

**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	2/23/2015
File #	2015-01621

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

Petitioner,

v.

DBPR CASE NO. 2013-039784

PEDRO ESPINAL ESPINOSA

Respondent,

FINAL ORDER

The Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering, hereby enters this Final Order for the above styled matter. On January 14, 2015, J. Yvette Pressley, Hearing Officer for the Division, issued the Recommended Order in this matter. Pedro Espinal Espinosa (Respondent) filed Exceptions to the Hearing Officer's Recommended Order on January 28, 2015. The Division of Pari-Mutuel Wagering (Division or Petitioner) filed a response to Respondent's Exceptions to the Hearing Officer's Recommended Order (Recommended Order) on February 3, 2015.

EXCEPTIONS

Respondent's Exceptions to the Recommended Order were in the form of a signed letter submitted January 28, 2015. Respondent's exception to the Recommended Order is limited to the penalty recommended by the Hearing Officer. The Hearing Officer recommended that the Respondent be permanently excluded from all licensed slot machine and pari-mutuel facilities in the State of Florida. The Respondent did not take exception to the findings of fact of the Recommended Order, as he indicated that he regrets the actions that he took at Hialeah Casino

on September 18, 2013. Additionally, Respondent did not take exception to the conclusions of law set forth in the Recommended Order in that Respondent violated Rule 61D-611-005(4), Florida Administrative Code, and that Respondent may be excluded from any pari-mutuel facility in the state pursuant to Sections 550.0251(6) and 551.112, Florida Statutes because he was escorted from Hialeah Park and placed on its lifetime exclusionary list.

Respondent's exception to the recommended penalty is based upon his assertion that the recommendation is "completely unfair and unjustified" and that he feels "discriminated" and that he is being "used as an example." Respondent's exception requests that a shorter penalty be imposed and he suggests a suspension from pari-mutuel and slot machine facilities be imposed against him for three to six months. Respondent did not set forth the disputed portion of the Recommended Order by page number or paragraph and did not identify a legal basis for his exception or include specific citations to the record.

RULING ON EXCEPTIONS

Pursuant to Section 120.57(1)(k), this final order shall include an explicit ruling on each exception to the Recommended Order. Notwithstanding Respondent's failure to set forth the disputed portion of the Recommended Order by page number or paragraph or identification of a legal basis for the exception or identification of specific citations to the record, Respondent's exception will be considered for ruling herein.

Respondent's exception to the recommended penalty set forth in the Recommended Order is denied. The penalty recommended by the Hearing Officer is squarely within the penalty guidelines set forth in Sections 550.0251(6) and 551.112, Florida Statutes. The Respondent has not offered a citation to the record or to law to support his request to have his exclusion from

pari-mutuel and slot machine facilities limited to three to six months. Accordingly, Respondent's exception to the recommended penalty set forth in the Final Order is denied.

FINDINGS OF FACT

The Findings of Fact contained in the Recommended Order, attached hereto and incorporated herein by reference, are hereby adopted as the Findings of Fact of the Division.

CONCLUSIONS OF LAW

The Conclusions of Law contained in the Recommended Order, attached hereto and incorporated herein by reference, are hereby adopted as the Conclusions of Law of the Division.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law adopted from the Recommended Order of the Division's Informal Hearing, it is hereby ORDERED that:

- (1) The Respondent is permanently excluded from all licensed slot machine and pari-mutuel facilities in this state.
- (2) The Final Order shall become effective on the date of filing with the Agency Clerk of the Department of Business and Professional Regulation.

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



Jonathan R. Zachem, Director
Division of Pari-Mutuel Wagering
1940 North Monroe Street
Northwood Centre, Suite 50
Tallahassee, Florida 32399-1035

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been provided by Certified United States Mail to
Petitioner, Pedro Espinal Espinosa, 2190 N.W. 34th Street, Miami, Florida 33142 this
23rd day of February 2015.

Brandon M. Nicks
Agency Clerk's Office

CC:
J. Yvette Pressley, Hearing Officer
Bryan Barber, AAIL OGC/PMW
Marisa Button, Assistant Gen/Counsel

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<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
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2013039784	
Postmark Here	
Sent To <u>Pedro Espinal Espinosa</u>	
Street, Apt. No., or PO Box No.	
City, State, ZIP+4	
PS Form 3800, June 2002	
See Reverse for Instructions	

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

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 Rules 9.110 and 9.190, Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Department of Business and Professional Regulation, Attn: Ronda L. Bryan, Agency Clerk, 1940 North Monroe Street, Suite 92, Tallahassee, Florida 32399 and a Second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Florida 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.

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	2/3/2015
File #	

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

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

Petitioner,

DBPR CASE NO. 2013-039784

v.

PEDRO ESPINAL ESPINOSA,

Respondent.

**PETITIONER'S RESPONSE TO RESPONDENT'S EXCEPTIONS TO
HEARING OFFICER'S RECOMMENDED ORDER**

Pursuant to Rule 28-106.217(3), Florida Administrative Code, Petitioner files the following response to Respondent, Pedro Espinal Espinosa's Exceptions to the Recommended Order issued by Hearing Officer, J. Yvette Pressley ("Hearing Officer") on January 14, 2015, in the above styled case.

PRELIMINARY STATEMENT

1. On September 12, 2014, Petitioner issued an Administrative Complaint against Respondent. Thereby, the Petitioner sought an order permanently excluding Respondent from all licensed slot machine and pari-mutuel facilities in the State of Florida because the Hialeah Park Casino placed Respondent on its lifetime exclusionary list due to Respondent's theft of tournament chips from Hialeah Park Casino on September 18, 2013.

2. On October 7, 2014, Respondent executed his Election of Rights before a notary public, and thereby Respondent indicated he disputed, "the material facts alleged in the Administrative Complaint," specifying that he disputed paragraph number 8 of the Administrative Complaint that alleged that Respondent stole the tournament chips with the intent to cheat by introducing the chips into the next tournament. Petitioner agreed to withdraw paragraph 8 from the Administrative Complaint. Subsequently, Respondent agreed to an informal hearing pursuant to Section 120.57(2), Florida Statutes, as he did not dispute that he took chips from Hialeah Park Casino on September 18, 2013, or that Hialeah Park Casino placed him on its lifetime exclusionary list, which are the essential material facts in this case. An informal hearing was held on December 3, 2014. Respondent appeared by telephone. Petitioner was represented by the undersigned counsel.

3. The Hearing Officer issued a Recommended Order on January 14, 2015, finding that Respondent violated Rule 61D-11.005(4), and finding that Petitioner could exclude Respondent from any pari-mutuel facility in the State under Sections 550.0251(6) and 551.113, Florida Statutes, because Respondent was escorted from Hialeah Park Casino and placed on its lifetime exclusionary list. The Hearing Officer made a recommendation that the Division permanently exclude Respondent from all licensed slot machine and pari-mutuel facilities in the State of Florida.

4. Respondent filed Exceptions to the Recommended Order by letter on January 26, 2014.¹ Respondent's exceptions do not argue or dispute any finding of fact or conclusion of law set forth in the Hearing Officer's Recommended Order. Respondent's exceptions are limited to the recommended penalty of being placed on the statewide lifetime exclusionary list. Respond-

¹ Respondent subsequently filed a signed copy of his exceptions on January 28, 2014.

ent suggests that the recommended penalty is too harsh and suggests that a three to six month suspension is more appropriate for the severity of his violation.

STANDARD OF REVIEW OF HEARING OFFICER RECOMMENDED ORDER

5. Under Section 120.57(1)(l), Florida Statutes, the agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review on the complete record and without stating with particularity its reasons therefor in the order, but citing to the record in justifying the action.

RESPONSE TO EXCEPTIONS

6. The Respondent's exceptions to the recommended penalty are without merit and should be rejected. While Respondent has been forthcoming regarding his actions in this matter and has expressed regret for those actions, the Respondent took a significant amount of chips from Hialeah Park Casino and his actions were captured on video surveillance by Hialeah Park Casino. Accordingly, the Hearing Officer's recommended penalty should be adopted as final order in this matter.

PROPOSED ORDER

WHEREFORE, Petitioner, Division of Pari-Mutuel Wagering, requests the entry of a final Order adopting the Hearing Officer's Recommended Order permanently excluding Respondent from all licensed slot machine and pari-mutuel facilities in this state and further reflecting that one year after the entry of the Final Order or anytime thereafter, Respondent may petition the Division to be removed from the statewide exclusion list upon showing of rehabilitation and good moral character.

Respectfully submitted this 30th day of February 2015.



MARISA G. BUTTON
Assistant General Counsel
Division of Pari-Mutuel Wagering
Dept of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-2202
(850) 717-1197 / FAX 921-1311

CERTIFICATE OF SERVICE

I hereby certify this 30th day of February 2015, that a true copy of the foregoing
“RESPONSE TO RESPONDENT’S EXCEPTIONS TO HEARING OFFICER’S
RECOMMENDED ORDER” has been provided by U.S. Mail to:

PEDRO ESPINAL ESPINOSA
2190 N.W. 34th Street
Miami, Florida 33142



MARISA G. BUTTON

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

January 24, 2015

Exceptions Letter to Case Number: **2013-039784**

To whom this may concern:

(In the Department of Business & Professional Regulations, Division of Pari-Mutuel Wagering)

I *Pedro Espinal Espinosa* deeply regret my actions that I have caused on September 18, 2013 at Hialeah Park and Casino! I know that it was wrong and a very poor judgment. I do realize the seriousness of my actions, and I feel embarrassed and ashamed!

I understand that I cannot undo what has already been done. I do feel that I do need to be penalized for my actions!

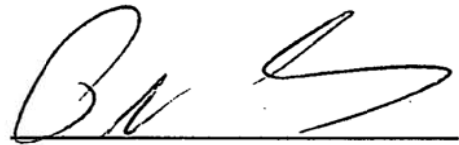
However after carefully reviewing all the letters sent to me from the department of professional regulations I feel that their recommendation is completely unfair and unjustified, and I feel discriminated and that I am being used as an example!

This whole process has made me feel as if I was a criminal and by no means I am not a criminal. I am a family man and never been in trouble with the law! Please understand that it's my phone call to the casino to return the casino chips not the other way around.

Therefore, I feel a short penalty would be appreciated, (for example! 3 months but no more than 6 months preventing me to go to a casino). I know I was wrong and I am so sorry and very apologetic. I promise that I will be extremely careful in the future!

Your consideration in this matter is very appreciative!

P.S I do understand! And for that I apologize to everyone involved.

A handwritten signature in black ink, consisting of stylized initials and a surname, positioned above a horizontal line.

Pedro Espinal Espinosa

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Evette Lawson-Proctor
Date	1/14/2015
File #	

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION

Petitioner,

v.

DBPR Case No: 2013-039784

PEDRO ESPINAL ESPINOSA

Respondent.

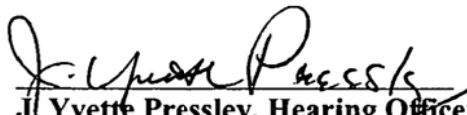
NOTICE OF SCRIVENER'S ERROR

On **January 12, 2015**, the Hearing Officers Recommended Order was issued by the Division of Pari-Mutuel Wagering and filed with the Agency Clerk on **January 13, 2015**, for the Department of Business and Professional Regulation which contained the following scrivener's error(s):

- 1.) On page 1, the case styling reads: Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering v. Benjamin Espinal Espinosa, which is incorrect. It should read: Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering v. Pedro Espinal Espinosa.
- 2.) On page 1, paragraph 1, line 4, it reads in parts: against Benjamin Espinal Espinosa.....it should read, in part: against Pedro Espinal Espinosa...

As such, the Division hereby provides this Notice of Scrivener's Error to correct that portion of the Hearing Officer's Recommended Order described herein.

Done this 14th day of January, 2015.


J. Yvette Pressley, Hearing Officer
Office of the General Counsel
Department of Bus. & Prof'l Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida 32399-2201

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided this 14 day of January, 2015, by U.S. Mail to Pedro Espinal Espinosa, 2190 N. W. 34th Street, Miami, Florida 33142.

BY: 
Agency Clerk's Office

Cc:
Yvette Pressley, Deputy General Counsel
Byran Barber, AAI

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Evette Lawson-Proctor
Date	1/14/2015
File #	

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

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

Petitioner,

DBPR CASE NO. 2013-039784

v.

PEDRO ESPINAL ESPINOSA,

Respondent.

HEARING OFFICER'S RECOMMENDED ORDER

THIS MATTER came before J. Yvette Pressley, the Hearing Officer of the Division of Pari-Mutuel Wagering on December 3, 2014, in Tallahassee, Florida, in accordance with the provisions of Section 120.57(2), Florida Statutes, for consideration of the administrative complaint issued against Pedro Espinal Espinosa (Respondent) in DBPR Case No. 2013-039784. The Division of Pari-Mutuel Wagering (Petitioner) was represented by Marisa G. Button, Assistant General Counsel. Respondent appeared pro se by telephone.

PRELIMINARY STATEMENT

1. On September 12, 2014, Division of Pari-Mutuel Wagering issued an Administrative Complaint against Respondent. Thereby, the Petitioner sought an order permanently excluding Respondent from all licensed slot machine and pari-mutuel facilities in the State of Florida because the Hialeah Park Casino placed Respondent on its lifetime exclusionary list due to Respondent's theft of tournament chips from Hialeah Park Casino on September 18, 2013.

2. On October 7, 2014, Respondent executed his Election of Rights before a notary public, and thereby Respondent indicated he disputed “the material facts alleged in the Administrative Complaint,” specifying that he disputed paragraph number 8 of the Administrative Complaint that alleged that Respondent stole the tournament chips with the intent to cheat by introducing the chips into the next tournament. The Petitioner agreed to withdraw paragraph 8 from the Administrative Complaint. Subsequently, Respondent agreed to an informal hearing pursuant to Section 120.57(2), Florida Statutes, as he did not dispute that he took chips from Hialeah Park Casino on September 18, 2013, or that Hialeah Park Casino placed him on its lifetime exclusionary list, the essential material facts in this case. The Election of Rights indicated that Respondent’s physical address is 2190 N.W. 34th Street, Miami, Florida 33142.

3. At the informal hearing on December 3, 2014, the Petitioner presented the issues raised in its September 21, 2014, Administrative Complaint, withdrew paragraph 8 from the Administrative Complaint, and cited Respondent’s Election of Rights signed October 7, 2014. The Petitioner and the Hearing Officer asked that Respondent confirm he did not dispute the material facts in this case – those being that he took chips from a tournament at Hialeah Park on September 18, 2013, and was placed on its lifetime exclusionary list. Respondent stated on the record that he did not dispute those material facts, but offered testimony that he did not intend to steal the chips and that he contacted Hialeah Park by telephone to report that he had mistakenly taken the chips from the tournament.

FINDINGS OF FACT

4. Hialeah Park Casino is a Florida licensed pari-mutuel and slot machine facility under, respectively, Chapters 550 & 551, Florida Statutes.

5. Respondent stole chips from a tournament at Hialeah Park Casino on September 18, 2013.

6. Respondent's actions were captured on video surveillance by Hialeah Park Casino.

7. As a result of Respondent stealing the tournament chips, Hialeah Park Casino placed Respondent on its lifetime exclusionary list.

8. As of the date of the hearing, Respondent remains on Hialeah Park's lifetime exclusionary list.

CONCLUSIONS OF LAW

9. The Division has jurisdiction over this matter pursuant to Chapters 120, 550, & 551, Florida Statutes.

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

(4) No person shall, either directly or indirectly:

(a) Employ or attempt to employ any device, scheme, or artifice to defraud any participant in a game or the cardroom operator.

(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.

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

12. Section 551.112, Florida Statutes, provides in relevant part:

... The division may exclude from any facility of a slot machine licensee any person who has been ejected from a slot machine licensee in this state

13. Section 550.0251(6), Florida Statutes, similarly provides in relevant part:

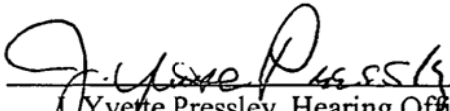
... The division may exclude from any pari-mutuel facility within this state any person who has been ejected from a pari-mutuel facility in this state

14. Being escorted from a facility and placed on its lifetime exclusionary list is an ejection within the meaning of Sections 550.0251(6) & 551.112, Florida Statutes.

RECOMMENDATION

Permanently excluding Respondent from all licensed slot machine and pari-mutuel facilities in this state.

Respectfully submitted this 14th day of January 2015.




J. Yvette Pressley, Hearing Officer
Office of the General Counsel
Department of Business and
Professional Regulation
Northwood Center
1940 N. Monroe Street
Tallahassee, FL 32399-2202

CERTIFICATE OF SERVICE

I hereby certify this 14 day of January 2015 that a true copy of the foregoing Hearing Officer's Recommended Order has been provided by Certified U.S. Mail to:

PEDRO ESPINAL ESPINOSA
2190 N.W. 34th Street
Miami, Florida 33142



Agency Clerk's Office

Cc:
J. Yvette Pressley, Deputy General Counsel
Marisa Button, Assistant General Counsel

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to the Recommended Order should be filed with the Department.

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

FILED	
<small>Department of Business and Professional Regulation Deputy Agency Clerk</small>	
CLERK	Evette Lawson-Proctor
Date	9/12/2014
File #	

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

Petitioner,

DBPR CASE NO. 2013039784

v.

PEDRO ESPINOZA,

Respondent.

ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (Petitioner) files this Administrative Complaint against Pedro Espinoza (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 2190 NW 34 Street, Miami, Florida 33142.
3. Hialeah Park Casino (Hialeah Park) is a Florida licensed pari-mutuel and cardroom facility.
4. On or about September 18, 2013, Respondent participated in a poker tournament held at Hialeah Park.
5. Respondent was seated at table seventeen (17) during the tournament.
6. After the conclusion of the tournament, the Hialeah Park Poker Supervisor, realized tournament cheques (chips) were missing in the tournament amount of approximately \$31,000.00.

7. Hialeah Park surveillance footage of the September 18, 2013, tournament revealed that Respondent stole tournament chips.

8. When interviewed about and confronted by Hialeah Park Director of Surveillance, on September 19, 2013, Respondent admitted to stealing the tournament chips and indicated that he intended to cheat by reintroducing the chips into the next tournament.

9. As a result, Hialeah Park permanently excluded Respondent from the facility.

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

(4) No person shall, either directly or indirectly:

(a) Employ or attempt to employ any device, scheme, or artifice to defraud any participant in a game or the cardroom operator.

(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.

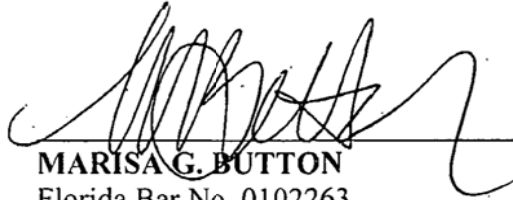
11. By stealing tournament chips, Respondent has violated Rule 61D-11.005(4), F.A.C.

12. 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.”

13. By violating Rule 61D-11.005(4), F.A.C., and by being ejected from Hialeah Park, 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 11th day of September, 2014.



MARISA G. BUTTON
Florida Bar No. 0102263
Assistant General Counsel
Division of Pari-Mutuel Wagering
Department of Business & Professional Regulation
Northwood Center
1940 North Monroe Street, Suite 40
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.