

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/18/2017
File #	2017-03946

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

Petitioner,

DBPR CASE NO. 2016-025315

v.

NORMAN D. FRANKLIN,

Respondent.

FINAL ORDER

The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("Division"), hereby enters this Final Order for the above styled matter. On April 5, 2017, Patrick Cunningham, designated Hearing Officer for the Division, issued the Recommended Order in the above styled case, recommending that the Division enter a Final Order dismissing the Administrative Complaint seeking to permanently exclude Norman D. Franklin ("Respondent") from all licensed pari-mutuel facilities in the state. That Recommended Order is attached to the Final Order and incorporated herein by reference. The Division filed exceptions to the Recommended Order on April 12, 2017. Those exceptions are attached to the Final Order and incorporated herein by reference. Respondent filed a response to the Division's exceptions on April 28, 2017. That response is attached to the Final Order and incorporated herein by reference. The Division's Exceptions and the Respondent's response to the Division's Exceptions were both considered in the rendering of this Final Order.

EXCEPTIONS

The Division filed one exception to the Recommended Order, which took exception to the Hearing Officer's conclusion of law set forth in Paragraph #15, page 3, which states that "[a]lthough the record shows Respondent was excluded from Tampa Bay Downs, Petitioner failed to establish by clear and convincing evidence that such exclusion was based on a violation of the applicable licensing law or misconduct necessitating disciplinary action by the Division."

The Respondent filed a response to the Division's Exceptions alleging that the more reasonable interpretation of the rules, statutes, and factual basis were the findings by the Hearing Officer.

RULING ON THE EXCEPTIONS

Pursuant to Section 120.57(1)(k), Florida Statutes, this Final Order shall include an explicit ruling on each exception to the Recommended Order.

The Division's Exception to Paragraph #15, page 3, of the Recommended Order's conclusion of law is granted. Based on the foregoing exception to the conclusion of law, a more reasonable conclusion of law is to permanently exclude Respondent from all licensed pari-mutuel facilities in this state pursuant to Section 550.0251(6), Florida Statutes.

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

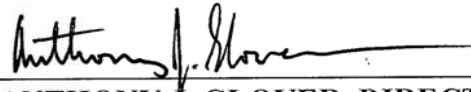
The Conclusions of Law contained in the Recommended Order along with the Division's Exception to Paragraph #15, attached hereto and incorporated by reference, are hereby adopted as the Conclusions of Law of the Division.

ORDER

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

1. Respondent is PERMANENTLY EXCLUDED from all licensed 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 15 day of May, 2017, in Tallahassee, Florida.



ANTHONY J. GLOVER, DIRECTOR
Division of Pari-Mutuel Wagering
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399-2202


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, 2601 Blair Stone Road, Mail Stop G3, Tallahassee, Florida 32399-2203 (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 18th day of May, 2017, that a true copy of the foregoing "Final Order" has been provided by U.S. Mail to:

Norman D. Franklin
c/o Borden R. Hallows, Esq.
1098 Village Oaks Lane
St. Simons Island, GA 31522
bhallowes@bellsouth.net


for: AGENCY CLERK
Department of Business and
Professional Regulation

Cc:
Keneidra Williams, AIII OGC
Charles Dewrell, Assistant General Counsel OGC/PMW
Gauge Campbell, AII OGC/PMW

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

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	4/28/2017
File #	

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

CASE NO.: 16-025315

Petitioner,

vs.

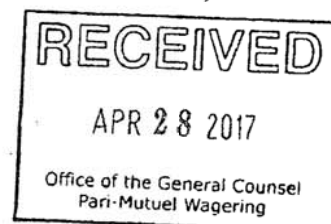
NORMAN D. FRANKLIN,

Respondent.

RESPONDENT'S RESPONSE TO PETITIONER'S EXCEPTIONS

The Respondent, NORMAN D. FRANKLIN, through his undersigned counsel, responds to the exceptions filed by the State to the Order of the Hearing Examiner stating that the Conclusions of Law by the Hearing Examiner pursuant to §120.57(1)(1) are more reasonable than that which was rejected or modified.

The Respondent did not question what was considered very poor drafting of an administrative complaint. All it simply says is that he is alleged to have been rejected from the Tampa Bay Downs Pari-Mutual facility and therefore they were seeking to have him barred from all Pari-Mutual facilities in the State of Florida. As stated in the original Proposed Findings of Facts and Conclusions of Law suggested by the Respondent, it was clearly stated there were no basis for this. There must be a basis. We live in a free United States. We have the right to come and go and, in order to be excluded from a facility, there must be a reason. Not because of the color of your skin or because of your ethnic background, or because of anything else that relates to discrimination.

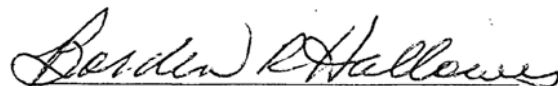


There is no basis for establishing what the Department wants and for that reason, the more reasonable conclusion of this Tribunal's finding is certainly more reasonable than their attempt to just make a blanket statement that he should be ejected from every Pari-Mutual facility in Florida. This is the Respondent's livelihood and has been his livelihood for forty years and now they are simply saying that they want to exclude him from all Pari-Mutual facilities in the State of Florida. If one reads the Administrative Complaint they would ask "What is the basis for this? Why? What is going on?" It appears the State does not want anyone to know what is going on.

In any event, it is clear that the more reasonable interpretation of the Rules, the Statutes, and factual basis are the findings by the Hearing Examiner.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to Charles Dewrell, Assistant General Counsel, Department of Business and Professional Regulations, 2601 Blairstone Rd., Mailstop N21, Tallahassee, FL 32399-2202, by U.S. Mail this 25 day of April, 2017.



Borden R. Hallows, Esquire
Florida Bar No.: 033092
113 Shore Rush Circle
St. Simons Island, GA 31522
bhallowes@bellsouth.net
(904) 376-5689
(912) 434-6363 facsimile
Attorney for Respondent

Borden R. Hallowes
Attorney at Law
113 Shore Rush Circle
St. Simons Island, GA 31522

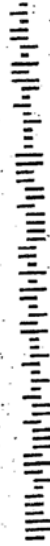
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Charles Dewrell, Assistant General Counsel
DBPR
2601 Blairstone Rd. Stop N21
Tallahassee FL 32399-2202

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

FILED	
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CLERK	Brandon Nichols
Date	4/12/2017
File #	

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

Petitioner,

v.

DBPR Case No. 2016-025315

NORMAN D. FRANKLIN,

Respondent.

PETITIONER'S EXCEPTIONS TO RECOMMENDED ORDER

Pursuant to section 120.57(1)(k), Florida Statutes (2009) and Rule 28-106.217(1) of the Florida Administrative Code, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("the Division") files the following exceptions to the Recommended Order issued by Hearing Officer Patrick Cunningham ("Hearing Officer") on April 5, 2017 in the above captioned matter.

Exception to Conclusion of Law

Pursuant to Section 120.57(1)(l), Florida Statutes, when rejecting or modifying conclusions of law or interpretations of administrative rules, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rules and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

Exception #1

Petitioner takes exception to the conclusion of law set forth in Paragraph #15, page 3, of the Hearing Officer's Recommended Order which states that "[a]lthough the record shows Respondent was excluded from Tampa Bay Downs, Petitioner failed to establish by clear and convincing evidence that such exclusion was based on a violation of the applicable licensing law or misconduct necessitating disciplinary action by the Division."

With this paragraph, the Hearing Officer's argument seems to be predicated on the language in the second sentence of Section 550.0251(6), Florida Statutes, which states:

The Division **may** authorize any person who has been ejected or excluded from pari-mutuel facilities...to attend the pari-mutuel facilities in this state upon a finding that the attendance of such person at pari-mutuel facilities would not be adverse to the public interest or to the integrity of the sport or industry...[H]owever, this subsection shall not be construed to abrogate the common-law right of a pari-mutuel permit holder to exclude absolutely a patron in this state. (Emphasis Added).

However, the Hearing Officer's Recommended Order (and the Division's Administrative Complaint) both also cite to the Division's authority to exclude patrons pursuant to the first sentence of Section 550.0251(6), Florida Statutes, which provides that:

"[t]he 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.** (Emphasis Added).

It appears clear from Section 550.0251(6), Florida Statutes, that the question as it relates to this Administrative Complaint is only whether or not the evidence is clear and convincing that Respondent was ejected from a pari-mutuel facility in this state. Any reasonable view of the evidence shows that this bar has been met.

Thus, the Petitioner respectfully requests that the Division of Pari-Mutuel Wagering enter a Final Order granting the Petitioner's Exception to the conclusion of law set forth in Paragraph #15 of the Recommended Order.

Conclusion

WHEREFORE, the Division requests that the above exception be granted and that a Final Order be entered permanently excluding Respondent from all pari-mutuel facilities in this state..

Respectfully submitted on this 10th day of April, 2017.

/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
Tallahassee, Florida 32399-2202
Telephone: (850) 717-1209
Facsimile: (850) 921-1311

CERTIFICATE OF SERVICE

I hereby CERTIFY that a copy of the foregoing has been furnished by electronic mail to Respondent, **Norman D. Franklin, c/o Borden Hallowes, Esq., 113 Shore Rush Cr., St. Simons Island, GA 31522, bhallowes@bellsouth.net** on this 10th day of April, 2017.

/s/ Charles Dewrell

CHARLES DEWRELL, ESQ.

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Evette Lawson-Proctor
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File #	

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

Petitioner,

DBPR CASE NO. 2016-025315

v.

NORMAN D. FRANKLIN,

Respondent.

HEARING OFFICER'S RECOMMENDED ORDER

THIS MATTER came before Patrick Cunningham, designated Hearing Officer for the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering on March 1, 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 Norman D. Franklin ("Respondent"), in DBPR Case No. 2016-025315. The Division of Pari-Mutuel Wagering ("Petitioner" or "Division") was represented by Charles Dewrell, Esq., Assistant General Counsel. Petitioner appeared in person for this hearing, and was represented by counsel, Borden Hallows, Esq., who appeared by telephone.

PRELIMINARY STATEMENT

1. On August 15, 2016, 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 September 3, 2016, Respondent executed his Election of Rights. Therein, Respondent requested a Formal Hearing, however, Respondent failed to provide a statement of disputed issues of material fact.

3. On October 5, 2016, pursuant to the Division's request, Respondent filed an Amended Election of Rights, but again failed to provide a statement of disputed issues of material facts.

4. On October 12, 2016, the Division served correspondence on the Respondent advising him that his Amended Election of Rights was dismissed, and that this matter would be scheduled for an informal hearing.

5. At the informal hearing on March 1, 2017, the Petitioner presented the issues raised in the Administrative Complaint and made an oral Motion for Informal Hearing, citing the above mentioned issues with Respondent's Election of Rights.

6. The Hearing Officer conducted a colloquy with Respondent and went through all facts alleged in the Administrative Complaint. Finding no disputes of material fact, the Hearing Officer granted the Petitioner's Motion for Informal Hearing and accepted the findings of fact in the Administrative Complaint as the undisputed facts in the case. Respondent then presented his case.

FINDINGS OF FACT

7. 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.

8. Tampa Bay Downs is a licensed pari-mutuel and cardroom facility in this state.

9. On or about May 18, 2016, Respondent was ejected and indefinitely trespassed from Tampa Bay Downs.

CONCLUSIONS OF LAW

10. The Division has jurisdiction over this matter pursuant to Chapters 120 and 550, Florida Statutes.

11. Section 550.0251(6), Florida Statutes, provides in relevant part that "[t]he 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."

12. Respondent's livelihood is based on horses.

13. In a case where the proceedings implicate the loss of livelihood, an elevated standard is necessary to protect the rights and interests of the accused. *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

14. Petitioner has the burden of proving by clear and convincing evidence the allegations against Respondent. *See Ferris v. Turlington*.

15. Although the record shows Respondent was excluded from Tampa Bay Downs, Petitioner failed to establish by clear and convincing evidence that such exclusion was based on a violation of the applicable licensing law or misconduct necessitating disciplinary action by the Division.

16. There is also no evidence that Respondent has been arrested, charged or convicted of any crime.

17. Section 550.0251(6), Florida Statutes, further provides that:

The division may authorize any person who has been ejected or excluded from pari-mutuel facilities . . . to attend the pari-mutuel facilities in this state upon a finding that the attendance of such person at pari-mutuel facilities would not

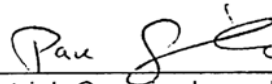
be adverse to the public interest or to the integrity of the sport or industry. . . . [H]owever, this subsection shall not be construed to abrogate the common-law right of a pari-mutuel permitholder to exclude absolutely a patron in this state.

18. Pursuant to Section 550.0251(6), Florida Statutes, Respondent may be allowed to continue to attend pari-mutuel facilities in the state if such attendance is not adverse to the public interest, the integrity of horse racing, or the common-law right of pari-mutuel permitholders to exclude patrons.

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: DISMISSING the administrative complaint and allowing Respondent to continue attending pari-mutuel facilities insofar as such attendance does not interfere with the common-law right of a pari-mutuel permitholder to exclude absolutely a patron in this state.

Respectfully submitted this 4 day of April, 2017.



Patrick Cunningham, 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 5 day of April, 2017, that a true copy of the foregoing has been provided by Certified U.S. to:

Norman D. Franklin
c/o Borden R. Hallowes, Esq.
1098 Village Oaks Lane
St. Simons Island, GA 31522
bhallowes@bellsouth.net


Evette L. Proctor
AGENCY CLERK'S OFFICE

Cc:
Patrick Cunningham, 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
DIVISION OF PARI-MUTUEL WAGERING

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

Petitioner,

v.

Case No. 2016-025315

NORMAN D. FRANKLIN,

Respondent.

ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (“Petitioner”) files this Administrative Complaint against Norman D. Franklin (“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 13931 SW 16th Avenue, Ocala, Florida 34473.
3. Tampa Bay Downs is a licensed pari-mutuel and cardroom facility in this state.
4. On or about May 18, 2016, Respondent was ejected and indefinitely trespassed from Tampa Bay Downs.
5. Section 550.0251(6), Florida States, 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 8th day of August, 2016.

KEN LAWSON, Secretary
Department of Business and
Professional Regulation

Caitlin R. Mawn

Caitlin R. Mawn

Deputy Chief Attorney
Florida Bar No. 99545
Office of the General Counsel
Division of Pari-Mutuel Wagering
Department of Business and
Professional Regulation
2601 Blair Stone Road, 5th Floor
Tallahassee, Florida 32399-2202
Telephone: (850) 717-1768
Facsimile: (850) 921-1311

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 any hearing.

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