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GAMBLING AND THE LAW®:
“BLACKJACK AND THE LAW” Wins Case for Casino

In one of the very first cases heard by the federal court in Las Vegas in 2011, Harrah’s (now renamed Caesars) once again won the right to kick out card-counters. Roger L. Hunt, Chief U.S. District Judge for Nevada, based his decision, in part, on a book I co-authored in 1998, BLACKJACK AND THE LAW.

Unfortunately for all advantage players, Judge Hunt’s decision was correct.

A Los Angeles lawyer, Ernest J. Franceschi Jr., alleged that Harrah’s Entertainment falsely advertised that that all residents of California were welcome at its Nevada casinos.

Franceschi claimed that on five separate occasions between 2005 and 2006 he was “backroomed,” photographed and ejected. Finally, he was permanently barred from “playing blackjack at multiple Nevada casinos, including Harrah's Las Vegas, Caesar's Palace, Paris Las Vegas, the Rio All-Suites Hotel, and Harrah's Reno.”

So, the gist of his claim was that Harrah’s casinos never really intended “to offer their services as advertised because they have an undisclosed policy and practice of barring ‘skillful’ blackjack players from playing blackjack...”

This is where advantage players and casino employees say, “I’m shocked! Shocked!”

In a somewhat surprising move, Judge Hunt dismissed the case for failure to state a claim, without Harrah’s even raising the issue.

Judge Hunt, who was born in Overton, Nevada in 1942 and apparently lived in Nevada nonstop, except for college and law school, understands the way casinos work.

Franceschi had originally filed the suit in California state court. It is the normal practice of plaintiffs to file where they live, because it is easier and cheaper for them and more expensive for out-of-state defendants, and because state courts have the reputation of sometimes favoring locals over foreigners. But Harrah’s lawyers knew all that, and got the case transferred to Nevada, since that is where most of the witnesses were and the events took place.

Still, the case involved claims under California statutes. But Judge Hunt ruled that even under California law, a claim of false advertising or unfair competition will not stand if the actions of the defendant were legal.

So that is where my book comes in. Do Nevada casinos have the right to exclude card-counters and other advantage players?

Citing BLACKJACK AND THE LAW Judge Hunt declared, “In addition, Nevada and California courts have long since established that the ‘right to exclude others’ is a ‘fundamental element of private property ownership.’ The same fundamental rights of private property ownership also extend to gaming establishments.”

As I explained in my book, Judge Hunt is right. The New Jersey Supreme Court has ruled that that state had imposed so much regulation on every part of the casino business in Atlantic City that only the regulators could pass a rule excluding advantage players, which they never have done. Nevada, on the other hand, has the old common law doctrine that a man’s home, or in this case, a corporation’s casino, is his castle, and the owner has the right to exclude anyone for any reason, or for no reason at all. The sole exceptions are that you can’t discriminate on the basis of race, religion, etc.

I have to admit it feels great to be included in a decision by the Chief Federal Judge in Nevada. I just wish it were one where the player won.

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© 2011, I. Nelson Rose. Prof. Rose is recognized as one of the world’s leading experts on gambling law, and is a consultant and expert witness for governments, industry and players. His latest books, INTERNET GAMING LAW (1st and 2nd editions), BLACKJACK AND THE LAW and GAMING LAW: CASES AND MATERIALS, are available through his website, www.GAMBLINGANDTHELAW.com.