

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRI SNOW,  
Appellant,  
vs.  
MANDALAY BAY RESORT AND  
CASINO,  
Respondent.

No. 44295

**FILED**

**JUL 17 2006**

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

This is an appeal from a district court order denying a petition for judicial review in a gaming case.<sup>1</sup> Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Appellant Terri Snow requested the Nevada Gaming Control Board to investigate gaming statute violations by respondent Mandalay Bay Resort and Casino, alleged to have occurred about 10:30 a.m. on July 30, 2000, when Snow hit the progressive jackpot on a 25-cent "Super Hot Sevens" slot machine. According to Snow, at the time of her win, one of the machine's displays, located at the top of the machine, read approximately \$1,105 as her win. But when a Mandalay Bay employee inserted his card into the machine to verify the win, Snow noticed that another of the machine's displays, located near the card reader, showed \$42,987,000. Although Snow claimed that she was entitled to that amount for her win, she was offered, and ultimately accepted, \$1,105.

In response to Snow's request, a Board investigator reported that, while one of the machine's display windows showed over \$42 million

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<sup>1</sup>Pursuant to NRAP 34(f), we have determined that oral argument is not warranted in this case.

due to an internal malfunction, the other two display windows showed \$1,105, which was the actual amount of Snow's win. The investigator also pointed out that Mandalay Bay had failed to notify the Board of the dispute, as required under Nevada statutes and regulations.

Snow contested the investigation's results, and ultimately, the Board issued an order resolving the dispute in favor of Mandalay Bay. Snow petitioned for judicial review, which was denied. Consequently, Snow appealed.

A Gaming Control Board decision is entitled to great deference by this court.<sup>2</sup> Accordingly, while we examine purely legal questions de novo,<sup>3</sup> we, like the district court, will not disturb a Board decision unless our review of the record indicates that the appellant's substantial rights were prejudiced by the decision because it, among other things, is unsupported by any evidence whatsoever or violates constitutional provisions.<sup>4</sup>

Here, Snow claims that her constitutional due process rights were violated when the Gaming Control Board determined that she had not won a \$42 million-plus jackpot because the dispute over the jackpot's amount was not reported to the Board as required by NRS 463.362(1)<sup>5</sup> and

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<sup>2</sup>See Sengel v. IGT, 116 Nev. 565, 570, 2 P.3d 258, 261 (2000); Redmer v. Barbary Coast Hotel & Casino, 110 Nev. 374, 378, 872 P.2d 341, 344 (1994).

<sup>3</sup>Redmer, 110 Nev. at 378, 872 P.2d at 344.

<sup>4</sup>Sengel, 116 Nev. at 569-70, 2 P.3d at 260-61; NRS 463.3666(3).

<sup>5</sup>We note that, under NRS 463.362(3), any failure to comply with the notice requirements of that statute may subject the non-complying entity  
*continued on next page . . .*

because evidence of the machine's functions at the time of the win was not preserved. Snow asserts that the Board's decision was based only on evidence taken after a Mandalay Bay employee had manipulated the machine and evidence of a test conducted on a similar, but different, machine, by Mandalay Bay. She argues that, because the Board was unable to investigate the machine as it existed directly after her win, it was impossible to verify the existence of the jackpot.

In support of her position, Snow cites to a 2002 Mississippi Supreme Court decision, Grand Casino Biloxi v. Hallmark.<sup>6</sup> That case involved a dispute over whether a slot machine had malfunctioned when the reel symbols failed to correspond to the randomly selected number, rendering an alleged jackpot winning invalid.<sup>7</sup> Before a gaming commission agent arrived on the scene, casino employees entered and manipulated the machine.<sup>8</sup> Later that night, portions of surveillance tapes showing the casino employees testing the machine were destroyed. Moreover, the court noted, the casino failed to preserve other objective evidence relating to the alleged win.<sup>9</sup> Nevertheless, the gaming

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*... continued*

to disciplinary action; the statute does not refer to evidentiary issues in gaming disputes.

<sup>6</sup>823 So.2d 1185 (Miss. 2002).

<sup>7</sup>Id. at 1186; id. at 1199 (Smith, P.J., and Waller, Cobb, and Carlson, JJ., dissenting).

<sup>8</sup>Id.

<sup>9</sup>Id.

commission had determined that, because the machine had malfunctioned, no win occurred.<sup>10</sup>

The Mississippi court apparently concluded that the casino's failure to preserve the machine evidence before contacting gaming authorities and the subsequent intentional destruction of surveillance tapes entitled the claimant to an inference or presumption that that evidence would have been unfavorable to the casino.<sup>11</sup> Because no objective evidence, or evidence that was not under the casino's control, existed, the court determined that the gaming commission's decision denying the claimant the win violated his due process rights, and accordingly affirmed the circuit court's order reversing that decision.<sup>12</sup>

Although Mandalay Bay, in this case, appears to have engaged in some of the same poor decisions as did the casino in Hallmark, with regard to notifying the gaming authorities of a dispute and preserving evidence, we cannot conclude that the Board's decision violated Snow's substantial rights in this instance. First, there is no dispute that the machine functioned properly as to the jackpot win; the dispute is over the amount of the win.

Second, the Hallmark court was careful to distinguish that case from earlier cases in which the court had determined that, despite failures to notify and preserve some evidence, sufficient evidence nonetheless existed to support Mississippi gaming commission decisions

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<sup>10</sup>Id.

<sup>11</sup>Id. at 1193.

<sup>12</sup>Id. at 1195.

ruling that no wins had occurred due to machine malfunctions.<sup>13</sup> Like the cases distinguished in the Hallmark decision, here, the Board's decision is based on some outside evidence, including a report of an investigation conducted by the Board's electronic laboratory and explanations by the manufacturers of the tracking display and game software of what took place after Snow hit the jackpot when the casino employee inserted his card into the card reader to verify the win. All of this evidence indicates that the software on the device that communicates, but does not determine, the amount won was incompatible with the device that tracks the machine's functions, resulting in the improper formatting of the digital data that was received by the tracking device. This improper formatting in turn resulted in erroneous information—the \$42 million number—appearing on the tracking board display. The fact that the manufacturers were able to produce similar results in later tests bolsters their explanations.

Third, the explanations comport with Snow's own account of the incident, also considered by the Board, in which she noted that at the time of the win, the display on the top of the machine showed a progressive amount of approximately \$1,105, while the card reader display showed approximately \$42 million after the casino employee accessed it.

Finally, the Board relied on a progressive meter reading taken approximately three hours before Snow won, which provided a progressive amount of \$1,051.85.

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<sup>13</sup>Id. at 1188 (distinguishing Mississippi Gaming Comm'n v. Freeman, 747 So.2d 231 (Miss. 1999)); id. at 1193 (distinguishing Thomas v. Isle of Capri Casino, 781 So.2d 125 (Miss. 2001)).

As the Board, which is entitled to great deference, accepted this evidence as adequately explaining the discrepancy between the two numbers and as sufficiently demonstrating that the \$42 million number was displayed as the result of a malfunction, we cannot conclude that the district court erroneously denied judicial review. Even if Mandalay Bay's actions infringed on Snow's due process rights, the Board's decision is supported by non-Mandalay-Bay-controlled evidence in the record, and therefore, it did not prejudice Snow's substantial rights.<sup>14</sup> Accordingly, we affirm the district court's order.

It is so ORDERED.

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Howard Roitman, Settlement Judge

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<sup>14</sup>See Sengel, 116 Nev. at 569-70, 2 P.3d at 261. In light of our conclusion that the Board's decision did not prejudice Snow's substantial rights, we do not address her contention that the Board retains equitable powers to make her "whole for any losses as a result of the [alleged] violations of the regulations."

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Clark County Clerk