


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DAVID CHIWAI WOO,
Appellant,
vs.
NEVADA GAMING CONTROL BOARD;
AND NEVADA GAMING
COMMISSION,
Respondents.

No. 88393-COA

FILED
MAR 28 2025
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF AFFIRMANCE

David Chiwai Woo appeals from a district court order denying his petition for judicial review in a gaming matter. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

In 2018, Woo submitted an application for a gaming employee registration in order to work as a casino dealer. The Nevada Gaming Control Board (Board) objected to Woo's registration pursuant to NRS 463.335(12) based on Woo's failure to disclose a prior gambling-related incident in his application. Woo did not immediately request a hearing based on the objection.

Several years later, in 2022, Woo petitioned the Board to reconsider its objection to his registration, and the Board sent him a letter notifying him that it received his "letter requesting reinstatement" of his registration as a gaming employee and would investigate and review his case pursuant to Nevada Gaming Regulation (NGR) 5.109. The Board conducted a hearing before a hearing officer, and Woo testified. Following the hearing, the hearing officer issued a written recommendation to the Nevada Gaming Commission (Commission) to sustain the Board's objection

to Woo's gaming employee registration, concluding that Woo was not suitable to be a gaming employee. Woo thereafter sought review of the recommendation before the Commission.

Following a hearing that Woo attended, the Commission sent Woo a letter sustaining the Board's objection and informing him that, pursuant to NGR 5.109, he was not permitted to request a hearing for reconsideration of the objection to his gaming employee registration until 2028—five years following the Commission's decision. However, the letter also provided that the Commission's decision was subject to judicial review by a district court pursuant to NRS 463.315-NRS 463.318 (gaming statutes regarding judicial review), and a petition seeking such review must be filed within 20 days after the Commission's final decision.

Woo timely filed a petition for judicial review and opening brief challenging the Commission's decision. In response, the Board and the Commission (collectively respondents) filed a responding memorandum opposing Woo's petition and contending that he lacked standing to file a petition for judicial review. Respondents asserted that the Commission's letter to Woo informing him of the availability of judicial review inadvertently combined language from the procedures outlined in NRS 463.335 (setting forth the process for appealing an objection to a gaming employee registration, which provides for judicial review of the Commission's decision) and NGR 5.109 (outlining the process for petitioning for reconsideration of an objection, which does not provide for judicial review). According to respondents, Woo failed to follow the procedure set forth in NRS 463.335 after the Board objected to his application in 2018, and his failure to request a Board hearing immediately following the objection was deemed an admission that the objection was well-founded,

which precluded administrative or judicial review pursuant to NRS 463.335(11). As such, when Woo petitioned for reconsideration of the objection in 2022, the reconsideration procedure set forth in NGR 5.109 applied, and judicial review was not available to Woo following the decision on his reconsideration request.

Woo filed a reply brief arguing that he complied with NGR 5.109 and was entitled to request a hearing for reconsideration. He acknowledged that his reconsideration request was made pursuant to NGR 5.109(1) and (2) and was submitted nearly four years after the Board's 2018 objection. Nevertheless, he contended that he complied with NRS 463.335 by timely filing a request for review before the Commission and a subsequent petition for judicial review, though he did not acknowledge or respond to respondents' argument that the procedures under the statute and the regulation are different, depending on the timing of his request.

The district court subsequently entered a written order denying Woo's petition for judicial review and concluding that Woo was barred from seeking judicial review because he failed to timely request a hearing from the Board's 2018 objection and therefore was precluded from seeking judicial review, as provided in NRS 463.335(11). Instead, the court determined that Woo sought relief through the reconsideration process set forth in NGR 5.109, which does not provide a right to judicial review. This appeal followed.

On appeal, Woo contends the district court erred by finding that he was barred from seeking judicial review. He argues the letter from the Commission informed him that he was entitled to judicial review of its decision, he complied with the applicable statutory timelines for seeking

judicial review, and he was entitled to judicial review regardless of whether he sought it in 2018 or 2022.¹

The issue in this case is whether Woo was entitled to judicial review following his reconsideration hearing before the Board and, subsequently, the review by the Commission. Where a party seeks review of an administrative agency's official act, "[c]ourts have no inherent appellate jurisdiction . . . except where the legislature has made some statutory provision for judicial review." *Crane v. Cont'l Tel. Co. of Cal.*, 105 Nev. 399, 401, 775 P.2d 705, 706 (1989). Because jurisdiction to review an agency decision is entirely created by statute, "strict compliance with the statutory requirements for such review is a precondition to jurisdiction." *Kame v. Emp. Sec. Dep't*, 105 Nev. 22, 25, 769 P.2d 66, 68 (1989), *overruled on other grounds by Jorrin v. Nev., Emp. Sec. Div.*, 139 Nev., Adv. Op. 29, 534 P.3d 978 (2023). On appeal, this court reviews issues of statutory interpretation de novo. *Pub. Emps.' Ret. Sys. of Nev. v. Reno Newspapers, Inc.*, 129 Nev. 833, 836, 313 P.3d 221, 223 (2013).

In gaming matters, "judicial review is confined to a final decision or order of the Commission and then only in specified instances." *State v. Rosenthal*, 93 Nev. 36, 41, 559 P.2d 830, 834 (1977). The Commission's letter and Woo's pleadings in the district court cite to "NRS 463.315 – NRS 463.318" in discussing the availability of judicial review. Under NRS 463.315(1), any person aggrieved by a final decision of the

¹On appeal, Woo suggests he filed an application for a gaming employee registration in 2018 and then filed a new application in 2022. However, contrary to this assertion, the record shows he filed an application in 2018 and a request for a reconsideration hearing related to the 2018 application in 2022.

Commission made after a hearing pursuant to NRS 463.213 to 463.3145, inclusive, may obtain judicial review thereof in the district court.

NRS 463.335 sets forth both the registration requirement an applicant must undergo in order to be employed as a gaming employee as well as the resulting procedure in the event the Board objects to an applicant's registration application. Once an applicant submits an application for registration as a gaming employee, the Board must conduct an investigation to determine the applicant's eligibility for registration. NRS 463.335(5). Following the investigation, the Board may object to the registration for any reason deemed reasonable by the Board. NRS 463.335(12). If the Board objects, the applicant has 60 days after receiving notice of the objection to apply to the Board for a hearing. NRS 463.335(11). An applicant's failure to apply for a hearing within 60 days shall be deemed to be an admission that the objection was well-founded and that failure precludes administrative or judicial review. *Id.* However, if an applicant is aggrieved by the Board's decision, and timely requests a hearing, the applicant may apply to the Commission for review. NRS 463.335(13). The Commission may sustain, modify, or reverse the Board's decision, and the Commission's decision then becomes final and is subject to judicial review pursuant to NRS 463.315. *Id.*

By contrast, NGR 5.109 sets forth the procedure to petition for reconsideration of an objection to an application for registration as a gaming employee. Under that regulation, when an application is objected to pursuant to NRS 463.335, the applicant may not request a hearing for reconsideration of the final administrative or judicial action for a period of one year following the date of the final action. NGR 5.109(1). After one year, the aggrieved applicant may request a hearing by filing a petition with

the Board setting forth the basis for reconsideration. NGR 5.109(2). Once a petition for reconsideration is filed, the Board must conduct an investigation and may grant relief or, if it declines to grant relief, must hold a hearing. NGR 5.109(3). Following the hearing, the Board must render a decision sustaining, modifying, or withdrawing the objection. NGR 5.109(5). If the applicant is aggrieved by the Board's decision, they may apply to the Commission for review of the decision. NGR 5.109(7). The Commission may then sustain, modify, or reverse the Board's decision or recommendation or remand for further investigation. NGR 5.109(8). Unlike NRS 463.335, NGR 5.109 does not provide for judicial review following the Commission's decision.

Here, Woo initially filed his application for a gaming employee registration in 2018, and the Board subsequently objected to that application. Woo acknowledges that he failed to request a hearing within 60 days of receiving notice of the objection as required by NRS 463.335(11). Woo's failure to seek such a hearing resulted in his admission that the objection was well-founded and precluded judicial review. *See id.* Consequently, Woo's available relief was limited to requesting reconsideration pursuant to NGR 5.109.

In 2022, Woo requested a hearing before the Board to "reconsider the objection to [his] registration as a gaming employee." The Board confirmed that a hearing was set pursuant to NGR 5.109(1) and, following the hearing, recommended sustaining the objection. The Commission subsequently held a hearing and sustained the Board's objection. Following this decision, Woo filed the underlying petition for judicial review. But as discussed above, when a party requests reconsideration of the Board's objection, the controlling regulation—NGR

5.109—does not provide for judicial review following such a decision. While Woo relies on NRS 463.315 in asserting that he was entitled to judicial review of the Commission’s denial of his request to reconsider the objection, that statute only applies following a final decision or order of the Commission, not after the denial of a request for reconsideration of an objection sought under NGR 5.109. See NRS 463.315(1) (“Any person aggrieved by a final decision or order of the Commission made after hearing or rehearing by the Commission pursuant to NRS 463.312 to 463.3145, inclusive . . . may obtain a judicial review thereof.”). Under these circumstances, the district court properly determined that judicial review was unavailable under the controlling statutes and regulations.²

Nevertheless, Woo relies on the Commission’s letter, which stated that the Commission’s decision was subject to judicial review “pursuant to NRS 463.315 – NRS 463.318” to support his contention that judicial review of the Commission’s decision was available. Although Woo does not frame his argument in terms of seeking judicial estoppel, he is, in essence, arguing that judicial estoppel should operate to permit him judicial review based on the Commission’s letter advising him of that option.

Judicial estoppel is an equitable doctrine used to protect the judiciary’s integrity and it is invoked by a court at its discretion. See *NOLM*,

²We note that Woo had the opportunity to obtain judicial review by following the NRS 463.335 procedures after the 2018 objection to his application. More specifically, Woo could have requested a hearing before the Commission regarding the objection and, if relief was denied following the hearing, he could have sought judicial review of the resulting final decision on his application. Woo, however, failed to avail himself of these procedures, and instead waited several years before seeking reconsideration of the objection in line with the procedures outlined in NGR 5.109.

L.L.C. v. Cnty. of Clark, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004). Courts may apply judicial estoppel when

(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position . . . ; (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.

S. California Edison v. First Jud. Dist. Ct., 127 Nev. 276, 285-86, 255 P.3d 231, 237 (2011) (internal citations omitted).


In this case, judicial estoppel does not apply because the record demonstrates that the Commission's first position regarding the availability of judicial review was taken by mistake. Below, the Commission asserted that its letter to Woo "inadvertently combined" the language from the procedures set forth in NRS Chapter 463 and the reconsideration procedure set forth in NGR 5.109 to suggest that Woo could seek judicial review of its denial of his request for reconsideration of the objection. Woo does not challenge the assertion that this was simply a mistake—either below or on appeal—and he makes no argument suggesting that the Commission intentionally provided him with incorrect information such that judicial estoppel could potentially apply. *See Edison*, 127 Nev. at 285-86, 255 P.3d at 237; *see also Marcuse v. Del Webb Communities, Inc.*, 123 Nev. 278, 287-88, 163 P.3d 462, 469 (2007) (clarifying that judicial estoppel "should be applied *only* when a party's inconsistent position [arises] from intentional wrongdoing or an attempt to obtain an unfair advantage," though it does not preclude changes in position that are not intended to sabotage the judicial process (emphasis added) (internal quotation marks omitted)). Under these circumstances, to the extent Woo


implies judicial estoppel should be applied to reverse the challenged order, we conclude his argument in this regard does not provide a basis for relief.

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. Crystal Eller, District Judge
David Chiwai Woo
Attorney General/Carson City
Attorney General/Las Vegas
Eighth District Court Clerk

³Insofar as Woo raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.