

STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	1/28/2015
File #	2015-00810

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION, DIVISION
OF PARI-MUTUEL WAGERING,

Petitioner,

CASE NO. 2011-050187

v.

RAFAEL ALFONZO HERNANDEZ,

Respondent,

FINAL ORDER

The Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering hereby enters this Final Order against the Respondent, Rafael Alfonzo Hernandez in the above styled matter.

1. On October 24, 2011, Petitioner Investigator Robert Starkman signed an Investigative Report setting forth facts which, if true, would constitute a violation of Rule 61D-11.005(4), Florida Administrative Code, and Section 550.0251(6), Florida Statutes (2011).

2. On October 7, 2014, an Administrative Complaint was filed with the agency clerk alleging Respondent violated Rule 61D-11.005(4), Florida Administrative Code and Section 550.0251(6), Florida Statutes (2011), by stealing seventy dollars (\$70.00) worth of poker chips.

3. Respondent was served with the Administrative Complaint via U.S. Certified Mail on October 21, 2014.

4. Respondent's Election of Rights Form was due to the Division on or before November 11, 2014. To date, the Petitioner has not received Respondent's Election of Rights Form and, therefore, Respondent has waived his rights to elect a forum.

5. The Division hereby adopts and incorporates by reference the facts contained and set forth in the Motion for Final Order, together with the supporting exhibits attached thereto, as the Division's Findings of Fact in this matter.

6. The Division also hereby adopts and incorporates the facts contained in the Investigative Report as the Division's Findings of Facts in this matter.

CONCLUSIONS OF LAW

7. The Division has jurisdiction over the parties and subject matter of this case pursuant to Chapter 550, Florida Statutes.

8. Respondent failed to return an Election of Rights and thereby waived his rights to elect a forum.


9. Under the facts of this case, Section 550.0251, Florida Statutes, authorizes the Division to enter an order permanently excluding Respondent from any and all pari-mutuel facilities in this state.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that Respondent is PERMANENTLY EXCLUDED from any and all pari-mutuel facilities in this state.

[Signature appears on the following page.]

DONE AND ORDERED this 16th day of January, 2015, in Tallahassee,
Florida.



JONATHAN ZACHEM, DIRECTOR
Division of Pari-Mutuel Wagering
Department of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1035
(850) 488-9130

NOTICE OF RIGHT TO APPEAL

Any party to this proceeding has the right to seek its judicial review under section 120.68, Florida Statutes, by the filing of an original notice of appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Agency Clerk, 1940 North Monroe Street, Tallahassee, Florida 32399-2202 (email: ogcagencyclerk@myfloridalicense.com), **and** by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate Florida district court of appeal. The notice of appeal must be filed (received) in the Office of the Agency Clerk within thirty (30) days after the date this Order is filed with the Clerk.

CERTIFICATE OF SERVICE

I hereby certify this 28th day of January, 2015, that a true copy of the foregoing "Final Order" has been provided by U.S. Mail to:

**Rafael Alfonso Hernandez
3825 Match Road
Lake Worth, FL 33467**

Brandon M. Nibbs

for: **AGENCY CLERK**
Department of Business & Professional Regulation

7004 1350 0002 7397 5803

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STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	12/12/2014
File #	

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION, DIVISION
OF PARI-MUTUEL WAGERING,

Petitioner,

CASE NO. 2011-050187

v.

RAFAEL ALFONZO HERNANDEZ,

Respondent,

MOTION FOR FINAL ORDER

The Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering ("Petitioner") hereby moves for entry of a Final Order against the Respondent. As grounds therefor Petitioner states as follows:

1. On October 24, 2011, Petitioner Investigator Robert Starkman signed an Investigative Report setting forth facts which, if true, would constitute a violation of Rule 61D-11.005(4), Florida Administrative Code, and Section 550.0251(6), Florida Statutes (2011). A true copy of the Investigative Report is hereby attached as Exhibit A.

2. On October 7, 2014, an Administrative Complaint was filed with the agency clerk alleging Respondent violated Rule 61D-11.005(4), Florida Administrative Code and Section 550.0251(6), Florida Statutes (2011), by stealing seventy dollars (\$70.00) worth of poker chips. A true copy of the Administrative Complaint is hereby attached as Exhibit B.

3. Respondent was served with the Administrative Complaint via U.S. Certified Mail on October 21, 2014. A true copy of the Certified Mail Return Receipt is attached hereto as Exhibit C.

4. Respondent's Election of Rights Form was due to the Division on or before November 11, 2014. To date, the Petitioner has not received Respondent's Election of Rights Form and, therefore, Respondent has waived his rights to elect a forum.

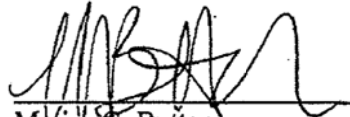
WHEREFORE, Petitioner respectfully requests that the Director of the Division of Pari-Mutuel Wagering promptly issue a Final Order deeming all allegations of fact in the Administrative Complaint admitted and adopting them as the Department's Finding of Fact, adopting the violations enumerated in the Administrative Complaint as the Department's Conclusions of Law, and permanently excluding Respondent from all licensed slot machine and pari-mutuel facilities in this state.

[Signatures appear on the following page]

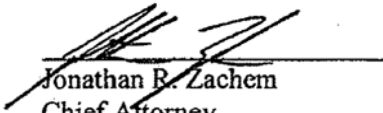
Signed this _____ day of Decmeber, 2014.

KEN LAWSON, Secretary
Department of Business and
Professional Regulation

By:



Marisa G. Button
Assistant General Counsel
Division of Pari-Mutuel Wagering
Florida Bar No. 0102263
Department of Business and
Professional Regulation
1940 N. Monroe Street, Ste. 40
Tallahassee, FL 32399-2202
(850)717-1197 Telephone
(850)921-1311 Facsimile

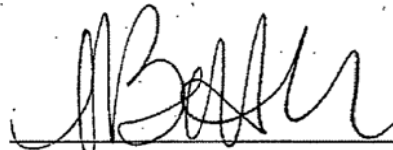


Jonathan R. Zachem
Chief Attorney
Division of Pari-Mutuel Wagering
Florida Bar No. 0083617
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Professional Regulation
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Tallahassee, FL 32399-2202
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(850)921-1311 Facsimile

CERTIFICATE OF SERVICE

I hereby certify this 12th day of December, 2014, that a true copy of the foregoing "Motion for Final Order" has been served by U.S. mail upon:

**Rafel Alfonzo Hernandez
3825 Match Road
Lake Worth, Florida 33467**



Marisa G. Button

Ken Lawson, Secretary

Rick Scott, Governor

OFFICE OF INVESTIGATIONS

INVESTIGATIVE REPORT

Office: P M W /	Region: Southern	Date of Complaint: October 13, 2011	Case Number: 2011 05 0187
Respondent: HERNANDEZ, Rafael Alfonso 3825 MATCH ROAD LAKE WORTH, FL., 33467		Complainant: DBPR – PMW- INVESTIGATION SECTION 1400 W. COMMERCIAL BLVD. SUITE 115 FT. LAUDERDALE, FL 33309 954-202-3900	
License # and Type:	Profession:	Board:	Report Date: October 24, 2011
Period of Investigation: October 13, 2011 to October 24, 2011		Type of Report: Preliminary	
Violation(s) Rule 61D-11.005 Prohibitions, (4) No person shall, either directly or indirectly: (b) Engage in any act, practice, or course of operation that would constitute a fraud or deceit upon any participant in a game or the card room operator. (c) Engage in any act, practice, or course of operation with the intent of cheating any participant or the card room operator.			
Synopsis: Palm Beach Kennel Club (PBKC) poker room manager Noah Carbone, provided information regarding a theft of \$70.00 worth of poker chips by patron Rafael Alfonso HERNANDEZ on 09/27/2011. HERNANDEZ was seated at table # 23, seat # 2 in the main cardroom. HERNANDEZ was seated next to the victim Ivan R. WEITHORN whom was sitting at seat # 3.			
Related Case: PBSO# 11-126631			
Investigator / Date <i>[Signature]</i> 10/24/2012		Investigator Supervisor / Date 10/25/11 <i>[Signature]</i>	
Chief of Investigations / Date October 26, 2011 Steven E. Kogan / <i>[Signature]</i>			



CONTINUATION

WEITHORN just won a hand and had approximately \$200.00 in poker chips against the table's bumper in front of him. He left the table and went to the restroom. At this time **HERNANDEZ** was moving his seat to seat # 4, which was on the other side of **WEITHORN**. **HERNANDEZ** picked up his poker chips and placed them in a clear plastic caddy utilized to hold chips. He then began to pick up the chip caddy in his left hand, while doing so, he reached under his left arm and with his right hand he took a small stack of chips belonging to **WEITHORN**. **HERNANDEZ** moved all of his chips to his new seat. **WEITHORN** returned and noticed some of his chips were missing. He also noticed a chip on the floor next to him. **WEITHORN** notified the floor manager Peter Arsenis of what transpired.

Cardroom Supervisor Noah Carbone, was notified and immediately reviewed the surveillance video for table # 23 and the alleged activities that took place. Upon review of the surveillance video, Noah Carbone verified the allegations.

Palm Beach Sheriff's Office (PBSO) Deputy D. Clark was notified of what transpired and responded. After the video was reviewed by Deputy Clark, he went to table # 23 and made contact with **HERNANDEZ**. Deputy Clark asked **HERNANDEZ** to stand and then placed him under arrest. **HERNANDEZ** was escorted to the cardroom office. Deputy Clark requested PBSO Detective G. Meron, who is fluent in Spanish, to assist in interviewing and processing **HERNANDEZ**. PBSO Deputy Clark contacted **WEITHORN** to ascertain if he wanted to press charges against **HERNANDEZ**, he agreed to do so. **HERNANDEZ** was read his Miranda Warnings and issued a Notice to Appear for 812.014 (1) (3) (A), Petit Theft under Florida law. Prior to releasing **HERNANDEZ**, he was issued a Trespass Warning (OAN# 13587) and left the property without incident.

The surveillance video DVD was reviewed and placed into evidence. Request **HERNANDEZ** be placed on the State Exclusion list.

Case Status: Forwarded to Legal

STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Evelle Lawson-Proctor
Date	10/7/2014
File #	

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION, DIVISION
OF PARI-MUTUEL WAGERING,

Petitioner,

DBPR CASE NO. 2011-050187

v.

RAFAEL A. HERNANDEZ,

Respondent.

ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (Petitioner) files this Administrative Complaint against Rafael A. Hernandez (Respondent), and alleges as follows:

1. The Petitioner is the state agency charged with regulating pari-mutuel wagering pursuant to Chapter 550, Florida Statutes and cardroom operations pursuant to Section 849.086, Florida Statutes.
2. Respondent's address is reported as 3825 Match Road, Lake Worth, Florida 33467.
3. Palm Beach Kennel Club is a Florida licensed pari-mutuel and cardroom facility.
4. On or about September 27, 2011, Respondent was a patron at Palm Beach Kennel Club, where Respondent was playing cards at table twenty-three (23) of the main card room.
5. While seated at table twenty-three (23), Respondent stole a stack of chips belonging to another patron in the amount of approximately seventy dollars (\$70.00).
6. Palm Beach Kennel Club surveillance footage of table twenty-three (23) on September 27, 2011, revealed that Respondent stole the chips.



7. As a result, Respondent was arrested for petit theft, issued a trespass warning, and Palm Beach Kennel club permanently excluded Respondent from the facility.

8. Rule 61D-11.005(4), Florida Administrative Code (F.A.C.), provides:

- (4) No person shall, either directly or indirectly:
 - (b) Engage in any act, practice, or course of operation that would constitute a fraud or deceit upon any participant in a game or the cardroom operator.
 - (c) Engage in any act, practice, or course of operation with the intent of cheating any participant or the cardroom operator.

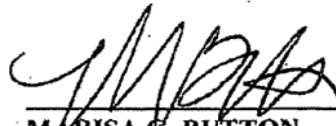
9. By stealing chips, Respondent has violated Rule 61D-11.005(4), F.A.C.

11. Under Section 550.0251(6), Florida Statutes, "[i]n addition to the power to exclude certain persons from any pari-mutuel facility in the state, the division may exclude any person from any and all pari-mutuel facilities in this state for conduct that would constitute, if the person were a licensee, a violation of this chapter or the rules of the division. The division may exclude from any pari-mutuel facility within this state any person who has been ejected from a pari-mutuel facility in this state or who has been excluded from any pari-mutuel facility in another state by the governmental department, agency, commission, or authority exercising regulatory jurisdiction over pari-mutuel facilities in such other state."

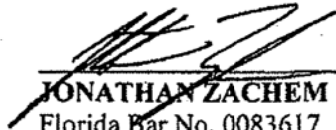
12. By violating Rule 61D-11.005(4), F.A.C., and by being ejected from Palm Beach Kennel Club, the Division may exclude Respondent from all pari-mutuel facilities in the State of Florida.

WHEREFORE, Petitioner respectfully requests the Division enter an Order permanently excluding Respondent from all licensed pari-mutuel facilities in the state.

Signed this 6th day of October, 2014.



MARISA G. BUTTON
Florida Bar No. 0102263
Assistant General Counsel
Division of Pari-Mutuel Wagering
Department of Business & Professional Regulation
Northwood Center
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Tallahassee, Florida 32399-2202



JONATHAN ZACHEM
Florida Bar No. 0083617
Chief Attorney
Division of Pari-Mutuel Wagering
Department of Business & Professional Regulation
Northwood Center
1940 North Monroe Street, Suite 40
Tallahassee, Florida 32399-2202

NOTICE OF RIGHTS

Please be advised that within twenty-one (21) days of your receipt of this administrative complaint you have the right to request an administrative hearing. Any such hearing would be conducted in accordance with the provisions of Sections 120.569 and 120.57, Florida Statutes, and you would have the right to be represented by counsel or other qualified representative, to call and examine witnesses, and to have subpoenas issued on your behalf. However, if you do not file (i.e., we do not receive) your request for hearing within the twenty-one (21) days, you will have waived your right to a hearing.

Please also be advised that mediation is not available in this matter.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <input checked="" type="checkbox"/> Date of Delivery</p> <p>C. Is delivery restricted? <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>If YES, enter ZIP+4[®]</p>
<p>1. Article Addressed to:</p> <p>Rafel Alfonzo Hernandez 3825 Match Road Lake Worth, FL 33467</p>	<p>RECEIVED</p> <p>DEC 21 2014</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input checked="" type="checkbox"/> Registered Mail <input checked="" type="checkbox"/> Insured Mail <input checked="" type="checkbox"/> Return Receipt for Merchandise <input checked="" type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input checked="" type="checkbox"/> Yes</p>
<p>2. Article Number <small>(Transfer from service label)</small></p> <p>AC 7011050187</p>	<p>7804 1350 0002 7397 5351</p> <p>102695-02-04-1540</p> <p>Domestic Return Receipt</p>



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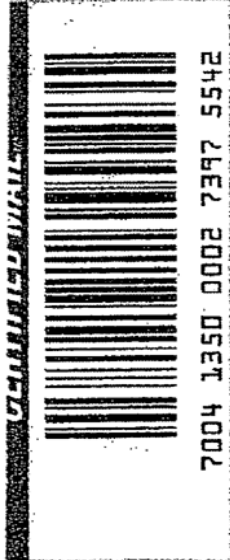
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<p>1. Article Addressed to:</p> <p>Rafael Alfonzo Hernandez 3825 Match Road Lake Worth, FL 33467</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Addressee</p> <p>C. Date of Delivery</p>	
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<p>3. Article Number (transfer from service label) PS Form 3811, February 2004</p>		<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. <input type="checkbox"/> Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>4. Article Number (transfer from service label) PS Form 3811, February 2004</p>		<p>4. Article Number (transfer from service label) PS Form 3811, February 2004</p>	

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