

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

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| Department of Business and Professional Regulation Deputy Agency Clerk | |
| CLERK | Brandon Nichols |
| Date | 1/25/2018 |
| File # | 2018-00582 |

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

Petitioner,

DBPR CASE NO. 2016-049383

v.

JOSE VIDAL,

Respondent.

FINAL ORDER

Pursuant to Sections, 120.569(2)(1), Florida Statutes, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, hereafter the Division, files the following Final Order. This cause came before the Division for the purpose of considering the Recommended Order issued by Informal Administrative Hearing Officer, Alison Parker, hereafter Hearing Officer, on November 30, 2017, pursuant to Section 120.57(2), Florida Statutes, in DBPR case number 2016-049383, a copy of which is attached as Exhibit A.

The Respondent filed exceptions to the recommended Order on January 2, 2018 and those exceptions are attached as Exhibit B. The undersigned has taken all post-hearing submittals into account and has reviewed the complete record in the preparation of this Final Order.

Background

On February 6, 2017, Petitioner filed a one-count Administrative Complaint against the Respondent, seeking to exclude Respondent from all pari-mutuel facilities in this state pursuant to section 550.0251(6), Florida Statutes.

On or about February 22, 2017, Respondent executed his election of rights wherein Respondent originally requested a formal administrative hearing. This matter was transferred to the Division of Administrative Hearings on April 11, 2017. However, following the filing of a Joint Motion to Relinquish, this case was sent back to the Division on May 1, 2017 for an informal hearing to be scheduled.

On October 4, 2017 the informal hearing was held in this case. The Hearing Officer issued a Recommended Order on November 30, 2017, recommending the Division enter a final order excluding Respondent from all licensed pari-mutuel facilities in the State of Florida. The Respondent filed two exceptions to the Hearing Officer's Recommended Order. Exhibit B. After a complete review of the record in this matter, the Division rules as follows.

Ruling on Respondent's Exception #1

Respondent's exception to paragraph 8, page 2, of the Recommended Order's finding of fact is denied. This finding of fact within the Recommended Order is supported by (1) the joint motion to relinquish jurisdiction to an informal hearing filed by the parties and (2) Petitioner's granted motion that the findings of fact in the administrative complaint be accepted as the undisputed facts of this case. According to Section 120.57(1)(i), Florida Statutes, "if the administrative law judge enters an order relinquishing jurisdiction, the agency may promptly conduct a proceeding pursuant to subsection (2), if appropriate, but the parties may not raise any issues of disputed fact that could have been raised before the administrative law judge." In addition, no objection was made by Respondent at the informal hearing regarding Petitioner's motion to accept the findings of fact in the administrative complaint as the undisputed facts of this case. Based on the substantial support for this finding of fact Respondent's exception is denied.

Respondent's exception to paragraph 14 and 16, on pages 3 and 4, of the Recommended Order's finding of fact is denied. These conclusions of law within the Recommended Order are supported by (1) the findings of facts contained within the Administrative Complaint accepted as the undisputed facts of this case, (2) the statements of the affiants supplied by the Respondent contained in the record, and (3) a proper reading of Sections, 687.071 and 550.0251(6), Florida Statutes. Based on the substantial support for these conclusions of law Respondent's exceptions are denied.

Ruling on Respondent's Exception #2

Respondent's exception to paragraph 15 and 16 on pages 3 and 4, of the Recommended Order's conclusion of law is denied. These conclusions of law within the Recommended Order are supported by (1) a proper reading of Section 550.0251(6), Florida Statutes, (2) the findings of facts contained within the Administrative Complaint accepted as the undisputed facts of this case, (3) although not directly at issue in this administrative matter, the well-established authority of a commercial establishment to exercise their common law right to absolutely exclude a patron, explained in *Tropical Park, Inc. v. Jock*, 374 So. 2d 639, 640 (Fla. 3rd DCA 1979), and (4) the Division's lack of authority to abrogate the common-law right of a pari-mutuel permitholder to exclude absolutely a patron in this state, referenced in Section 550.0251(5), Florida Statutes.

Findings of Fact

The findings of fact contained in the Recommended Order are hereby adopted as the findings of fact by the Division. Exhibit A. The Division finds the findings of fact in the Recommended Order were based on competent, substantial evidence, and that the proceedings complied with the essential requirements of law.

Conclusions of Law

The Conclusions of Law found in the Recommended Order are hereby adopted as the conclusions of law of the Division. See Exhibit A.

ORDER

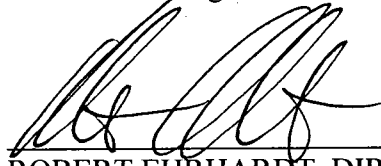
Based upon the foregoing Findings of Fact and Conclusions of Law adopted from the Recommended Order of the Department's Informal Hearing, it is hereby ORDERED that:

(1) Respondent is hereby EXCLUDED from all licensed pari-mutuel facilities in the State of Florida.

(2) This 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 23 day of JANUARY, 2018, in Tallahassee, Florida.

JONATHAN ZACHEM, Secretary
Department of Business and
Professional Regulation



ROBERT EHRHARDT, DIRECTOR
Division of Pari-Mutuel Wagering
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399-1035

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Final Order" has been provided by regular U.S. mail to Jose Vidal c/o Ricardo Corona, Esquire, 3899 N.W. Seventh Street, 2nd Floor, Miami Florida, 33126, this 25th day of January, 2018.

A handwritten signature in black ink that reads "Brandon M. Nichols". The signature is written in a cursive style and is positioned above a horizontal line.

Agency Clerk's Office

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, 2601 Blair Stone Road, Tallahassee, Florida 32399 (agc.filing@myfloridalicense.com) 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.

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

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| Department of Business and Professional Regulation AGENCY CLERK | |
| CLERK | Ronda L. Bryan |
| Date | 1/2/2018 |
| File # | |

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUAL WAGERING

Petitioner,

DBPR CASE NO. 2016-049383

V.

JOSE VIDAL,

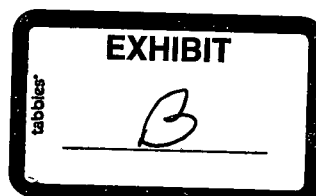
Respondent,

RESPONDENT'S EXCEPTIONS TO RECOMMENDED ORDER

Pursuant to section 120.57(1)(k), Florida Statutes (2016) and Rule 28-106.217(1) of the Florida Administrative Code, the Respondent JOSE VIDAL (hereinafter the "Respondent") files the following exceptions to the Recommended Order issued by Hearing Officer Allison Parker (hereinafter the "Hearing Officer") on November 30, 2017, in the above-captioned matter. The Respondent requested additional time to submit written exceptions, and additional time was granted until December 30, 2017.

STANDARD

An agency must reject a hearing officer's findings where "there is no competent, substantial evidence from which the findings could be inferred. *Heifetz v. Dep't of Bus. Reg., Div. of Alcoholic Beverages & Tobacco*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985); *Dep't of Bus. & Prof'l Reg. v. McCarthy*, 638 So.2d 574 (Fla. 1st DCA 1994). Moreover, an agency may



reject a conclusion of law and make a finding that its substituted conclusion of law is as, or more, reasonable than that which was rejected or modified. § 120.57(1)(I), Fla. Stat. (2000); *DeWitt v. Sch. Bd. of Sarasota County*, 799 So.2d 322 (Fla. 2nd DCA 2001).

Exception #1 -

At paragraphs 8, 14, and 16, the Hearing Officer's Recommended Order appears to suggest Respondent loan sharked and therefore precluded a finding that his attendance would not be adverse to the public interest or to the integrity of the sport industry. Respondent did not loan shark. There is no evidence in the record that Respondent ever loan sharked or did anything else to warrant an ejection. Accordingly, it should have been found that Respondent's attendance would not be adverse to the public interest or to the integrity of the sport industry.

In administrative proceedings, irrelevant evidence "*shall* be excluded." § 120.569, Fla. Stat. Ann. (emphasis added). The evidence presented must be such that a reasonable person would rely upon it. *Id.* Additionally, hearsay evidence "*shall not be sufficient* ... to support a finding." § 120.57, Fla. Stat. Ann. (emphasis added).

Petitioner alleges Vidal was ejected for loan sharking. In support, Petitioner sets forth, Vidal was "observed *via* video surveillance; allegedly loan sharking." Additionally, Security Supervisor, Jorge Aparicio, states that Angelo Garcia told Aparicio that Vidal was observed via video Surveillance allegedly loan sharking. Based solely on this evidence, Petitioner suggests that Vidal should be permanently excluded from all pari-mutuel facilities in the State of Florida.

To begin, there is no escaping that Garcia's statement amounts to hearsay. Hearsay is (1) an out-of-court statement (2) offered to prove the truth of the matter asserted. *Hutchinson v. State*, 882 So. 2d 943, 950 (Fla. 2004). In Florida, hearsay statements are not generally admissible in criminal or civil proceedings. *Doersam v. Brescher*, 468 So. 2d 427, 428 (Fla. 4th

DCA 1985) (citing § 90.802, Fla.Stat. (1983)). Reliance on hearsay “has also been rejected in ... administrative proceedings.” *Id.*

First, Garcia’s statement that he observed Vidal “allegedly loan sharking” was not testified to by Garcia at the informal hearing.” Accordingly, it is an out-of-court statement. Second, it is Petitioner’s only hope at proving Vidal was loan sharking and is offered for that purpose. Accordingly, it is also offered to prove the truth of the matter asserted. Therefore, it clearly amounts to hearsay. *See Hutchinson*, 882 So. 2d at 950.

Again, it is important to note that Florida courts reject the use of hearsay in administrative proceedings. *Doersam*, 468 So. 2d at 428. Courts have routinely expressed that this rejection is due to the fact that it is “inherent[ly] unreliab[le] as secondhand information.” *See, e.g., id.* Moreover, it is “obvious[ly] unfair[ly]” to preclude a party from “question[ing] the declarant of the statements.” *Id.* A finding that Respondent loan sharked cannot stand on this evidence. *See id.*

Providing even greater questions on reliability and fairness is the alleged video surveillance. There is no evidence regarding who actually viewed the video surveillance or what he or she saw to support the conclusion that Vidal was loan sharking. It is difficult to imagine how a loan sharking violation can possibly be based on video evidence.

Petitioner alleges Respondent loan sharked. *See Exhibit #1DBPR Investigative Report, Open Case Request, Exhibit #1, Page #1.* In order to violate Florida’s loan sharking statute, four elements are required: (1) there must be a loan; (2) there must be an understanding between the parties that the money lent shall be returned; (3) that loan must be made using a greater rate of interest than is legally allowed; and (4) the lender must have a corrupt intent to take more than the legal rate allowed. *Dixon v. Sharp*, 276 So. 2d 817, 819 (Fla. 1973). There is no allegation,

evidence or testimony at all in this case that provides any explanation as to how Vidal is alleged to have done any of these things.

To begin, there are no facts on the record ever indicating the existence of a loan.

Similarly, there are no facts on the record indicating that there was an understanding between the parties that the money lent shall be returned. Third, if any loan at all were to have ever possibly existed, there are absolutely no facts on the record regarding the interest rate on such a loan.

Lastly, there are absolutely no facts related to Vidal's subjective intent with regard to the fourth prong. Florida Courts routinely recognize that loan sharking is largely a matter of intent, and is not fully determined by the fact that the lender actually receives more than law permits; rather, loan sharking is determined by the existence of a corrupt purpose in the lender's mind to get more than legal interest for the money lent. *Chandler v. Kendrick*, 108 Fla. 450, 146 So. 551 (1933); *Jones v. Hammock*, 131 Fla. 321, 179 So. 674 (1938); *Maule v. Eckis*, 156 Fla. 790, 24 So.2d 576 (1946); *Shaffran v. Holness*, Fla., 93 So.2d 94; *Stewart v. Nangle*, 103 So.2d 649 (Fla.App.1958); *Connecticut Mutual Life Insurance Co. v. Fisher*, 165 So.2d 182 (Fla.App.1964). There is no way the evidence, here, could have possibly shown Vidal had such a corrupt intent.

In sum, there is no possible ground that such a finding could be "based upon competent, substantial evidence," as required to uphold this finding. *Prysi v. Dep't of Health*, 823 So. 2d 823, 825 (Fla. 1st DCA 2002) (citing § 120.57(1)(l)), Fla. Stat. Rather, only the opposite is true. Accordingly, Respondent takes exception to paragraphs 8 and 14 and asks that the Agency reverse.

EXCEPTION 2 –

In the Recommended Order, in paragraphs 15 and 16, the Hearing Officer apparently construed § 550.0251, Fla. Stat. Ann., to mean that a respondent is not entitled to any hearing to

contest the underlying validity of an initial ejection. Specifically, the Hearing Officer stated that Respondent is “subject to being excluded from all pari-mutuel facilities in this state by virtue of his ejection from Hialeah Park.” As explained above, there is no evidence to support a finding that Respondent’s original ejection had any basis, at all.

Moreover, Respondent was denied an opportunity to ever contest the ejection’s validity. Thus, Respondent may be divested of his privilege to attend pari-mutuel facilities throughout the entire state without a pre or post conviction hearing regarding the underlying ejection. Such a procedure fundamentally fails the requirements of procedural due process. Accordingly, Respondent requests that the Agency reverse the Hearing Officer’s Recommended Order in this regard.

In interpreting statutes, a court is to begin the construction of a statutory provision with the words of that provision. *See Jackson v. State Bd. of Pardons and Paroles*, 331 F.3d 790, 794–95 (11th Cir.2003); *CBS, Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1222 (11th Cir.2001). If the plain meaning of the provision is unambiguous, then the judicial inquiry is complete. *See Jackson*, 331 F.3d at 794. In interpreting a statute, a court is to avoid interpreting a statute in a manner that causes constitutional difficulties. *See Cable Holdings of Georgia, Inc. v. McNeil Real Estate Fund VI, Ltd.*, 953 F.2d 600, 604 (11th Cir.1992); *United States v. Brown*, 731 F.2d 1491, 1494 (11th Cir.1984); *also Frisby v. Schultz*, 487 U.S. 474, 483, 108 S.Ct. 2495, 101 L.Ed.2d 420 (1988) (holding that lower courts run “afoul” of a well established principle of statutory interpretation when they fail to avoid constitutional difficulties by broadly interpreting a statute). Here, the Hearing Officer’s interpretation causes serious constitutional difficulties.

The government simply cannot grant a benefit or privilege on conditions requiring the recipient to relinquish his constitutional rights to procedural due process. *Jones v. State Bd. of Ed. of State of Tenn.*, 397 U.S. 31, 34 (1970) (citing *Cafeteria and Restaurant Workers Union Local 473 v. McElroy*, 367 U.S. 886, 894, 81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230; *Sherbert v. Verner*, 374 U.S. 398, 404, 83 S.Ct. 1790, 1794, 10 L.Ed.2d 965; *Speiser v. Randall*, 357 U.S. 513, 519—520, 78 S.Ct. 1332, 1338—1339, 2 L.Ed.2d 1460; *Garrity v. New Jersey*, 385 U.S. 493, 499—500, 87 S.Ct. 616, 619—620, 17 L.Ed.2d 562; *Kwong Hai Chew v. Colding*, 344 U.S. 590, 597—598, 73 S.Ct. 472, 477—478, 97 L.Ed. 576; *Frost & Frost Trucking Co. v. Railroad Comm.*, 271 U.S. 583, 593—594, 46 S.Ct. 605, 607, 70 L.Ed. 1101; see Van Alstyne, *The Demise of the Right-Privilege Distinction in Constitutional Law*, 81 Harv.L.Rev. 1439, 1445—1454 (1968); Comment, *Another Look at Unconstitutional Conditions*, 117 U.Pa.L.Rev. 144 (1968)). As stated in *Homer v. Richmond*, 110 U.S.App.D.C. 226, 292 F.2d 719, 722:

‘One may not have a constitutional right to go to Baghdad, but the Government may not prohibit one from going there unless by means consonant with due process of law.’

Accordingly, it is clear here, that assuming an ejection’s validity without any opportunity to contest the ejection violates Respondent’s procedural due process rights. *Wisconsin v. Constantineau*, 400 U.S. 433, 434 (1971) (Holding that a state burdening a citizen’s privilege to purchase alcohol without any hearing, at all, violates the citizen’s right to procedural due process.). Therefore, Respondent takes exception and asks that the Agency reverse the Hearing Officers conclusion.

CONCLUSION

WHEREFORE, Respondent requests that the above exceptions be granted and that a Final Order be entered allowing Respondent to visit all other pari-mutuels in the state.

Respectfully submitted on this 30th day of December 2017.

/s/ Ricardo R. Corona

RICARDO R.
CORONA Counsel for
Respondent

Florida Bar No. 111333
CORONA LAW FIRM P.A.
3899 NW 7th Street, 2nd Floor
Miami, FL 33126
(305) 547-1234 Telephone
(305) 221-1151 Facsimile

CERTIFICATE OF SERVICE

I hereby certify this 30th day of December, 2017, that a true copy of the foregoing

"Proposed Recommended Order" has been provided by email and/or U.S. Mail to:

Charles Dewrell, Esq.
Asst General Counsel
Office of the General Counsel
Division of Pari-Mutuel
Wagering Department of
Business and Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399-2202

Alison A. Parker
Deputy General Counsel
Assistant General Counsel
Department of Business
and Professional Regulation
2601 Blair Stone Rd.
Tallahassee, FL 32399
Alison.Parker@myfloridalicense.com

s/s/Ricardo R. Corona

RICARDO R. CORONA

FBN 111333

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

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| Department of Business and Professional Regulation Deputy Agency Clerk | |
| CLERK | Evette Lawson-Proctor |
| Date | 11/30/2017 |
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DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL WAGERING

Petitioner,

DBPR CASE NO. 2016-049383

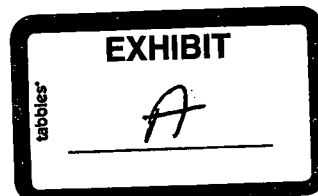
v.

JOSE VIDAL,

Respondent.

HEARING OFFICER'S RECOMMENDED ORDER

THIS MATTER came before Alison Parker, designated Hearing Officer for the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering on October 4, 2017, in Tallahassee, Florida, in accordance with the provisions of section 120.57(2), Florida Statutes, for consideration of the Division's Administrative Complaint issued against Jose Vidal ("Respondent"), in DBPR Case No. 2016-049383. The Division of Pari-Mutuel Wagering ("Petitioner" or "Division") was represented by Charles Dewrell, Assistant General Counsel. Petitioner appeared in person for this hearing, and was represented by counsel, Ricardo Corona, Esquire, who appeared by telephone. Marta Hernandez was also present and participated as a translator for Respondent. Both sides were allowed to present witnesses, submit items into evidence, and otherwise fully participate in the hearing. Additionally, both sides filed Proposed Recommended Orders, which I have fully reviewed.



PRELIMINARY STATEMENT

1. On February 6, 2017, Petitioner filed a one-count Administrative Complaint against the Respondent seeking to exclude Respondent from all pari-mutuel facilities in this state pursuant to section 550.0251(6), Florida Statutes (2016).

2. On or about February 22, 2017, Respondent executed his Election of Rights wherein Respondent originally requested a formal administrative hearing.

3. This matter was transferred to the Division of Administrative Hearings on April 11, 2017; however, jurisdiction was relinquished back to the Department on May 1, 2017, after the parties filed a Joint Motion to Relinquish.

4. The Informal Hearing in this matter was held on October 4, 2017. The Petitioner made an *ore tenus* motion to accept the findings of fact in the Administrative Complaint as the undisputed facts into this case; this motion was granted.

5. The investigative file was submitted into evidence, and was admitted into the record. Respondent submitted various items into evidence, all of which were admitted into the record: five affidavits from individuals able to opine on Respondent's character; and a psychological report from Dr. Manuel E. Alvarez, a clinical psychologist.

FINDINGS OF FACT

6. Petitioner is the state agency charged with regulating pari-mutuel wagering pursuant to Chapter 550, Florida Statutes, and cardrooms pursuant to section 849.086, Florida Statutes.

7. Hialeah Park is a licensed pari-mutuel and cardroom facility in this state.

8. On or about October 14, 2016, Respondent was ejected and permanently excluded from Hialeah Park for alleged loansharking.

9. Respondent testified on various topics at the hearing:

- a. Generally, Respondent believes there has been a misunderstanding as to his transactions;
 - b. Respondent has been a gambler all his life and enjoys it as entertainment;
 - c. Respondent is a 74-year-old retired male;
 - d. Respondent disputes he was loansharking, emphasizing that he had a good rapport with the other gamblers and did not often charge interest;
 - e. He is seeking non-exclusion, but in the alternative, is seeking non-exclusion from facilities other than Hialeah Park.
10. The Five Affidavits: The affiants state that they were not charged interest by Respondent and were not threatened with physical or mental harm by Respondent.
 11. Psychological Report: The clinical evaluation by Dr. Alvarez states that Respondent has no history of violence and that he is not a danger to himself or others.

CONCLUSIONS OF LAW

12. The Division has jurisdiction over this matter pursuant to Chapters 120 and 550, Florida Statutes.
13. While Respondent's clinical evaluation does reflect he does not likely have violent tendencies, it also suggests that Respondent may "tend[ed] to present himself in an overly positive light."
14. The affiants all avow that they "have never seen Respondent engaged in any illegal or criminal activity while patronizing the casinos", but loansharking is illegal and a crime of moral turpitude, pursuant to section 687.071, Florida Statutes.
15. Section 550.0251(6), Florida Statutes, provides in relevant part that "[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 government department, agency, commission, or authority exercising regulatory jurisdiction over pari-mutuel facilities in such other state.”

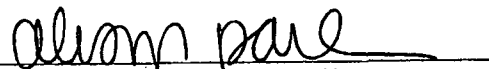
16. Pursuant to section 550.0251(6), Florida Statutes, Respondent is subject to being excluded from all pari-mutuel facilities in this state by virtue of his ejection from Hialeah Park on October 14, 2016.

17. There is competent substantial evidence to support the conclusions of law.

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 licensed pari-mutuel facilities in the State of Florida.

Respectfully submitted this 30th day of November 2017.


Alison Parker, Hearing Officer
Office of the General Counsel
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, FL 32399-2202

CERTIFICATE OF SERVICE

I hereby certify this 30 day of November, 2017, that a true copy of the foregoing has been provided by Certified U.S. Mail to:

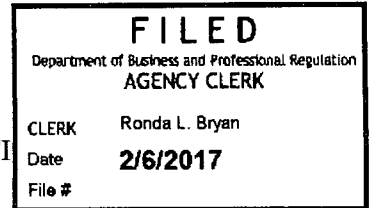
Jose Vidal
c/o Ricardo Corona, Esquire
3899 N.W. Seventh Street, 2nd Floor
Miami, Florida 33126


AGENCY CLERK'S OFFICE

Cc:
Alison Parker, Informal Hearing Officer
Charles Dewrell, 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 AND PROFESSIONAL REGULATION

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

Petitioner,

v.

Case No. 2016-049383

JOSE VIDAL,

Respondent.

ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (“Petitioner”) files this Administrative Complaint against Jose Vidal (“Respondent”) and alleges:

1. Petitioner is the state agency charged with regulating pari-mutuel wagering pursuant to Chapter 550, Florida Statutes and cardrooms pursuant to Section 849.086, Florida Statutes.
2. Respondent's address is reported as 1401 SW 142nd Avenue, Miami, FL 33184.
3. Hialeah Park is a licensed pari-mutuel and cardroom facility in this state.
4. On or about October 14, 2016, Respondent was observed via video surveillance conducting loansharking activities at Hialeah Park.
5. Based on this violation, Hialeah Park’s Cardroom Director, Angelo Garcia, issued a permanent exclusion to Respondent and escorted him from the facility.
6. Section 550.0251(6), Florida Statutes, provides in relevant part that “[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.”

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

Signed this 3rd day of February, 2017.

MATILDE MILLER, Interim Secretary
Department of Business and
Professional Regulation

/s/ Charles Dewrell

Charles Dewrell, Esq.
Assistant General Counsel
Florida Bar No. 102579
Office of the General Counsel
Division of Pari-Mutuel Wagering
Department of Business and
Professional Regulation
2601 Blair Stone Road
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Telephone: (850) 717-1209
Facsimile: (850) 921-1311

/s/ William Hall

William D. Hall
Chief Attorney
Florida Bar No. 67936
Office of the General Counsel
Division of Pari-Mutuel Wagering
Department of Business and
Professional Regulation

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.