

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ALAN NAKAMURA,
Appellant,
vs.
FIESTA HENDERSON CASINO
HOTEL, A/K/A STATION CASINOS;
AND THE STATE OF NEVADA
GAMING CONTROL BOARD,
Respondents.

No. 75746-COA

FILED

JAN 30 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Alan Nakamura appeals from a district court order denying a petition for judicial review of an administrative decision. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Nakamura was playing craps at the Fiesta Henderson Casino Hotel (Fiesta), where he claims the boxman overseeing the game gave him permission to perform a dice roll that violated the house rules, but then voided the roll when it resulted in a win for Nakamura. Nakamura claims that the boxman had previously objected to his rolls because they were failing to hit the far wall of the table as required under the rules. Nakamura allegedly asked the boxman if he could instead roll to the nearest wall, to which he claims the boxman said, "go ahead." There is conflicting evidence in the record as to whether that is how the boxman actually responded, as the boxman claims that he told Nakamura that he could roll to the nearest wall and "see what happens." Regardless, Nakamura proceeded to roll against the nearest wall, which would have resulted in a \$105 win on his \$65 bet, but the boxman called it a "no roll" and ordered the dealer not to pay Nakamura. After failing to convince the pit boss that he was entitled

to payment on the roll, Nakamura continued to roll to the far side of the table and ultimately lost his \$65 bet, for a total claimed loss of \$170.

After failing to resolve the dispute with Fiesta's management, Nakamura made a claim to the disputed funds with the Nevada Gaming Control Board (the Board). The Board assigned an agent to investigate the case who ultimately denied Nakamura's claim. Nakamura sought review of the agent's decision by the Board, and—following a hearing—the hearing examiner issued a written recommendation that the Board affirm the agent's decision denying the claim. In the recommendation, the hearing examiner found that the boxman did not give Nakamura permission to perform the illegal roll and that the boxman's statement to Nakamura was instead intended as a warning. The Board adopted the hearing examiner's recommendation as its order, and Nakamura filed a petition for judicial review in the district court. The district court affirmed the decision of the Board, concluding that there was sufficient evidence in the record to support denial of the claim. This appeal followed.

The Board possesses exclusive jurisdiction to resolve disputed claims by patrons of gaming licensees for payment of gambling debts not evidenced by a credit instrument. NRS 463.361(2)(a); *Sengel v. IGT*, 116 Nev. 565, 568, 2 P.3d 258, 260 (2000). Upon resolution by the Board, a person aggrieved by the decision may petition for judicial review. *Sengel*, 116 Nev. at 569, 2 P.3d at 260. If aggrieved by the district court's decision on the petition, the person may then seek review in the appellate courts. NRS 463.3668(1). On appeal, we review the Board's decision in the same manner as the district court.¹ *Sengel*, 116 Nev. at 571, 2 P.3d at 262. Thus,

¹Insofar as Nakamura challenges the specific manner in which the district court's written order recounted the facts as determined by the Board, because we review the Board's decision directly rather than the decision of the district court, we reject those arguments as without merit.

by statute, we may only reverse the order or remand for further proceedings where the petitioner's substantial rights were prejudiced because the Board's decision was:

- (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 unlawful procedure;
- (d) Unsupported by any evidence; or
- (e) Arbitrary or capricious or otherwise not in accordance with law.


NRS 463.3666(3). Where the statute refers to "any evidence," it means 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." *Sengel*, 116 Nev. at 570, 2 P.3d at 261 (internal quotation marks omitted). Accordingly, this court affords great deference to the Board's decision on appeal. *Id.*

Here, Nakamura challenges the Board's factual findings and its interpretation thereof, which we are not free to reevaluate so long as they are supported by any evidence in the record. *See* NRS 463.3666(3)(d). The record reveals that the boxman supervising the subject game of craps provided a statement to the agent of the Board investigating the matter, corroborated by a shift supervisor in a separate statement, claiming that Nakamura had repeatedly failed to hit the back wall of the table with the dice as required by the house rules. The boxman further stated that he had repeatedly warned Nakamura to hit the back wall of the table, and if he failed to do so, the roll would result in a "no roll." Finally, the boxman stated that Nakamura asked if he could roll the dice into the nearest wall, to which the boxman claims he replied that Nakamura could do so and "see what

happens.” The Board interpreted the boxman’s statement as a warning rather than permission, and it therefore concluded that Nakamura had broken the house rules and failed to demonstrate his entitlement to any winnings. Because this decision was based on evidence in the record, we must affirm the district court’s order denying Nakamura’s petition for judicial review.²

It is so ORDERED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Nancy L. Allf, District Judge
Alan Nakamura
Semenza Kircher Rickard
Attorney General/Reno
Eighth District Court Clerk

²To the extent Nakamura challenges the hearing examiner’s decision declining to grant a continuance for Nakamura to call one of the dealers as a witness, we note that the hearing examiner had informed Nakamura in a scheduling letter sent over one month before the hearing that it was Nakamura’s responsibility to have any witnesses he wished to testify present at the hearing. See NV Gaming Regulation 7A.060(3)(a) (stating that “[e]ach party may . . . [c]all and examine witnesses” at the hearing). Accordingly, we reject Nakamura’s argument on this point.

³Insofar as Nakamura raises other arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.