

Casino\Patron Disputes

John Tatro

Hearing Examiner

Nevada State Gaming Control Board

While gambling games such as cards and dice have continued throughout time, Nevada's gaming experience dates back only to frontier times. Slot machines have also evolved from their early mechanical beginnings as "one armed bandits" to their current state of electronically sophisticated games. An approximate total of the number of games currently existing throughout Nevada is as follows:

- ♦ 165,000 slot machines;
- ♦ 3,400 twenty-one tables;
- ♦ 800 craps tables and roulette games;
- ♦ 520 poker tables;
- ♦ 68 race books;
- ♦ 10 sports pools;
- ♦ 158 keno games;
- ♦ 29 bingo games.

Obviously, with these many available games and the millions of players who play them, there are bound to be disputes and disagreements over winnings between patrons and licensees. Some typical examples of these daily disputes are:

- ♦ A customer insists he inserted three coins into a slot machine, but the casino claims he only inserted two. The disputed amount means the difference between a \$10,000 jackpot and a \$200 one;
- ♦ A customer views a progressive meter displaying the chance to win \$5,000 by playing only three nickels. After playing his three nickels and achieving the necessary alignment, the player is informed by the casino that the payout was displayed in error.
- ♦ A patron on a craps table calls out a \$100 "hardway 8." The hardway rolls and would have paid \$800, but the dealer did not hear the bet; therefore, the wager was not recognized.
- ♦ A race book bettor places a \$1,000 "exacta" wager and both horses finish in first and second as required. It is then discovered that there is no "exacta" at the race track; therefore, the casino will refund the wager but will not pay the winnings.

It is at this point that the State Gaming Control Board (Board) becomes involved in an attempt to objectively consider all the facts and make a decision that is fair to both the patron and the casino in settling the disagreement. Under Nevada Revised Statutes (NRS) § 463.362(1):

Whenever a licensee refuses payment of alleged winnings to a patron, the licensee and the patron are unable to resolve the dispute to the satisfaction of the patron and the dispute involves:

- (a) At least \$500, the licensee shall immediately notify the board; or
- (b) Less than \$500, the licensee shall inform the patron of his right to request that the board conduct an investigation.

The board, through an agent, shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.

The Board's Enforcement Division is responsible for investigating and deciding casino/patron disputes. Once a call or letter is received, an agent is assigned and immediately begins an investigation. The agent has thirty days within which to conduct the investigation and issue a written decision, which is sent to both the patron and the casino. If either side does not agree, they may appeal the decision. The aggrieved party (petitioner) has twenty days to file a petition for reconsideration with the Board to request a hearing, and to serve it on the opposing party (respondent).

On receipt of the petition, the matter is placed under the jurisdiction of the Board-appointed hearing examiner who initiates the process of preparing for and conducting the hearing. Consequently, requests such as discovery, special consideration for hearing dates, or procedural questions are sent directly to the hearing examiner.

The entire Board file regarding a casino/patron dispute is available to each party upon written request. The file includes the agent's investigative report and any documentation the agent acquires in the investigation — *e.g.*, witness statements, applicable rules, surveillance tapes (when available) and photographs.

The testimony of any material witness may be taken by deposition in the manner provided by the Nevada Rules of Civil Procedure and may be used at the hearing. However, only those portions that are shown to be relevant will be admitted. Affidavits, in lieu of testimony, are also admissible but must be presented in compliance with NRS 463.313(3).

At the request of a party, subpoenas must be issued by the Board as provided in NRS 463.3125(1). If a party wishes to obtain a subpoena they must submit a written request to the hearing examiner who will in turn obtain a signed subpoena from a Board member. The signed subpoena will be returned to the requesting party who is responsible for its service. Board employees may not be subpoenaed, but a written request to the hearing examiner will ensure their appearance at the hearing.

In complex cases pre-hearing conferences may be held to establish certain hearing procedures, namely, setting a hearing date, determining the number of witnesses, estimating how long the hearing will take, and ruling on any pre-hearing motions. These conferences will be recorded and considered a part of the hearing record. A pre-hearing conference may be conducted in person, or may be accomplished through a telephone conference call. Many times these conferences resolve procedural questions and help streamline the hearing. Numerous pre-hearing conferences have resulted in the parties coming to an agreement and withdrawing their petition for a hearing. Settlement, of course, is an option afforded each party at any point throughout the hearing process.

The hearings are as formal, or informal, as the need dictates. Hearings range from being as structured as a court room setting to as unstructured as a round table discussion. If the dispute is complex, highly contested, or involves a large sum of money, the hearing may last several days and will be conducted in strict adherence with the procedures outlined in Nevada Gaming Commission Regulation 7A.050. However, if the issue is not complex and it appears there is simply a misunderstanding between the parties, the hearing examiner will encourage discussion until everyone fully understands all sides of the issue. Settlement is often the result in these cases. Regardless of the degree of formality, the hearing must be recorded to permanently preserve the record.

When the hearing begins, the hearing examiner makes a brief statement which outlines the format of the hearing, identifies everyone attending, swears in the witnesses, generally summarizes the dispute, and identifies any documents previously submitted. The petitioner can then make an opening statement on the merits of his case and the respondent may either follow with a statement of his defense or reserve his statement until the presentation of his case. Immediately following the opening statement(s), the petitioner presents his case in support of his petition which is followed by the presentation of the respondent's case.

Each party may call and examine as many witnesses as are necessary to present their case. The opposing party may cross-examine witnesses on any matter relevant to the dispute even if the matter was not covered in direct examination. Each party may introduce any exhib-

The petitioner bears the burden of proof and must prove by a preponderance of the evidence why the agent's decision should be reversed or modified.

its which are relevant to the dispute. The parties may impeach any witness and offer rebuttal evidence. If a party chooses not to testify, the opposing party may question them as if under cross-examination. After the presentation of all evidence, the petitioner may present a closing argument followed by the respondent's closing argument. The petitioner then is allowed to present his rebuttal argument.

Following the hearing, the hearing examiner will submit a written recommendation to the Board. The Board members will vote on the recommendation during the following monthly meeting. They will base their decision strictly on the record created by the hearing examiner and will not accept new evidence. The Board may sustain, modify, or reverse the agent's decision. The petitioner bears the burden of proof and must prove by a preponderance of the evidence why the agent's decision should be reversed or modified. The decision of the Board is not subject to review by the Nevada Gaming Commission. Instead, the aggrieved party may file a Petition for Judicial Review pursuant to NRS 463.3662.

The Board's decisions are made on a case-by-case basis because each casino/player dispute is unique. Their main objective, however, is to ensure that both the patron and the licensee are treated fairly. A review of past decisions reflects their adherence to this practice. For instance:

- ♦ In a recent slot dispute a progressive meter on a bank of video poker machines malfunctioned and displayed an award of \$2,000. It should have only displayed \$500. The patron testified that he chose to play the machine based on the posted award. He was not aware the display was erroneous. A short time later, the patron aligned the necessary jackpot for his sought-after prize. Casino employees, however, soon realized the display was erroneous. The casino paid the patron only \$500 leaving a disputed balance of \$1,500. An Enforcement Agent issued a decision denying payment of the disputed amount to the patron. The patron then requested a hearing. The result was a recommendation by the hearing examiner to reverse the agent's decision. The Board adopted the recommendation and found that since the \$2,000 amount was displayed prior to the patron's commencement to play, it would only be fair to award him that payoff.
- ♦ A keno patron observed all of his eight selected numbers on a keno board. He interpreted this to mean that he had won \$100,000. Unfortunately, a malfunction had occurred which erroneously displayed his numbers. The Board denied payment because the results of keno games are not determined by the numbers which are displayed, but are determined by the balls which are drawn. The patron was not lured into playing the game because of this display; fairness would not allow the patron to be enriched at the expense of a licensee because of an uncontrollable malfunction which did not affect the final result of the game.
- ♦ In a race book dispute, a patron bet on a horse with 150 to 1 odds and won the bet. The casino, however, would not pay the ticket at 150 to 1 and instead, relied on their posted rules which indicated a maximum payout of 100 to 1. The hearing examiner and each Board member personally inspected the rules at the casino. They discovered the rules were posted approximately 30 feet above the casino floor and were written in a cryptic style leaving them virtually impossible to read. The Board adamantly enforces the requirement that licensees post, conspicuously display, and follow their rules for gambling games. These rules must be worded in a clear and accurate manner. In this case the Board decided in favor of the patron determining it was unfair to hold a patron to a rule which was not clearly displayed in a conspicuous place.

The Enforcement Division issued decisions in 849 casino/patron disputes during fiscal year 1993. Of those, forty-four petitioned for a hearing. Obviously, these numbers will rise as the industry continues to expand. The Board considers this regulatory function to be an important aspect in creating an atmosphere of goodwill and confidence between the general public and the gaming industry. The Board will strive to continue with this process in a fair and equitable manner.

