

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALEXANDER OCASIO,
Appellant,
vs.
NEVADA GAMING COMMISSION,
Respondent.

No. 37077

FILED

JUN 25 2002

JANETTE M. GLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order that affirmed the Nevada Gaming Commission's denial of appellant's application for a gaming employee work permit on judicial review. We have reviewed the record, and we conclude that the district court did not err by affirming the administrative decision.

The Orleans Casino required appellant to obtain a gaming employee work permit when it hired him as a "bar back" in August 1999 because casino bar personnel were not engaged exclusively in preparing or serving food or beverages.¹ Appellant submitted his application and received a 90-day temporary permit from Clark County. The Gaming Control Board objected, however, so appellant's temporary work permit

¹NRS 463.335 (requiring all Nevada gaming employees to obtain work permits); NRS 463.0157 (defining "gaming employee" to include "any person connected directly with . . . a gaming establishment licensed to conduct any game, 16 or more slot machines, a race book, sports pool or pari-mutuel wagering," but not to include "bartenders, cocktail waitresses or other persons engaged exclusively in preparing or serving food or beverages"). Bar personnel supervise nearby gaming machines and make change, in addition to their beverage service responsibilities.

was revoked and the Orleans terminated his employment in November 1999.²

Appellant requested a hearing, and the hearing examiner recommended that the Board's objection be reversed, and that appellant be given a work permit subject to specific limitation and conditions. The Board rejected the recommendation, however, and sustained the objection. On reconsideration, the Gaming Commission sustained the Board's objection "on the same grounds." Appellant then petitioned for judicial review.

NRS 463.317 limits judicial review to the administrative record, and authorizes reversal only if the Commission's decision violated constitutional provisions, exceeded statutory authority or jurisdiction, was made upon unlawful procedure, was unsupported by any evidence or was arbitrary or capricious or otherwise not in accordance with the law. The decision in this case was not infirm on any of these grounds.

NRS 463.335(12) permits the Gaming Control Board to object to the issuance of a work permit for any cause it deems reasonable, and under subsection 12(c), it may object if the applicant has "[c]ommitted . . . any crime of . . . larceny."³ Appellant pleaded guilty to petty larceny after he obtained \$4,977 in state unemployment benefits by submitting false

²See NRS 463.335(9) (requiring the licensing authority to deny a work permit application, and immediately revoke and repossess any temporary permit it has issued, if the Board objects before the temporary permit expires). In late 1999, when these events occurred, this provision was numbered NRS 463.335(8). See 1999 Nev. Stat., ch. 181, § 1, at 900, and § 2, at 902.

³In late 1999, this provision was numbered NRS 463.335(11). See 1999 Nev. Stat., ch. 181, § 1, at 900-01, and § 2, at 902.

statements every week for six months. Then, after he promised to repay the money in monthly \$100 installments, he made no payments until criminal charges were filed against him. The Board's objection is authorized by statute and supported by the evidence.

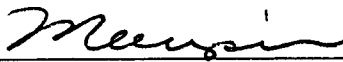
NRS 463.335(13) authorizes the Gaming Commission to review an adverse Board decision upon timely request by the applicant, but limits review to the record of proceedings before the Board.⁴ This section does not require the Commission to make specific findings or to comply with NRS 463.3145, which requires findings of fact in contested disciplinary actions, and it does not prohibit the Commission from adopting the Board's findings. Here, the Commission sustained the Board's objection "on the same grounds" as the Board, and the Board's order contained findings, reasons and statutory authority for its objection. The Commission's decision was not procedurally defective.

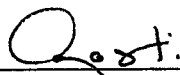
Finally, the Commission's decision was not based upon the Attorney General's felony and gross misdemeanor charges against appellant, which were dismissed in exchange for his plea of guilty to the misdemeanor charge; the decision was based upon appellant's fraudulent and dishonest activity underlying the charges. Appellant admitted that he knowingly submitted false statements to obtain unemployment benefits that he knew he was not entitled to, and he pleaded guilty to larceny. The Commission's decision to sustain the Board's objection, which was based on the specific statutory factor of larceny, was not arbitrary or capricious or otherwise unlawful. The Gaming Commission has not deprived

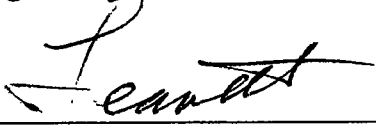
⁴In late 1999, this provision was numbered NRS 463.335(12). See 1999 Nev. Stat., ch. 181, § 1, at 901, and § 2, at 902.

appellant of the right to work, it has simply prohibited him from working in an industry over which it has exclusive licensing and permitting authority.⁵ Accordingly, we

ORDER the judgment of the district court AFFIRMED.⁶


_____, C.J.
Maupin


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Joseph S. Pavlikowski, Senior Judge
Attorney General/Carson City
Attorney General/Las Vegas
Alexander Ocasio
Clark County Clerk

⁵See State of Nevada v. Rosenthal, 93 Nev. 36, 559 P.2d 830 (1977) (observing that gaming is a state privilege, which the state may regulate or suppress as it sees fit, and as an exclusive state privilege, it does not carry with it the federal constitutional rights inherent in useful trades and occupations, except the right to due process of law).

⁶Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from him. We deny appellant's October 17, 2001 motion.