

IN THE SUPREME COURT OF THE STATE OF NEVADA

PATRICIA KRIDER,  
Appellant,  
vs.  
HARD ROCK HOTEL & CASINO,  
Respondent.

No. 50464

**FILED**

APR 30 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal arising from a district court order affirming a decision of the Nevada Gaming Control Board. Eighth Judicial District Court, Clark County; Norman C. Robison, Judge.

On September 4, 2002, Patricia Krider played video poker at the Hard Rock Hotel & Casino. The face of Krider's machine, like all similar machines, had a sign indicating that "malfunction voids all pays and plays." After playing for 15 to 20 minutes, Krider noticed that the progressive jackpot for a four-of-a-kind hand was over \$1 million. Krider called over a Hard Rock employee who later testified that the jackpot was jumping between \$31 and \$100,000,000. Moments later, Krider was dealt a four-of-a-kind hand and the machine displayed that she had won an approximately \$1.4 million progressive jackpot.<sup>1</sup> Hard Rock refused to pay Krider the \$1.4 million, stating that the machine had malfunctioned and she had actually won \$32.34.

Krider subsequently filed a patron dispute with the Nevada Gaming Control Board. The Board investigated, held a hearing, and determined that the machine had malfunctioned and Hard Rock owed

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<sup>1</sup>Krider allegedly won \$1,406,162.75.

Krider \$32.34. The district court affirmed the Board's decision. We now affirm the district court's decision, which upheld the Board's decision. As the parties are familiar with the facts, we recount them here only as necessary to our disposition.

## DISCUSSION

### Standard of review

On appeal, this court's role in reviewing the Board's decision is the same as the district court's. Sengel v. IGT, 116 Nev. 565, 571, 2 P.3d 258, 262 (2000) (citing Nevada State Bd. of Nursing v. Merkley, 113 Nev. 659, 664, 940 P.2d 144, 147 (1997)).<sup>2</sup> As such, this court affords great deference to the Board's decision. Id. at 570, 2 P.3d at 261 (citing Redmer v. Barbary Coast Hotel & Casino, 110 Nev. 374, 378, 872 P.2d 341, 344 (1994)). Pursuant to NRS 463.3666(3), the Board's decision will not be disturbed unless it is, among other factors, "[u]nsupported by any evidence" or "[a]rbitrary or capricious or otherwise not in accordance with law." See Redmer, 110 Nev. at 378, 872 P.2d at 344. As used in NRS 463.3666(3), the "any evidence" standard means that this court should affirm the Board's decision if it is "supported by any evidence whatsoever," even if that amount of evidence is less than what a reasonable person might find adequate. Sengel, 116 Nev. at 570, 2 P.3d at 261. However, this court is "free to examine purely legal questions decided at the

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<sup>2</sup>In citing Sengel, we note that we reject Krider's argument that Sengel and Pickle v. IGT, 830 So. 2d 1214 (Miss. 2002), are not precedent and should be disregarded as authority because they do not discuss the issues on appeal in this case. Rather, Sengel and Pickle both involved patron disputes and are appropriate precedent.

administrative level.” Id. at 571, 2 P.3d at 262 (quoting Redmer, 110 Nev. at 378, 872 P.2d at 344).

Evidence supports the Board’s decision

In this case, we conclude that there is more than the necessary evidence required to support the Board’s decision. Specifically, we note that the following evidence, which was cited by the Board in rendering its decision, supports its decision that Hard Rock owed Krider \$32.34, and not \$1.4 million: (1) on the days preceding and following Krider’s win, a four-of-a-kind hand resulted in a win of approximately \$31; (2) it was mathematically impossible for the progressive to reach a \$1.4 million jackpot in one day; (3) the royal flush jackpot was less than the four-of-a-kind jackpot, which is inconsistent with the rank of hands in poker; (4) the Hard Rock employee observed that the progressive jackpot was jumping between \$31 and \$100,000,000; and (5) the device on the machine that displays the amount won, but does not determine it, malfunctioned, allowing Hard Rock to employ an element of a wagering contract between a patron and a casino known as “malfunction voids all pays and plays.”<sup>3</sup>


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<sup>3</sup>We note that Krider presents four other arguments in this appeal. First, Krider argues that she entered into a wagering contract for \$1.4 million, which could not be reformed to be \$32.34. We conclude that Krider’s argument lacks merit because there is more than the requisite amount of evidence to support the Board’s conclusion that she entered into a contract for \$32.34. Second, Krider argues that a term of the contract was Nevada Gaming Commission Regulation (NGCR) 14.040(4) (providing that all gaming devices submitted for approval must display the rules of play and payoff schedule). While the Board did not note NGCR 14.040(4) in its decision, we conclude that Hard Rock did not violate the regulation. Third, Krider argues that “malfunction voids all pays and plays” should not apply. We have determined that this argument lacks merit because

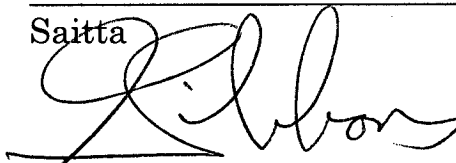
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Accordingly, because the Board's decision was neither unsupported by any evidence nor was it arbitrary or capricious or otherwise contrary to law, we

ORDER the district court's order upholding the Board's decision AFFIRMED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Chief Judge, Eighth Judicial District  
Hon. Norman C. Robison, Senior Judge  
William F. Buchanan, Settlement Judge  
Nersesian & Sankiewicz  
Bailey Kennedy  
Eighth District Court Clerk

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the Board's conclusion that the machine malfunctioned is supported by more than enough evidence. Last, Krider argues that she was denied due process. This argument, too, is without merit. The Board's conclusion that Krider was not denied due process because the game was properly sealed, unsealed, and evaluated is adequately supported by the evidence.