

Supplemental Meeting Materials for 8/6/2025

Item # 5.5.

bestbet Holdings, Inc. v. Commission,
Case No. 2025-055983

STATE OF FLORIDA
FLORIDA GAMING CONTROL COMMISSION

BESTBET HOLDINGS, INC.,

Petitioner,

v.

FLORIDA GAMING CONTROL
COMMISSION,

FGCC Case No.: 2025-055981

Respondent.

FINAL ORDER

This matter appeared before the Florida Gaming Control Commission at a duly noticed public meeting on August 6, 2025, for final agency action. After a complete review of the record, the Commission adopted the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On July 1, 2025, the Florida Gaming Control Commission rendered a final order approving an application to amend the permitted property description submitted by Hamilton Downs Horsetrack, LLC d/b/a Hamilton Downs (“Hamilton Downs”) for permit number QHRS 547, styled as In Re: Hamilton Downs Horsetrack, LLC d/b/a Hamilton Downs, Amendment to Pari-Mutuel Permit (the “Final Order”).
2. The Final Order included a Notice of Right to Judicial Review, informing Hamilton Downs, the party to the proceeding, of its rights to seek judicial review of the Final Order under section 120.68, Florida Statutes.
3. On July 22, 2025, bestbet Holdings, Inc. filed a Petition for Formal Administrative Hearing, requesting administrative review of the Final Order under sections 120.569 and

120.57(1), Florida Statutes, and Rule 28-106.201 of the Florida Administrative Code (the “Petition”).

4. The Final Order has not been appealed.

5. The Petition alleged that certain provisions of sections 120.57 and 120.68, Florida Statutes, require reversal of the Final Order and seeks the following relief from the Commission: (i) that the Commission refer the matter to the Division of Administrative Hearings for a formal administrative hearing; (ii) rescind the Final Order; and (iii) grant such further relief as may be deemed appropriate.

6. bestbet Holdings, Inc. is not a party to Hamilton Downs’ application to amend the property description of its pari-mutuel wagering permit.

CONCLUSIONS OF LAW

7. Section 120.52(7), Florida Statutes, defines “final order” as:

[A] written final decision which results from a proceeding under s. 120.56, s. 120.565, s. 120.569, s. 120.57, s. 120.573, or s. 120.574 which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it. The clerk shall indicate the date of filing on the order.

8. The Final Order is a final order under section 120.52(7), Florida Statutes, and constitutes final agency action in this matter.

9. Section 120.569(1), Florida Statutes, provides, in pertinent part, that:

Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party’s attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the

hearing or judicial review; and shall state the time limits which apply.

10. Hamilton Downs submitted an amendment to its pari-mutuel wagering permit under section 120.60, Florida Statutes.

11. Section 120.60(3), Florida Statutes, requires, in pertinent part, that:

Each applicant shall be given written notice, personally or by mail, that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived, a copy of the notice shall be delivered or mailed to each party's attorney of record and to each person who has made a written request for notice of agency action. Each notice must inform the recipient of the basis for the agency decision, inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57 or judicial review pursuant to s. 120.68 which may be available, indicate the procedure that must be followed, and state the applicable time limits.

(Emphasis added)

12. The Final Order complied with the notice requirements applicable to final orders approving license applications under sections 120.60 and 120.569(1), Florida Statutes.

13. Final agency action is subject to judicial review. § 120.68(1)(a), Fla. Stat. Judicial review “shall be sought in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.” § 120.68(2), Fla. Stat.

14. By law, the Division of Administrative Hearings does not have judicial power to review final agency action and is an improper forum to contest the Final Order.

15. The Division of Administrative Hearings is an “executive agency, exercising executive powers,” not a court vested with judicial power under article V of the Florida Constitution. *Agency for Health Care Admin. v. Murciano*, 381 So. 3d 1283, 1288 (Fla. 1st DCA 2024).

16. An administrative law judge with the Division of Administrative Hearings “is not an article V judge.” *Id.* In fact, “ALJs do not, and cannot, exercise judicial power.” *Id.* at 1288 n.2.

17. Therefore, the Division of Administrative Hearings lacks subject-matter jurisdiction to review the Final Order under section 120.68, Florida Statutes, to rule on whether the provisions of section 120.68(7), Florida Statutes, require reversal of the Final Order, and to grant Petitioners relief requested in the Petition.

18. The Commission is authorized to dismiss, with prejudice, a defective petition for a formal administrative hearing if it conclusively appears from the face of the petition that the defect is incurable. *See* § 120.569(2), Fla. Stat. *See also* § 120.569(2)(a), Fla. Stat. (“The referring agency shall take no further action with respect to a proceeding under s. 120.57(1), except as a party litigant, as long as the division has jurisdiction over the proceeding under s. 120.57(1).” (emphasis added)). The Division of Administrative Hearings does not have jurisdiction over a proceeding involving final agency action.

19. The Petition for Formal Administrative Hearing is defective because it is not subject to administrative review by the Division of Administrative Hearings. This defect is incurable because subject-matter jurisdiction cannot be waived. *See, e.g., Page v. Deutsche Bank Tr. Co. Americas*, 308 So. 3d 953, 960 (Fla. 2020).

Therefore, it is ordered:

The Petition for Formal Administrative Hearing is dismissed with prejudice.

[To be completed with the names of the Commissioners], concur.

I HEREBY CERTIFY that this document was filed, and a true copy was served on each party via U.S. mail and electronic mail on the _____ day of _____, 2025.

CLERK OF THE COMMISSION
Florida Gaming Control Commission

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE CLERK OF THE FLORIDA GAMING CONTROL COMMISSION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL OF THE FIRST DISTRICT OR IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CLERK OF THE COMMISSION
Florida Gaming Control Commission