

IN THE SUPREME COURT OF THE STATE OF NEVADA

STANLEY J. SHAFTEL,

No. 37823

Appellant,

vs.

TEXAS STATION, PALACE STATION AND  
STATION CASINOS,

Respondents.

**FILED**

**AUG 22 2001**

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant Stanley Shaftel's complaint under NRCP 12(b)(5) for failure to state a claim upon which relief can be granted. Mr. Shaftel's February 2001 proper person complaint sought damages allegedly arising from the respondent casinos' July 1998 removal of nickel, quarter and dollar poker machines that advertised million-coin progressive jackpots. Because Mr. Shaftel did not exhaust his administrative remedies, he was precluded from pursuing his claim in the district court.

District courts have no authority to regulate gaming establishments, and are not permitted to intrude into gaming administration, control, supervision or discipline.<sup>1</sup> The only recourse for a dissatisfied gaming patron like Mr. Shaftel, with a complaint about the manner in which a game is conducted, is an investigation by the Nevada Gaming Control Board.<sup>2</sup> If the patron is aggrieved by the final decision or order of the Board or the Board hearing examiner, the patron may obtain judicial review by filing a petition in the manner specified by NRS 463.3662, but only final decisions are

<sup>1</sup>Harrah's Club v. State Gaming Control Bd., 104 Nev. 762, 764, 766 P.2d 900, 901 (1988).

<sup>2</sup>Id. at 764, 766 P.2d at 901-02; NRS 463.362.

subject to judicial review.<sup>3</sup> There is no other way for a gaming patron who is dissatisfied with the way a casino conducts a game to get his case into the district court.<sup>4</sup> Thus, unless Mr. Shaftel's pleading can be construed as a timely petition for judicial review, the district court had to dismiss it.

Construed liberally,<sup>5</sup> Mr. Shaftel's February 2001 complaint alleges that the casinos frustrated his efforts to win million-coin progressive jackpots by removing the machines in July 1998 in violation of gaming regulations, and defrauded gaming patrons generally by improperly distributing the accumulated amounts displayed on the progressive jackpot machines into minimal promotions instead of jackpots. The complaint further alleges that Mr. Shaftel complained to Texas Station by letter dated July 29, 1998, to Palace Station by letter dated July 31, 1998, and to the Gaming Control Board by letter dated August 10, 1998. The document does not allege that the Board rendered any final decision, however, and without a final decision, Mr. Shaftel could not take his complaint to the district court. If the Board did render a final decision, the petition would be timely only if it were filed within twenty days after the effective date of the final decision or order,<sup>6</sup> and the document does not allege or establish that it was timely filed. Because Mr. Shaftel's

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<sup>3</sup>Harrah's Club, 104 Nev. at 764, 766 P.2d at 902.

<sup>4</sup>See id.; NRS 463.3668(2).

<sup>5</sup>Knittle v. Progressive Casualty Ins. Co., 112 Nev. 8, 10, 908 P.2d 724, 725 (1996) (holding that when reviewing a dismissal under NRCP 12(b)(5) for failure to state a claim upon which relief can be granted, this court must accept all factual allegations of the complaint as true, construe the pleading liberally, and draw every fair inference in favor of the non-moving party).

<sup>6</sup>NRS 463.3662(2).

complaint does not state a claim upon which relief can be granted, the district court did not err by dismissing it.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>7</sup>

Maupin, C.J.  
Maupin

Leavitt, J.  
Leavitt

Becker, J.  
Becker

cc: Hon. Mark W. Gibbons, District Judge  
Pyatt & Silvestri  
Stanley J. Shaftel  
Clark County Clerk

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<sup>7</sup>Although appellant was not granted leave to file papers in proper person, see NRAP 46(b), we have considered the proper person documents received from appellant.