

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

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

Petitioner,  
v.

DBPR CASE NO. 2018-047272

MILCO MARRERO,

Respondent.

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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 11, 2019, Alison Parker, 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 Department's Informal Hearing, it is hereby ORDERED that:

- 1) Respondent shall be **PERMANENTLY EXCLUDED** from all licensed pari-mutuel facilities within 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 30 day of April, 2019, in Tallahassee, Florida.

  
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**LOUIS TROMBETTA, 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 this 2<sup>nd</sup> day of May 2019, that a true and correct copy of the foregoing Final Order has been provided by electronic mail and regular U.S. mail to:

**Milco Marrero**  
6930 N.W. 186<sup>th</sup> Street, Apt. 502A  
Hialeah, Florida 33015

  
\_\_\_\_\_  
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.

**FILED**  
Department of Business and Professional Regulation  
Deputy Agency Clerk  
CLERK **Evette Lawson-Proctor**  
Date **4/12/2019**  
File #

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

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

Petitioner,

DBPR Case No. 2018-047272

v.

MILCO MARRERO,

Respondent.

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**HEARING OFFICER'S RECOMMENDED ORDER**

THIS MATTER came before Alison A. Parker, the designated Hearing Officer for the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("Petitioner"), on March 6, 2019, in Tallahassee, Florida, in accordance with the provisions of sections 120.569 and 120.57(2), Florida Statutes (2018), for consideration of the Petitioner's Administrative Complaint issued against Milco Marrero ("Respondent") in the above-styled matter. Petitioner was represented by James A. Lewis, Assistant General Counsel. Respondent appeared *pro se* by telephone. Both sides were allowed to present witnesses, offer items into evidence, and otherwise fully participate in the hearing.

**PRELIMINARY STATEMENT**

1. On November 21, 2018, Petitioner filed a three-count Administrative Complaint against the Respondent alleging that Respondent was subject to discipline under the provisions of sections 550.109(4), 551.112, and 550.0251(6), Florida Statutes (2018), by being ejected and/or excluded from Calder Casino, a licensed pari-mutuel facility located in the state of Flori-

da, and by being involved in a conspiracy to manipulate the payment, outcome, and/or operation of a slot machine by physical tampering (“Administrative Complaint”).

2. On or about December 27, 2018, Respondent executed his Election of Rights, indicating he did not dispute the material facts alleged in the Administrative Complaint and requesting a hearing pursuant to sections 120.569 and 120.57(2), Florida Statutes (“informal hearing”).

3. At the informal hearing convened on February 6, 2019, Respondent indicated that he believed he had requested this particular forum in error, citing his unfamiliarity with the English language and the administrative process. Over objection from Petitioner, the undersigned Hearing Officer allowed Respondent 14 days to execute an Amended Election of Rights. In addition, Respondent received explicit instructions that should he fail to furnish an Amended Election of Rights to Petitioner he would waive his opportunity to contest the facts delineated within the Administrative Complaint. Respondent’s deadline for this amended election was on or before February 20, 2019, at 5:00 pm EST.

4. On February 21, 2019, Petitioner furnished Respondent with a Notice of Hearing, instructing Respondent that another informal hearing would be convened based on Respondent’s failure to amend his Election of Rights. Shortly thereafter, Respondent provided an untimely Amended Election of Rights, which alleged that Respondent was incorrectly identified and that he was “innocent” of the charges alleged against him.

5. On March 6, 2019, an informal hearing was again convened for the above-styled matter. Therein, Petitioner presented the issues raised in the Administrative Complaint and cited the Respondent’s signed Election of Rights, the ruling of the designated Hearing Officer providing Respondent an extension to provide an Amended Election of Rights and his subsequent fail-

ure to do so in a timely fashion, and Respondent's untimely election of rights. The undersigned Hearing Officer agreed that a section 120.57(2) hearing was appropriate given Respondent's initial election and subsequent failure to timely or sufficiently amend. Accordingly, the undersigned granted Petitioner's Motion to Accept the Findings of Fact in the Administrative Complaint as the undisputed facts in the case and admitted the Division's investigative file into evidence, along with supplemental documents indicating the failure of Respondent to amend his Election of Rights and other photographs taken at Calder Casino identifying Respondent. Respondent then presented his case.

#### FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating pari-mutuel wagering and slot machines pursuant to chapters 550 and 551, Florida Statutes.
2. At all times material to the Administrative Complaint, Respondent was a patron of Calder Casino.
3. At all times material hereto, Calder Casino is a facility operated by a permit holder authorized to conduct pari-mutuel wagering and operate slot machines in the state of Florida.
4. On or about December 4, 5, and/or 19, 2017, Respondent conspired with, solicited, aided, abetted, counseled, hired, and/or procured another individual to manipulate the outcome, payoff, or operation of a slot machine by physical tampering.
5. On or about May 11, 2018, Respondent was ejected and permanently excluded from Calder Casino.
6. At the original informal hearing held on February 6, 2019, Respondent made an ore tenus motion for leave to amend his election of rights, which was granted by the Hearing Officer. The parties were explicitly instructed that a failure to timely receive an Amended Election

of Rights within 14 days would constitute a waiver of Respondent's right to contest the factual allegations set forth within the Administrative complaint.

7. Respondent failed to timely return an Amended Election of Rights.

8. The evidence adduced at the informal hearing held on March 6, 2019, established that Respondent should be permanently excluded from all licensed pari-mutuel and slot machine facilities located in the state of Florida.

9. There is competent substantial evidence to support the foregoing findings of fact.

#### CONCLUSIONS OF LAW

10. The Department of Business and Professional Regulation has jurisdiction over the parties and the subject matter thereto pursuant to chapters 120 and 550, Florida Statutes.

11. The undersigned Hearing Officer has jurisdiction to hear this matter pursuant to section 120.57, Florida Statutes.

#### Respondent Failed to Request a Section 120.57(1) Hearing

12. The undersigned authorized Respondent leave to amend his election of rights, in accordance with certain principles of Florida jurisprudence. See Adams v. Knabb Turpentine Co., 435 So. 2d 944, 946 (Fla. 1st DCA 1983) (amendment of pleadings is to be liberally allowed) ("It is the public policy of this state to freely allow amendments to pleadings so that cases may be resolved upon their merits.") (Citing Enstrom v. Dixon, 354 So. 2d 1251 (Fla. 4th DCA 1978) and Weich v. Cook, 250 So. 2d 281 (Fla. 1st DCA 1971)); accord Bill Williams Air Conditioning & Heating, Inc. v. Haymarket Coop. Bank, 592 So. 2d 302, 305 (Fla. 1st DCA 1991).

13. However, as articulated in Brown v. Montgomery Ward & Co., 252 So. 2d 817 (Fla. 1st DCA 1971), "[a]lthough it is highly desirable that amendments to pleadings be liberally allowed so that cases may be concluded on their merits, there is an equally compelling obligation on the court to see to it that the end of all litigation be finally reached." (Citing Warfield v.

Drawdy, 41 So. 2d 877 (Fla. 1949)). Further, the provisions of rules 28-106.104(1) and 28-106.111(2), Florida Administrative Code, unambiguously state that a request for hearing must be received by the agency within 21 days. Further, agencies may grant requests for extensions of deadlines to file initial pleadings. Id. at (3).

14. Here, the Hearing Officer granted Respondent's motion for leave to amend, which functionally provided an extension for Respondent to file an Amended Election of Rights form. However, given that Respondent failed to do so, his failure must be construed as a waiver of his right to request a hearing involving a factual dispute. Florida Administrative Code Rule 28-106.111(4); Riverwood Nursing Ctr., LLC v. Ag. for Health Care Admin., 58 So. 3d 907, 911-12 (Fla. 1st DCA 2011) (failure of a party to sufficiently request an administrative hearing involving an issue of material fact constitutes a waiver of their entitlement thereto). Therefore, the undersigned convened and held a section 120.57(2) hearing in this matter.

Respondent Should Be Excluded From All Pari-Mutuel and Slot Machine Facilities

15. Section 551.109(4), Florida Statutes (2017), imposes criminal liability on an individual for tampering with a slot machine, providing:

Any person who manipulates or attempts to manipulate the outcome, payoff, or operation of a slot machine by physical tampering or by use of any object, instrument, or device, whether mechanical, electrical, magnetic, or involving other means, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

16. Correspondingly, rule 61D-14.090, Florida Administrative Code (2017), subjects violations of, inter alia, section 551.109(4) to administrative liability, providing that "[n]o person shall conspire with, solicit, aid, abet, counsel, hire, or procure any other persons to engage in a violation of chapter 551, F.S., or chapter 61D-14, F.A.C., nor shall he or she commit any such act on his or her own."



17. Based on the foregoing, Respondent violated rule 61D-14.090, Florida Administrative Code, by conspiring with, soliciting, aiding, abetting, counseling, hiring, or procuring another person to engage in a violation of section 551.109(4), Florida Statutes, on or about December 4, 5, and/or 19, 2017.

18. Section 551.112, Florida Statutes, provides:

In addition to the power to exclude certain persons from any facility of a slot machine licensee in this state, the division may exclude any person from any facility of a slot machine licensee 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 facility of a slot machine licensee any person who has been ejected from a facility of a slot machine licensee in this state or who has been excluded from any facility of a slot machine licensee or gaming facility in another state by the governmental department, agency, commission, or authority exercising regulatory jurisdiction over the gaming in such other state. This section does not abrogate the common law right of a slot machine licensee to exclude a patron absolutely in this state.

(Emphasis supplied).

19. Likewise, section 550.0251(6), Florida Statutes, provides in pertinent part:

In 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.

(Emphasis supplied).

20. Based on the foregoing, Respondent's conduct and subsequent exclusion and ejection from Calder Casino subjects him to permanent exclusion from all licensed pari-mutuel


and slot machine facilities in the state of Florida based on his permanent exclusion and ejection from Calder Casino on or about May 11, 2018.

21. 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: PERMANENTLY EXCLUDED from all licensed pari-mutuel and slot machine facilities located in the State of Florida.

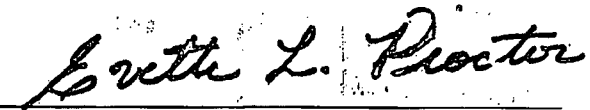
Respectfully submitted this 11<sup>th</sup> day of April 2019.

  
Alison A. Parker, Hearing Officer  
Department of Business and  
Professional Regulation  
2601 Blair Stone Road  
Tallahassee, FL 32399-2202

CERTIFICATE OF SERVICE

I hereby certify this 12 day of April 2019 that a true copy of the foregoing has been provided by U.S. Mail to:

**Milco Marrero**  
6930 N.W. 186<sup>th</sup> Street, Apt. 502A  
Hialeah, FL 33015

  
AGENCY CLERK'S OFFICE

Cc:  
Alison Parker, Informal Hearing Officer  
James A. Lewis, 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.**

**FILED**  
Department of Business and Professional Regulation  
Deputy Agency Clerk  
CLERK **Evette Lawson-Proctor**  
Date 11/21/2018  
File #

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

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

Petitioner,

vs.

DBPR Case No. 2018-047272

MILCO MARRERO,

Respondent.

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ADMINISTRATIVE COMPLAINT

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

1. Petitioner is the state agency charged with regulating pari-mutuel wagering and slot machines pursuant to chapters 550 and 551, Florida Statutes.
2. At all times material hereto, Respondent was a patron of Calder Casino.
3. At all times material hereto, Calder Casino is facility operated by a permitholder authorized to conduct pari-mutuel wagering and operate slot machines in the State of Florida.
4. On or about December 4, 5, and/or 19, 2017, Respondent conspired with, solicited, aided, abetted, counseled, hired, and/or procured another individual to manipulate the outcome, payoff, or operation of a slot machine by physical tampering.
5. On or about May 11, 2018, Respondent was ejected and permanently excluded from Calder Casino.

## COUNT I

6. Petitioner realleges and incorporates the allegations contained within paragraphs one through five as though fully set forth herein.

7. Section 551.109(4), Florida Statutes (2017), imposes criminal liability on an individual for tampering with a slot machine, providing:

Any person who manipulates or attempts to manipulate the outcome, payoff, or operation of a slot machine by physical tampering or by use of any object, instrument, or device, whether mechanical, electrical, magnetic, or involving other means, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

8. Rule 61D-14.090, Florida Administrative Code (2017), provides “[n]o person shall conspire with, solicit, aid, abet, counsel, hire, or procure any other persons to engage in a violation of Chapter 551, F.S., or Chapter 61D-14, F.A.C., nor shall he or she commit any such act on his or her own.”

9. Based on the foregoing, Respondent violated rule 61D-14.090, Florida Administrative Code, by conspiring with, soliciting, aiding, abetting, counseling, hiring, or procuring another person to engage in a violation of section 551.109(4), Florida Statutes, on or about December 4, 5, and/or 19, 2017.

## COUNT II

10. Petitioner realleges and incorporates the allegations contained within paragraphs one through five as though fully set forth herein.

11. Section 551.112, Florida Statutes, provides:

In addition to the power to exclude certain persons from any facility of a slot machine licensee in this state, the division may exclude any person from any facility of a slot machine licensee 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 facility of a slot machine licensee any person who has been ejected from a facility of a slot machine licensee in this state or who has been excluded from any facility of a slot machine licensee or gaming facility in another state by the governmental department, agency, commission, or authority exercising regulatory jurisdiction over the gaming in such other state. This section does not abrogate the common law right of a slot machine licensee to exclude a patron absolutely in this state.

(Emphasis supplied).

12. Based on the foregoing, Respondent is subject to permanent exclusion from all licensed slot machine facilities in the State of Florida based on his ejection from Calder Casino on or about May 11, 2018.

### COUNT III

13. Petitioner realleges and incorporates the allegations contained within paragraphs one through five as though fully set forth herein.

14. Section 550.0251(6), Florida Statutes, provides in pertinent part:

In 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.

(Emphasis supplied).

15. Based on the foregoing, Respondent is subject to permanent exclusion from all licensed pari-mutuel facilities in the State of Florida based on his permanent exclusion from Calder Casino on or about May 11, 2018.

WHEREFORE, Petitioner respectfully requests the Division enter an Order permanently excluding Respondent from all licensed pari-mutuel and slot machine facilities in the State of Florida along with any other remedy provided by chapters 550 and 551, Florida Statutes, and/or the rules promulgated thereunder.

This Administrative Complaint for DBPR Case No. 2018-047272 is signed this 21st day of November, 2018.

/s/ James A. Lewis  
**JAMES A. LEWIS**  
Assistant General Counsel  
Florida Bar No. 1002349  
James.Lewis@MyFloridaLicense.com

/s/ Louis Trombetta  
**LOUIS TROMBETTA**  
Chief Attorney  
Florida Bar No. 0108119  
Louis.Trombetta@MyFloridaLicense.com

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)-717-1585  
Facsimile: (850) 921-1311

NOTICE OF RIGHTS TO REQUEST A HEARING

Pursuant to sections 120.569 and 120.57, Florida Statutes, you have the right to request a hearing to challenge the charges contained in this Administrative Complaint. If you choose to request a hearing, you will have the right 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 your behalf.

Any request for an administrative proceeding to challenge or contest the charges contained in this Administrative Complaint must conform to rule 28-106.2015, Florida Administrative Code. Pursuant to rule 28-106.111(4), Florida Administrative Code, you must request a hearing within 21 days from receipt of this Notice, or you will waive your right to request a hearing.