order Denying Casino Connection International, LLC's Petition for Judicial Review, or in the Alternative, Petition for Writ of Mandamus and/or Prohibition* via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically.

Eric R. Olsen, Esq.
GARMAN TURNER GORDON LLP
650 White Drive, Suite 100
Las Vegas, NV 89119

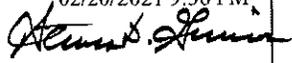
The following parties are not registered and therefore, a prepaid postage copy of this document has been placed in the U.S. mail in Carson City, Nevada:

John Buyachek, Jr.
4776 Desert Vista Road
Las Vegas, NV 89121

/s/ Susan Messina
An employee of the Nevada Office of the
Attorney General

EXHIBIT A

EXHIBIT A


CLERK OF THE COURT

1 **ODJR**
2 **AARON D. FORD**
3 Attorney General
4 **ANDREA NICHOLS** (Bar No. 6436)
5 Senior Deputy Attorney General
6 Office of the Attorney General
7 100 N. Carson Street
8 Carson City, NV 89701-4717
9 (775) 684-1218 (phone)
10 (775) 688-1156 (fax)
11 ANichols@ag.nv.gov

12 Attorneys for Nevada Labor Commissioner

13 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF**
14 **THE STATE OF NEVADA IN AND FOR CLARK COUNTY**

15 **CASINO CONNECTION**
16 **INTERNATIONAL, LLC.**, a Georgia
17 limited liability company,

18 Petitioner,

19 v.

20 **NEVADA LABOR COMMISSIONER;** a
21 Nevada Administrative Agency, and
22 **JOHN BUYACHEK, JR.**, an individual,

23 Respondents.

Case No. A-19-805612-J

Dept. No. 25

ORDER DENYING CASINO
CONNECTION INTERNATIONAL,
LLC'S PETITION FOR JUDICIAL
REVIEW OR, IN THE ALTERNATIVE,
PETITION FOR WRIT OF MANDAMUS
AND/OR PROHIBITION

24 This matter came before the Court on January 12, 2021, for hearing on Petitioner,
25 Casino Connection International, LLC's, Petition for Judicial Review of the Findings of
26 Fact, Conclusions of Law and Order issued by Respondent, Nevada Labor Commissioner,
27 on October 18, 2019. Petitioner, Casino Connection, LLC, was represented by Eric R. Olsen
28 of Garman Turner Gordon, LLP and Respondent, Nevada Labor Commissioner, was
represented by Andrea Nichols, Senior Deputy Attorney General.

Petitioner filed its Opening Brief on November 2, 2020. Respondent, Nevada Labor
Commissioner, filed its Reply Memorandum of Points and Authorities on December 2, 2020,
and Petitioner filed its Reply Brief on January 4, 2021. In addition to the Briefs this Court
considered the Transcript, filed herein on September 1, 2020, and the Remainder of the
Administrative Record on Appeal filed herein on September 3, 2020.

///

1 Having carefully read and considered the filings and having heard and considered
2 the arguments of counsel, the Court hereby makes the following Findings of Fact,
3 Conclusions of Law and Order:

4 **FINDINGS OF FACT**

5 This matter commenced on October 23, 2018, when John Buyachek, Jr. ("Mr.
6 Buyachek") submitted a claim for wages to the Office of the Labor Commissioner ("OLC")
7 for unpaid commissions during the period of May 10, 2018 to October 22, 2018.¹ The OLC
8 commenced an investigation and the OLC's Investigator issued a determination for the
9 limited time period of May 9, 2018 to June 30, 2018.² Mr. Buyachek objected because the
10 determination did not address the entire time period.

11 The matter was heard on October 8, 2019, by the Deputy Labor Commissioner
12 serving in her capacity as Hearing Officer.³ On October 18, 2019, the Hearing Officer issued
13 Findings of Fact, Conclusions of Law and Order.⁴ Respondent, Casino Connection,
14 International, LLC ("Casino Connection") filed its Petition for Judicial Review or, in the
15 Alternative Petition for Writ of Mandamus and/or Prohibition, on November 18, 2019.

16 This Court's review is conducted pursuant to NRS 233B.135 which states,

- 17 1. Judicial review of a final decision of an agency must be:
18 (a) Conducted by the court without a jury; and
19 (b) Confined to the record.

20 In cases concerning alleged irregularities in procedure before an
21 agency that are not shown in the record, the court may receive
22 evidence concerning the irregularities.

23 2. The final decision of the agency shall be deemed reasonable
24 and lawful until reversed or set aside in whole or in part by the
25 court. The burden of proof is on the party attacking or resisting
26 the decision to show that the final decision is invalid pursuant to
27 subsection 3.

28 3. The court shall not substitute its judgment for that of the
agency as to the weight of evidence on a question of fact. The
court may remand or affirm the final decision or set it aside in

¹ ROA 000001-16.

² ROA 000381-82.

³ Appointed pursuant to NAC 607.310(1).

⁴ ROA 000381-387.

1 whole or in part if substantial rights of the petitioner have been
2 prejudiced because the final decision of the agency is:

- 3 (a) In violation of constitutional or statutory provisions;
- 4 (b) In excess of the statutory authority of the agency;
- 5 (c) Made upon unlawful procedure;
- 6 (d) Affected by other error of law;
- 7 (e) Clearly erroneous in view of the reliable, probative and
8 substantial evidence on the whole record; or
- 9 (f) Arbitrary or capricious or characterized by abuse of
10 discretion.

11 4. As used in this section, "substantial evidence" means
12 evidence which a reasonable mind might accept as adequate to
13 support a conclusion.

14 The Hearing Officer found in relevant part that Mr. Buyachek was employed by
15 Casino Connection for the time period of September, 2015 to May, 2018.⁵ On September
16 19, 2015, Mr. Buyachek and Casino Connection signed the Formal Offer of Employment⁶,
17 which contained a brief section regarding commissions:

18 5% commission will be paid on existing sales you will be
19 managing. 12% commission will be paid on any new sales you
20 make. Commissions are paid on collected net revenues the
21 month following the collections. Commissions are paid in equal
22 installments-divided by the number of paychecks that month.
23 While you are receiving your draw, only commissions that exceed
24 your draw will be paid.⁷

25 The Hearing Officer made further factual findings and concluded that Mr.
26 Buyachek's, "contracts from May 10, 2018 to October 22, 2018 was \$337,952.60. 12.5% of
27 this amount would be \$42,244.07."⁸ The Hearing Officer ordered Casino Connection to pay
28 this amount and assessed an additional penalty pursuant to NRS 608.040 for Casino
Connection's failure to pay commissions when they became due as required by NAC
608.120.⁹

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⁵ ROA 000382.

⁶ *Id.* The parties' offer and acceptance is in the Record on Appeal at ROA 000092, ROA 000141, ROA 000146 and ROA 000169.

⁷ ROA 000382-383.

⁸ ROA 000383-84.

⁹ ROA 000384-385.

1 **CONCLUSIONS OF LAW**

2 Petitioner, Casino Connection challenges the Hearing Officer's application of NAC
3 608.120. Pursuant to NRS 608.012 wages includes commissions owed to an employee. NRS
4 608.180 charges the Labor Commissioner with enforcement of this statute.¹⁰ NAC 608.120
5 requires an employer to pay each commission to the employee when the commission
6 becomes payable pursuant to an agreement. In light of this statutory scheme, the Court
7 finds no merit in Petitioner's challenge to the regulation either on its face or as applied.

8 Petitioner argues that Mr. Buyachek had the burden of proving his claim as objector
9 to the Labor Commissioner's original determination and that the Hearing Officer
10 improperly shifted the burden of proof to Casino Connection. The Court concludes that Mr.
11 Buyachek met the burden of showing that he was entitled to 12.5% commission.

12 Lastly, Casino Connection argues that, since it was required to pay another
13 employee 5% to manage existing sales, Mr. Buyachek's commissions should be reduced by
14 this amount. There is no evidence that the 12.5% gets reduced by 5%. Substantial evidence
15 supports the Hearing Officer's determination that, "based on the terms of the agreement
16 the parties mutually entered into, the Claimant [Mr. Buyachek] should have continued to
17 receive commissions even after he was terminated from his employment; he had completed
18 the sale."¹¹

19 Considering the totality of the record, the Hearing Officer's Decision is sound and is
20 supported by substantial evidence.

21 There is no basis to remand or to set aside the Decision in whole or in part.

22 Casino Connection has failed to show that its rights have been prejudiced.

23 The Decision is not: In violation of constitutional or statutory provisions; In excess
24 of the statutory authority of the agency; Made upon unlawful procedure; Affected by other
25 error of law; Clearly erroneous in view of the reliable, probative and substantial evidence
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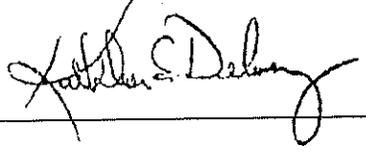
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5 *v. Nunez*, 122 Nev. 1100, 1104-05 (2006).

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8 above-referenced matter, is AFFIRMED.

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11 18, 2019, is DENIED.

12 **IT IS SO ORDERED**

Dated this 20th day of February, 2021



278 FC7 B114 8F98
Kathleen E. Delaney
District Court Judge

19 Respectfully submitted by:

20 AARON D. FORD
Attorney General

21 By: /s/ Andrea Nichols
22 ANDREA NICHOLS (Bar No. 6436)
23 Senior Deputy Attorney General
24 Office of the Attorney General
100 N. Carson Street
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*Attorneys for Respondent,
Nevada Labor Commissioner*

Approved by:

GARMEN TURNER GORDEN LLP

/s/ Eric R. Olsen
ERIC R. OLSEN (Bar No. 3127)
7251 Amigo street, Suite 210
Las Vegas, NV 89119

*Attorneys for Petitioner,
Casino Connection, LLP*

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Casino Connection International
LLC, Petitioner(s)

vs.

Nevada Labor Commissioner,
Respondent(s)

CASE NO: A-19-805612-J

DEPT. NO. Department 25

AUTOMATED CERTIFICATE OF SERVICE

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Service Date: 2/20/2021

- | | |
|----------------|--------------------|
| Catherine Rowe | crowe@gtg.legal |
| Eric Olsen | eolsen@gtg.legal |
| Andrea Nichols | anichols@ag.nv.gov |