

FILED

Department of Business and Professional Regulation
Deputy Agency Clerk

CLERK
Brandon Nichols

Date
10/21/2015

File #
2015-08722

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

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

Petitioner,

v.

EVAN R. NACHERLILLA,

Respondent,

CASE NO. 2015-007289

FINAL ORDER

The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, hereby enters this Final Order for the above styled matter. On October 8, 2015, Paige Shoemaker, Hearing Officer for the Department, issued the Recommended Order in this matter. That Recommended Order is attached to the Final Order and incorporated herein by reference.

FINDINGS OF FACT

The Findings of Fact contained in the Recommended Order are hereby adopted as the Findings of Fact of the Division.

CONCLUSIONS OF LAW

The Conclusions of Law contained in the Recommended Order 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 Division EXCLUDE Respondent from all pari-mutuel facilities in the state and RE-VOKE Respondents Pari-Mutuel Cardroom Employee Occupational License, number 8572785-1012.
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 19th day of October, 2015, in Tallahassee, Florida.



JONATHAN R. 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: AGC.Filing@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 **21st** day of October, 2015, that a true copy of the foregoing "Final Order" has been provided by first class U.S. Mail to:

Evan R. Nacherlilla
c/o Steven Brownlee, M.D., Esq.
Chapman Law Group
1834 Main Street
Sarasota, Florida 34236



 AGENCY CLERK
Department of Business & Professional Regulation

cc:
Gauge Campbell, AAI OGC/PMW
Keneidra Williams, AAIII OGC
Louis Trombetta, Assistant General Counsel

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

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

DBPR CASE NO.: 2015-007289

Petitioner,

v.

EVAN R. NACHERLILLA,

Respondent.

HEARING OFFICER'S RECOMMENDED ORDER

THIS MATTER came before Paige Shoemaker, designated Hearing Officer for the Department of Business and Professional Regulation, on September 2, 2015, in Tallahassee, Florida, in accordance with the provisions of Section 120.57(2), Florida Statutes. The Division of Pari-Mutuel Wagering ("Division") was represented by Louis Trombetta, In-House Counsel. Petitioner was represented by Steven D. Brownlee, M.D., Esq., of the Chapman Law Group.

PRELIMINARY STATEMENT

On June 22, 2015, the Division issued a First Amended Administrative Complaint to Respondent alleging a violation of Rule 61D-11.005(4), Florida Statutes for which the Division sought to fine Respondent up to \$1,000, revoke his Cardroom Employee Occupational license, and exclude him from all licensed pari-mutuel facilities. On July 13, 2015, the Division received Respondent's Election of Rights requesting an informal hearing and Answer to First Amended Administrative Complaint. On September 2, 2015, an informal hearing was conducted. The

Administrative Complaint and Petitioner's exhibits 1-6 were entered into evidence. Both parties submitted post hearing recommendations which were considered.

FINDINGS OF FACT

1. The Division has jurisdiction over this matter pursuant to Chapters 120 and 550, Florida Statutes.
2. At all times material hereto, respondent held pari-mutuel cardroom employee occupational license, number 8572785-1012. Mr. Nacherillilla worked as a poker dealer at Gulfstream Park, a licensed pari-mutuel facility.
3. The material facts contained in the First Amended Administrative Complaint are the agreed upon facts of this case. The facts are that Mr. Nacherillilla converted money from pots on multiple occasions while working as a poker dealer at Gulfstream Park. On February 13, 2015, Gulfstream Park evicted Mr. Nacherillilla.
4. Respondent was diagnosed with sleep apnea in 2014. He informed his employer, Gulfstream Park, of his condition. He was required to work approximately 50 hours per week despite his condition. The condition caused him to fall asleep occasionally while working and impaired his mental faculties. He is now being treated and no longer has adverse symptoms.
5. The instant complaint is the first and only complaint or disciplinary action against Respondent by the Division.
6. Section 550.0251(10), Florida Statutes provides that the Division "...may impose an administrative fine for a violation under this chapter of not more than \$1,000.00 for each count or separate offense, and may suspend or revoke a permit, a pari-mutuel license, or an occupational license for a violation."

CONCLUSIONS OF LAW

1. Rule 61D-11.005(4), Florida Administrative Code (2014), provides that “[n]o 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.

Additionally Section 550.0251(6), Florida Statutes (2014), says in relevant part, “[t]he division may exclude from any pari-mutuel facility within the state any person who has been ejected from a pari-mutuel facility in this state...”

2. Respondent violated Rule 61D-11.005(4), Florida Administrative Code by converting money from pots while dealing poker and was excluded from Gulfstream Park.

3. The Division is required to adopt reasonable rules for the control, supervision, and direction of all applicants, permittees, and licensees and for the holding, conducting, and operating of all racetracks, race meets, and races held in this state. The exclusion of Respondent from these facilities falls within the broad discretion granted the Division in regulating and controlling gambling under the state’s police power as provided in Section 550.0251(6), Florida Statutes.

4. Respondent argues that his sleep apnea should mitigate the penalty imposed for his violations. Respondent’s mitigation evidence is not compelling. The seriousness of Respondent’s actions outweigh any mitigating factors.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation, enter a Final Order excluding Respondent from all pari-mutuel facilities in the state and revoking Respondent's Pari-Mutuel license without prejudice for him to apply at a later date.

Respectfully submitted this 8th day of October, 2015.



Paige Shoemaker, Hearing Officer
Office of the General Counsel
Department of Business and
Professional Regulation
Northwood Center
1940 N. Monroe Street
Tallahassee, FL 32399-2201

CERTIFICATE OF SERVICE

We hereby certify this 9 day of October, 2015, that a true copy of the

foregoing has been served by Certified U.S. Mail to

Steven Brownlee, M.D., Esq.
Chapman Law Group
1834 Main Street
Sarasota, Florida 34236



AGENCY CLERK'S OFFICE

Cc:

Paige Shoemaker, Informal Hearing Officer
Louis Trombetta, In-House 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.

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Evette Lawson-Proctor
Date **6/22/2015**
File #

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

**DEPARTMENT OF BUSINESS &
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OF PARI-MUTUEL WAGERING,**

DBPR CASE NO.: 2015007289

Petitioner,

v.

EVAN R. NACHERILILLA,

Respondent.

FIRST AMENDED ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (Petitioner), files this First Amended Administrative Complaint against Evan R. Nacherillla (Respondent), and alleges as follows:

1. Petitioner is the state agency charged with regulating pari-mutuel wagering pursuant to Chapter 550, Florida Statutes.
2. Respondent holds a pari-mutuel cardroom employee occupational license, number 8572785-1012, issued by Petitioner.
3. At all times material Respondent worked as a poker dealer at Gulfstream Park, a licensed pari-mutuel facility in this state.
4. On February 13, 2015, Gulfstream Park terminated Respondent's employment after Respondent's admission of committing theft by stealing money from pots while dealing poker on multiple occasions at Gulfstream Park.

COUNT 1

5. According to Rule 61D-11.005(4), Florida Administrative Code, "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."
6. Respondent violated Rule 61D-11.005(4) by stealing money from pots while dealing.

COUNT 2

7. Petitioner realleges and incorporates the allegations set forth in paragraphs one through four (¶¶1 - 4) above.
8. On or about February 13, 2015, Gulfstream Park executed a Notice of Removal and Exclusion ejecting and excluding Respondent from Gulfstream Park.
9. On or about February 13, 2015, Gulfstream Park ejected Respondent from its property, issuing him a Trespass Affidavit directing him "to leave...and not return."
10. Section 550.0251(6), Florida Statutes, 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...
- WHEREFORE, based on Respondent's violation of Rule 61D-11.005(4), Florida Administrative Code, and subsequent ejection and exclusion from Gulfstream Park, Petitioner respectfully requests the Division enter an Order imposing a civil fine of up to \$1,000 in accordance with Section 550.105(6)(e), Florida Statutes, as well as revoking Respondent's

license and permanently excluding Respondent from all licensed pari-mutuel facilities in the state.

Signed this 22 day of June, 2015.



Louis Trombetta
In-house Counsel
Florida Bar No. 018119



Jason L. Maine
Chief Attorney
Florida Bar No. 91833
Division of Pari-Mutuel Wagering
Department of Business and
Professional Regulation
1940 N. Monroe Street, Ste. 40
Tallahassee, FL 32399-2202
(850)488-0062 Telephone
(850)921-1311 Facsimile

CERTIFICATE OF SERVICE

We hereby certify this 22 day of June, 2015, that a true copy of the foregoing "First Amended Administrative Complaint" together with "Notice of Rights," has been served by e-mail upon:

Steven D. Brownlee, M.D., Esq.
SBrownlee@ChapmanLawGroup.com



Louis Trombetta

NOTICE OF RIGHTS

Please be advised that mediation under section 120.573, Florida Statutes, is not available for administrative disputes involving this type of agency action.

Please be advised that Respondent has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoenas and *subpoenas duces tecum* issued on his or her behalf if a hearing is requested. Any request for an administrative proceeding to challenge or contest the charges contained in the administrative complaint must conform to Rule 28-106.2015, Florida Administrative Code. Rule 28-106.111, Florida Administrative Code, provides in part that if Respondent fails to request a hearing within 21 days of receipt of an agency pleading, Respondent waives the right to request a hearing on the facts alleged.