

No. 82683

IN THE SUPREME COURT OF THE STATE OF NEVADA

CASINO CONNECTION INTERNATIONAL, LLC,
LIMITED LIABILITY COMPANY,

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Elizabeth A. Brown
Clerk of Supreme Court

Appellant,

v.

NEVADA LABOR COMMISSIONER, A NEVADA ADMINISTRATIVE
AGENCY,

Respondent.

On Appeal from the
Eighth Judicial District Court of the State of Nevada
Case No. A-19-805612-J

RESPONDENT'S ANSWERING BRIEF

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INTRODUCTION

Appellant, Casino Connection International, LLC, seeks to create ambiguity in its employment agreement with John Buyachek, Jr. where none exists. As the Hearing Officer determined, the agreement is plain on its face: the payment of commissions owed to Mr. Buyachek are neither conditioned on his continued employment nor reduced to cover the cost of paying a new salesperson after termination of Mr. Buyachek's employment. But even if Casino Connection could successfully create ambiguity in the agreement, that does nothing to tip the scales in its favor. Any ambiguity in the terms of the employment offer, Casino Connection drafted, must be interpreted against it as a matter of law. This Court should affirm.

JURISDICTIONAL STATEMENT

The Eighth Judicial District Court denied Casino Connection's Petition for Judicial Review on February 20, 2021.¹ Notice of Entry was served on February 23, 2021.² Appellant filed its Notice of Appeal in the District Court on March 25, 2021, and in this Court on March 30, 2021.

¹ App. Vol. 5, 000532-546.

² App. Vol. 5, 000538-546.

This Court has jurisdiction to review a final judgment of the District Court pursuant to NRS 233B.150 and NRAP 3A(b)(1).

ISSUE PRESENTED FOR REVIEW

Whether the Eighth Judicial District Court was correct in denying Casino Connection International, LLC's Petition for Judicial Review and upholding Findings of Fact, Conclusions of Law, and Order, issued by Respondent, Nevada Labor Commissioner?

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal of a District Court Order, which upheld a Decision issued by the Office of the Labor Commissioner ("OLC") finding Appellant, Casino Connection International, LLC ("Casino Connection") owed John Buyachek, Jr. ("Mr. Buyachek") unpaid Commissions.³

According to their agreement, Casino Connection agreed to pay Mr. Buyachek a commission of 12.5% on any new sales he made.⁴ The commissions were paid on collected net revenues the month following the

³ App. Vol. 1, 000062-68.

⁴ The parties' offer and acceptance is in the Appendix at Vol. 2, 000165, 000214, 000219, and 000242.

collection.⁵ After Mr. Buyachek was terminated from his employment, Casino Connection continued to collect revenues on sales made by Mr. Buyachek, but it did not pay him commissions.⁶ The OLC Hearing Officer found the total amount generated on Mr. Buyachek's sales from May 10, 2018 to October 22, 2018, was \$337,952.60, and 12.5% of this amount is \$42,244.07.⁷ The Hearing Officer ordered Casino Connection to pay this amount and assessed an additional penalty, pursuant to NRS 608.040, for Casino Connection's failure to pay commissions when they became due.⁸

B. Course of Proceedings

These proceedings began on October 23, 2018, when Mr. Buyachek submitted a claim for wages to the OLC for unpaid commissions during the period of May 10, 2018 to October 22, 2018.⁹ The OLC commenced an investigation and the OLC's Investigator issued a determination for the limited time period of May 9, 2018 to June 30, 2018.¹⁰ Mr. Buyachek

⁵ *Id.*

⁶ App. Vol. 2-4, 000244-414.

⁷ App. Vol. 5, 000456-457.

⁸ App. Vol. 5, 000458.

⁹ App. Vol. 1, 000074-89.

¹⁰ App. Vol. 2, 000167-169. See also App. Vol. 5, 000454-455.

objected because the determination did not address the entire time period, due to Casino Connection's failure to produce pertinent records.¹¹ The matter was heard on October 8, 2019, by the Deputy Labor Commissioner, serving in her capacity as Hearing Officer.¹²

On October 18, 2019, the Hearing Officer issued Findings of Fact Conclusions of Law and Order.¹³ The Hearing Officer ordered Casino Connection to pay \$42,244.07 in unpaid commissions and assessed an additional penalty of \$1,980.00 pursuant to NRS 608.040.¹⁴ Casino Connection filed a Petition for Judicial Review.

C. The Disposition Below

On February 20, 2021, the Eighth Judicial District Court denied Casino Connection's Petition for Judicial Review, and concluded, among other things, that considering the totality of the record, the Hearing Officer's Decision is sound and is supported by substantial evidence.¹⁵

¹¹ App. Vol. 2, 000170.

¹² Appointed pursuant to NAC 607.310(1) .

¹³ App. Vol. 5, 000454-460.

¹⁴ App. Vol. 5, 000458.

¹⁵ App. Vol. 5, 000532-546.

STATEMENT OF FACTS

Appellant, Casino Connection, publishes magazines focusing on the gaming industry.¹⁶ Mr. Buyachek accepted an offer of employment, from Casino Connection on September 19, 2015.¹⁷ The offer stated, “5% commission will be paid on existing sales you will be managing. 12.5% commission will be paid on any new sales you make. Commissions are paid on collected net revenues the month following the collections.”¹⁸ Documents submitted by Casino Connection clearly show that the company continued to receive payments for sales made by Mr. Buyachek after the company terminated Mr. Buyachek in May of 2018.¹⁹

In October of 2018, the OLC informed Casino Connection that Mr. Buyachek filed a claim for unpaid wages earned and past due from May 10, 2018 to October 22, 2018.²⁰ The OLC advised Casino Connection that if it wished to dispute the claim it must provide documentation to substantiate its position.²¹ In November of 2018, Casino Connection

¹⁶ Appellant’s Opening Brief, p. 6.

¹⁷ App. Vol. 2, 000165, 000214, 000219, and 000242.

¹⁸ *Id.*

¹⁹ App. Vol. 1, 000096-101. See also App. Vol. 2, 000193-195, App. Vol. 4, 000411-414, and App. Vol. 2-4 000244-336.

²⁰ App. Vol. 1, 000090.

²¹ *Id.*

responded with paystubs through the period of Mr. Buyachek's employment, a spreadsheet of invoices outstanding when Mr. Buyachek's employment ended, and a document showing commissions Mr. Buyachek would have received if he had worked through June 30, 2018.²² Casino Connection did not provide any documentation for the time period after June 30, 2018.

In February of 2019, the OLC issued a determination that Mr. Buyachek was due commissions for the time period of May 9, 2018, through June 30, 2018.²³ Mr. Buyachek objected, noting that the OLC had not received all pertinent information.²⁴ The OLC attempted to facilitate a settlement.²⁵

The OLC held a pre-hearing conference with the parties, which was unsuccessful. So the matter was set for hearing to commence on October 8, 2019.²⁶ At the hearing, the OLC Investigator testified that the

²² App. Vol. 1-2, 000093-162.

²³ App. Vol. 2, 000167-169.

²⁴ App. Vol. 2, 000170, and App. Vol. 5, 000455, ll. 10-11.

²⁵ App. Vol. 2, 000171-177.

²⁶ App. Vol. 2, 000178-181.

February 2019 determination was for the period of May 10 through June 30, 2018, because that was all the information she had.²⁷

For the hearing, which was held approximately one year after Mr. Buyachek filed his wage claim, Casino Connection finally submitted documentation concerning amounts the company received after June 30, 2018, on sales Mr. Buyachek made before his termination.²⁸ Casino Connection's calculation showed total sales of \$337,952.60.²⁹ 12.5% of this amount is \$42,244.00.

Mr. Buyachek testified as to how the transactions typically went. Normally companies would make a bulk purchase for the entire year.³⁰ Most companies made these purchases in the first few months of the year from December through February. Casino Connection would then run the advertisements in magazines published in May, June, July, August, September, and October. The company would pay Casino Connection for the advertisement after each ad ran. Casino Connection paid Mr.

²⁷ App. Vol. 1, 000004, Hearing Transcript, p. 6, l. 5 to p. 8, l. 19.

²⁸ App. Vol. 2, 000193-000195, and Vol. 4, 000411-414. Casino Connection also submitted copies of invoices and orders, but the billing and payment information was redacted App. Vol. 2-4, 000246-000409.

²⁹ App. Vol. 4, 000413.

³⁰ App. Vol. 1, 000007, Hearing Transcript p. 19, l. 20 to p. 21, l. 25.

Buyachek a 12.5% commission after Casino Connection received payment.

Casino Connection claimed that Mr. Buyachek was required to complete 13 steps in order to receive his commission.³¹ At the hearing, Casino Connection's representative testified that these steps were not given to Mr. Buyachek in written form.³² In fact, the list was created in November of 2018, six months after Mr. Buyachek's employment with Casino Connection ended.³³ Mr. Buyachek testified that the first time he'd seen the list was in a letter Casino Connection's attorney sent to the OLC.³⁴

Mr. Buyachek acknowledged that a series of things would need to happen before Casino Connection got paid, and in turn for Mr. Buyachek to get paid.³⁵ Casino Connection asked Mr. Buyachek to complete some of these tasks after he was hired.³⁶ Casino Connection also asked Mr. Buyachek to perform other work for the company, which was not on the

³¹ App. Vol. 1, 000094.

³² App. Vol. 1, 000029, Hearing Transcript p. 107, l. 23 to p. 108, l. 21.

³³ App. Vol. 1, 000029, Hearing Transcript, p. 108, ll. 11-21.

³⁴ App. Vol. 1, 000014, Hearing Transcript p. 47, l. 23 to p. 48, l. 5.

³⁵ App. Vol. 1, 000014, Hearing Transcript p. 48, ll. 2-19.

³⁶ App. Vol. 1, 000015-20, Hearing Transcript p. 52, l. 1 to p. 53, l. 16, p. 57, l. 25 to p. 58, l. 6, p. 59, l. 23 to p. 60, l. 9 and p. 72, ll. 6-21.

list of 13 steps, and for which he did not receive remuneration.³⁷ Mr. Buyachek indicated that there were times when he did not complete all of the tasks on Casino Connection's list, but the magazine still came out.³⁸ The agreement did not require Mr. Buyachek to complete each listed item in order to get paid.³⁹

Mr. Buyachek testified, "I worked for the wage and I expect to be paid after it's collected. I am not asking for anything that I was working on afterwards."⁴⁰ Mr. Buyachek explained further,

There's no other item in here that says I'm responsible for anything else. I get paid when I -- when they get paid. I performed the sale and the contract is simple. . . This contract induced me to sign. I just want what I worked for. I don't want anything that hasn't been consummated. I didn't do that work. That's all I can tell you ma'am.⁴¹

At the end of his testimony, Mr. Buyachek stated, "There isn't a termination/separation agreement. There isn't anything else other than

³⁷ App. Vol. 1, 000020, Hearing Transcript p. 72, ll. 11-21.

³⁸ App. Vol. 1, 000015-16, Hearing Transcript p. 52, l. 20 to p. 53, l. 8.

³⁹ App. Vol. 1, 000015-16, Hearing Transcript p. 52, l. 15 to p. 53, l. 8, and p. 56, l. 16 to p. 57, l. 17.

⁴⁰ App. Vol. 1, 000006, Hearing Transcript p. 15, ll. 20-22.

⁴¹ App. Vol. 1, 000006, Hearing Transcript p. 16, ll. 20-23 and p. 17, ll. 17-21.

once they get paid. And all I've been asking for is once they get paid, I want my commission."⁴²

SUMMARY OF ARGUMENT

Casino Connection seeks to create ambiguity on the terms of Mr. Buyachek's compensation. But there is none. The parties' agreement entitles Mr. Buyachek to commissions on the net revenue from all of his sales once Casino Connection received payment. The agreement does not condition payment on (1) Mr. Buyachek's continued employment with Casino Connection, (2) completion of other tasks not identified in the offer of employment, or (3) limit his compensation after termination of his employment to cover payments to a new salesperson. But even if ambiguity exists, the law requires resolution of that ambiguity in Mr. Buyachek's favor because Casino Connection drafted the offer of employment.

Casino Connection's assertion that the Hearing Officer improperly shifted the burden is not supported by the record. Even if the Hearing Officer placed the burden on Casino Connection, it makes no difference to the outcome because the Hearing Officer's Findings of Fact

⁴² App. Vol. 1, 000020-21, Hearing Transcript, p. 73, l. 24 to P. 74, l. 2.

Conclusions of Law and Order was based on the agreement of both parties, the interpretation of which is a question of law. And there is no factual dispute over the net revenue Casino Connection collected on sales Mr. Buyachek made, which controls the calculation of Mr. Buyachek's commission under the agreement.

Further, the record does not support Casino Connection's claim that Mr. Buyachek knew or should have known that he was required to complete additional tasks when Casino Connection reduced those additional tasks to writing six months after Mr. Buyachek was terminated. The language of the agreement controls. And any ambiguity in the agreement—if there is any—must be construed against Casino Connection as a matter of law.

Substantial evidence supports the Hearing Officer's determination that Casino Connection owes Mr. Buyachek unpaid commissions. This Court should affirm.

STANDARD OF REVIEW

The applicable standard of review is set forth in NRS 233B.135, which places the burden of proof on the party attacking an agency decision to show that the final agency decision is invalid. When

reviewing an administrative agency's decision the Court defers to the agency's findings of fact, but reviews questions of law de novo. *Bombardier Transp. (Holdings) USA, Inc., v. Nev. Lab. Comm'r*, 135 Nev. 15, 18, 433 P.3d 248, 252 (2019) (citing to *Nevada Dep't. of Tax'n v. Masco Builder Cabinet Grp.*, 127 Nev. 730, 265 P.3d 666 (2011)). The Nevada Supreme Court has repeatedly recognized the authority of agencies to interpret the language of a statute that they are charged with administering; as long as that interpretation is reasonably consistent with the language of the statute, it is entitled to deference in the courts. *Dept. of Bus. and Indus., Fin. Inst's Div. v. TitleMax of Nev., Inc.*, 135 Nev. 336, 340, 449 P.3d 835, 839 (2019) (citing to *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 122 Nev. 132, 157, 127 P.3d 1088, 1106 (2006)).

In the absence of a factual dispute, interpreting a contract is also a question of law that is reviewed de novo. *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015). The objective of contract interpretation is to look at the language in the document and the attendant circumstances to determine the intent of the parties. *Id.*

In the absence of ambiguity, the contract is to be enforced as written, and any ambiguity in the contract is construed against the drafter. *Id.*

ARGUMENT

The Trial Court did not err in Denying the Petition for Judicial Review Because Substantial Evidence Supports the Hearing Officer's Decision.

A. There is no Evidence That the OLC Improperly Placed the Burden of Proof on Casino Connection

In February of 2019, the OLC issued a determination that Casino Connection owed Mr. Buyachek payment for commissions for May 9, 2018, through June 30, 2018.⁴³ Mr. Buyachek objected, noting that the OLC had not received all pertinent information.⁴⁴

At the hearing of this matter, the OLC Investigator testified that the February 2019 determination was for the period of May 10 through June 30, 2018, because that was all the information she had.⁴⁵ For the hearing, which was held approximately one year after Mr. Buyachek filed his wage claim, Casino Connection submitted documentation concerning

⁴³ App. Vol. 2, 000167-169.

⁴⁴ App. Vol. 2, 000170, and App. Vol. 5, 000455, ll. 10-11.

⁴⁵ App. Vol. 1, 000004, Hearing Transcript, p. 6, l. 5 to p. 8, l. 19.

revenue the company received after June 30, 2018, on sales Mr. Buyachek made before his termination.⁴⁶

In its Opening Brief, Casino Connection argues that Mr. Buyachek had the burden of proof at the hearing because he appealed the OLC's initial determination and that, "the district court glossed over the significance of placing the burden of proof on the employer."⁴⁷ However, Casino Connection fails to point to any statute or regulation that would indicate which party had the burden of proof at the hearing. Casino Connection also fails to point to anything in the OLC's Decision that would indicate which party the OLC placed the burden on.

The Hearing Officer found, "[B]ased on the terms of the agreement the parties mutually entered into, the Claimant should have continued to receive 12.5% commission even after he was terminated from his employment; he had completed the sale."⁴⁸ This finding is supported by the party's contract which states, "[C]ommissions are paid on collected

⁴⁶ App. Vol. 2, 000193-000195, and Vol. 4, 000411-414. Casino Connection also submitted copies of invoices and orders, but the billing and payment information was redacted App. Vol. 2-4, 000246-000409.

⁴⁷ Appellant's Opening Brief, p. 16.

⁴⁸ App. Vol. 5, 000458, ll. 4-6.

net revenues the month following the collection.”⁴⁹ The District Court concluded, “that Mr. Buyachek met the burden of showing that he was entitled to 12.5% commission.”⁵⁰ Casino Connection has the burden to show that the OLC’s decision is invalid.⁵¹ Casino Connection cannot meet that burden no matter which party had the burden of proof at the hearing.

NAC 608.120 requires an employer to pay each commission, “to the employee when the commission becomes due and payable pursuant to the agreement.” NRS 608.040(1) provides that “If an employer fails to pay: (a) Within 3 days after the wages or compensation is due; or (b) On the day the wages or compensation is due to an employee who resigns or quits, the wages or compensation of the employee continues at the same rate from the day the employee resigned, quit or was discharged until paid or for 30 days, whichever is less.” Casino Connection terminated Mr. Buyachek’s employment in May of 2018. The company did not pay Mr. Buyachek commissions in the months following his termination, even though Casino Collection continued to receive revenue on sales Mr.

⁴⁹ App. Vol. 2, 000165, 000214, 000219, and 000242.

⁵⁰ App. Vol. 5, 000544, ll.10-11.

⁵¹ NRS 233B.135.

Buyachek made. The Hearing Officer calculated a penalty using 30 days at minimum wage.⁵² There is nothing erroneous, in either the OLC's Determination or the District Court's Order, concerning the application of these statutes and regulations, no matter which party has the burden of proof.

B. There is no Evidence in the Record Tending to Show that Mr. Buyachek's Commission Should be Reduced by 5%.

Casino Connection argues that the OLC disregarded evidence that Mr. Buyachek's commission should be reduced by 5%. Casino Connection points to its agreement with Mr. Buyachek as support for this argument. However, neither the agreement nor anything else in the record tends to show that the parties agreed to any such reduction. Instead, as the Hearing Officer noted, the language in the four corners of the parties' agreement controls.⁵³

Casino Connection quotes Mr. Buyachek as stating, "I am not asking for anything that I was working on afterwards."⁵⁴ The quote is taken out of context. Mr. Buyachek testified, "I worked for the wage, and

⁵² App. Vol. 5, 000458, nt. 10.

⁵³ App. Vol. 1, 000066

⁵⁴ Appellant's Opening Brief, p. 20, nt. 22.

I expect to be paid after it's collected. I am not asking for anything that I was working on afterwards."⁵⁵ Mr. Buyachek explained further,

There's no other item in here that says I'm responsible for anything else. I get paid when I – when they get paid. I performed the sale and the contract is simple. . . This contract induced me to sign. I just want what I worked for. I don't want anything that hasn't been consummated. I didn't do that work. That's all I can tell you ma'am.⁵⁶

When he was hired Mr. Buyachek earned a 5% commission for managing existing contracts and 12.5% for sales he made.⁵⁷ Casino Connection testified that it hired a replacement for Mr. Buyachek and paid this person 5% of collected net revenues for servicing existing contracts and 12.5% for new contracts.⁵⁸ But there is nothing in the agreement establishing that Mr. Buyachek would not still receive the total value of his commissions for the sales he made, or that his commissions would be reduced to cover any payments Casino Connection made to a new salesperson.⁵⁹ Thus, contrary to Casino Connection's

⁵⁵ App. Vol. 1, 000006, Hearing Transcript p. 15, ll. 20-22.

⁵⁶ App. Vol. 1, 000006, Hearing Transcript p. 16, ll. 20-23 and p. 17, ll. 17-21.

⁵⁷ App. Vol. 1, 000025, Hearing Transcript p. 91, ll. 3-7.

⁵⁸ App. Vol. 1, 000025-34, Hearing Transcript p. 92, ll. 10-20 and p. 127, ll. 15-24.

⁵⁹ App. Vol 2, 000165, 000214, 000219, and 000242.

claim, the record supports the Hearing Officer's finding on the absence of language in the agreement memorializing that compensation of a new salesperson would come at the cost of a comparable reduction of Mr. Buyachek's commission.

C. The Evidence Does Not Support a Finding That Mr. Buyachek was Required to Complete Additional Tasks in Order to Receive Commissions.

Casino Connection argues that Mr. Buyachek was required to complete 14 steps in order to earn a 12.5% commission and the OLC's Decision failed to mention 14 steps of the "sales cycle."⁶⁰ The Hearing Officer based her Decision on the four corners of the party's agreement and not on a document created six months after Mr. Buyachek left the company.⁶¹ The substantial evidence simply does not support Casino Connection's assertion that Mr. Buyachek was required to complete additional tasks in order to receive his commissions.

At the hearing, Casino Connection alleged that to receive his commissions Mr. Buyachek was required to complete 13 steps.⁶² Casino

⁶⁰ Appellant's Opening Brief, p. 29.

⁶¹ App. Vol. 5, 000458, ll. 2-6 and App. Vol. 1, 000029, Hearing Transcript, p. 108, ll. 11-21.

⁶² App. Vol. 1, 000094.

Connection's representative admitted that these steps were not given to Mr. Buyachek in written form.⁶³ In fact, the list was created in November of 2018, six months after Mr. Buyachek's employment with Casino Connection ended.⁶⁴ Mr. Buyachek testified that the first time he'd seen the list was in the letter Casino Connection's attorney sent to the OLC.⁶⁵

Mr. Buyachek acknowledged that a series of things would need to happen before Casino Connection got paid, and in turn for Mr. Buyachek to get paid.⁶⁶ Casino Connection asked Mr. Buyachek to complete some of these tasks after he was hired.⁶⁷ Casino Connection also asked Mr. Buyachek to perform other work for the company, which was not on the list of 13 steps, and for which he did not receive remuneration.⁶⁸

There were times when Mr. Buyachek did not complete all of the tasks and the magazine still came out. His agreement did not require him

⁶³ App. Vol. 1, 000029, Hearing Transcript p. 107, l. 23 to p. 108, l. 21.

⁶⁴ App. Vol. 1, 000029, Hearing Transcript, p. 108, ll. 11-21.

⁶⁵ App. Vol. 1, 000014, Hearing Transcript p. 47, l. 23 to p. 48, l. 5.

⁶⁶ App. Vol. 1, 000014, Hearing Transcript p. 48, ll. 2-19.

⁶⁷ App. Vol. 1, 000015-20, Hearing Transcript p. 52, l. 1 to p. 53, l. 16, p. 57, l. 25 to p. 58, l. 6, p. 59, l. 23 to p. 60, l. 9 and p. 72, ll. 6-21.

⁶⁸ App. Vol. 1, 000020, Hearing Transcript p. 72, ll. 11-21.

to complete each item in order to get paid.⁶⁹ As Mr. Buyachek stated, “all I’ve been asking for is once they get paid, I want my commission.”⁷⁰

The evidence in the record supports the District Court’s conclusion that, “Substantial evidence supports the Hearing Officer’s determination that, ‘based on the terms of the agreement the parties mutually entered into, the Claimant [Mr. Buyachek] should have continued to receive commissions even after he was terminated from his employment; he had completed the sale.’”⁷¹

D. Any Ambiguity in the Agreement Must be Construed Against Casino Connection.

Ambiguity exists when a contract is capable of more than one reasonable interpretation. *Am. First Fed. Credit Union*, 131 Nev. at 739, 359 P.3d at 106. Here, there is no ambiguity. But if there is, it must be construed against Casino Connection as the drafter of the agreement. *Id.* Casino Connection argues that Mr. Buyachek knew and agreed that he would not continue to receive commissions after termination of his employment, that his compensation would be dependent on the

⁶⁹ App. Vol. 1, 000015-16, Hearing Transcript p. 52, l. 15 to p. 53, l. 8, and p. 56, l. 16 to p. 57, l. 17.

⁷⁰ App. Vol. 1, 000020-21, Hearing Transcript, p. 73, l. 24 to P. 74, l. 2.

⁷¹ App. 000535, ll. 14-18.

completion of additional tasks, and/or that his commissions would be reduced by 5% to cover the cost of paying a new salesperson because Mr. Buyachek was paid 5% to manage existing contracts when he started.⁷² But Casino Connection's deductive logic fails under rules for contract interpretation, which require enforcement of the agreement as written. *Id.*

There is no language in the contract conditioning payment of commissions on continued employment, completion of additional tasks, or requiring a 5% reduction of commissions after termination of employment to cover payment of a new salesperson.⁷³ The agreement requires Casino Connection to pay Mr. Buyachek a 12.5% commission for net revenue on any sales he made with payment issuing the month after collection of the revenue, full stop. And the language of the agreement controls. *Id.*

Even assuming Casino Connection's interpretation of the agreement is reasonable, that only creates ambiguity. The Hearing Officer and the District Court reasonably read the terms of the

⁷² Appellant's Opening Brief, p. 15, 23-28

⁷³ App. Vol. 2, 000165 000214, 000219, and 000242.

agreement to require continued payment of a 12.5% commission on all of Mr. Buyachek's sales, even after termination of his employment. And that means Mr. Buyachek must prevail as a matter of law, because any ambiguity in the agreement must be construed against Casino Connection as the drafter of the agreement.

CONCLUSION

Based on the foregoing the State of Nevada on relation of its Labor Commissioner respectfully requests that this Court enter its Order affirming the District Court's denial of Casino Connection's Petition for Judicial Review.

Dated this 4th day of November 2021.

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ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the type face 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 in font size 14 and font style Century Schoolbook.

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 proportionately spaced, has a typeface of 14 points or more and contains 4925 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 if the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 4th day of November 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on this 4th day of November 2021.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

I further certify that any of the participants in the case that are not registered as electronic users will be mailed the foregoing document by First-Class Mail, postage prepaid.

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