

FILED	
Department of Business and Professional Regulation AGENCY CLERK	
CLERK	Ronda L. Bryan
Date	12/29/2021
File #	2021-09575

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. : 2021-024525

MICHAEL FRANCIS AFFLECK,
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 November 16, 2021, Alison A. 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

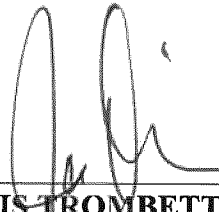
The Conclusions of Law contained in the Recommended Order are hereby adopted as the Conclusions of Law of the Division.

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 22 day of December, 2021, in Tallahassee, Florida.



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

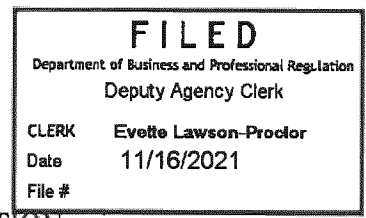
I HEREBY CERTIFY that on this 29th day of December, 2021, a true and correct copy of this Final Order has been sent via U.S. Mail to:

Michael Francis Affleck
3290 29th Avenue Southwest
Naples, Florida 34117


AGENCY CLERK'S OFFICE

NOTICE OF RIGHT TO APEAL UNLESS WAIVED

A party who is adversely affected by this Final Oder 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
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HEARING OFFICER'S RECOMMENDED ORDER

THIS MATTER came before Alison A. Parker, designated Hearing Officer for the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering on October 6, 2021, in Tallahassee, Florida, in accordance with the provisions of section 120.57(2), Florida Statutes, for consideration of the Division's Administrative Complaint filed against Michael Francis Affleck ("Respondent"), in DBPR Case Number 2021-024525 ("Administrative Complaint"). The Division of Pari-Mutuel Wagering ("Petitioner") was represented by Darrell Garvey, Assistant General Counsel. Respondent did not attend the hearing by failing to answer the call when the undersigned telephoned him several times during the timeframe as listed on the applicable Notice of Hearing: specifically, 9:00 a.m., 9:16 a.m., 9:27 a.m., and 9:40 a.m. There is no evidence that Respondent requested a continuance. Therefore, the informal hearing transpired without an agent of Respondent present.

PROCEDURAL HISTORY

1. On May 18, 2021, the Division filed an Administrative Complaint against Respondent. The Administrative Complaint alleged that Respondent was ejected and

permanently excluded from Bonita Fort Meyers Corporation (“Bonita”) on May 18, 2021, and Respondent was subject to permanent exclusion from all licensed pari-mutuel facilities in the State of Florida based on his ejection and permanent exclusion from Bonita on May 18, 2021.

2. On July 20, 2021, Respondent requested an informal hearing pursuant to section 120.57(2), Florida Statutes, through his Election of Rights form.

3. At the informal hearing on October 6, 2021, the Division presented the issues raised in its Administrative Complaint. Petitioner’s motion to accept the findings of fact in the Administrative Complaint as the case’s undisputed facts was granted. The Division successfully moved the investigative packet into the record. Respondent provided no mitigation.

FINDINGS OF FACT

1. At all times pertinent to the allegations contained herein, Respondent was a patron at Bonita.

2. On or about May 18, 2021, Respondent was ejected and permanently excluded from Bonita.

CONCLUSIONS OF LAW

1. The undersigned Hearing Officer has jurisdiction to hear this cause pursuant to section 120.57(2), Florida Statutes.

2. At all times material, Bonita was a facility operated by a permit holder authorized to conduct pari-mutuel wagering, cardroom operations, and slot machine operations in the State of Florida.

3. Section 550.0251(6), Florida Statutes, provides in relevant part (emphasis added):

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.

4. Section 551.112, Florida Statutes, provides (emphasis added):

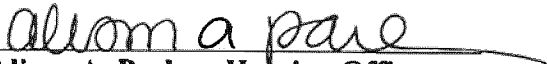
In addition to the power to exclude certain persons from any facility of a slot machine licensee in this state, the division may exclude any person from any facility of a slot machine licensee in this state for conduct that would constitute, if the person were a licensee, a violation of this chapter 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.

5. Respondent is subject to permanent exclusion from all licensed pari-mutuel facilities in the State of Florida based on his ejection and permanent exclusion from Bonita on May 18, 2021.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is hereby recommended that the Division issue a Final Order excluding Respondent from all pari-mutuel facilities in the state of Florida.

Respectfully submitted this 15th day of November 2021.

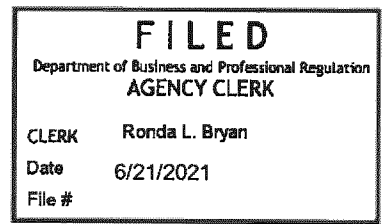

Alison A. Parker, Hearing Officer
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, FL 32399-2202

CERTIFICATE OF SERVICE

I hereby certify this 16 day of November 2021 that a true copy of the foregoing has been
furnished by mail to:

Michael Francis Affleck
3290 29th Avenue Southwest
Naples, Florida 34117


AGENCY CLERK'S OFFICE



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

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Petitioner,

DBPR Case No.: 2021-024525

v.

MICHAEL FRANCIS AFFLECK,

Respondent.

_____ /

ADMINISTRATIVE COMPLAINT

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

1. Petitioner is the state agency charged with regulating pari-mutuel wagering, slot machines, and cardroom operations pursuant to Chapters 550, 551, and 849, Florida Statutes.
2. At all times material hereto, Respondent’s address was reported as 3290 29th Avenue SW, Naples, Florida 34117.
3. At all times material hereto, Bonita Fort Meyers Corporation was a facility operated by a permitholder authorized to conduct pari-mutuel wagering, slot machines, and cardroom operations in the State of Florida.
4. On or about May 18, 2021, Respondent was a patron of Bonita Fort Meyers Corporation.
5. On or about May 18, 2021, Respondent was ejected and permanently excluded from Bonita Fort Meyers Corporation.

6. Section 550.0251(6), Florida Statutes, provides in relevant 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).

7. 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).

8. Based on the foregoing, Respondent violated Section 550.0251(6), Florida Statutes, and is subject to exclusion from all licensed pari-mutuel wagering facilities in the State of Florida based on his ejection from Bonita Fort Meyers Corporation on or about May 18, 2021.

WHEREFORE, Petitioner respectfully requests the Division Director enter an Order excluding Respondent from all licensed pari-mutuel facilities in the State of Florida, along with

any other remedy provided by Chapter 550, Florida Statutes, and/or the rules promulgated thereunder.

This Administrative Complaint for DBPR Case Number 2021-024525 is signed this 15th day of June 2021.

/s/ Darrell Garvey
Darrell Garvey
Assistant General Counsel
FBN: 1018554
Department of Business and Professional Regulation
Office of the General Counsel
Division of Pari-Mutuel Wagering
2601 Blair Stone Road
Tallahassee, Florida 32399-2202
Telephone: (850) 717-1508
Facsimile: (850) 921-1311
Primary: Darrell.Garvey@MyFloridaLicense.com
Secondary: Ebonie.Lanier@MyFloridaLicense.com

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, 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.

Mediation under Section 120.573, Florida Statutes, is not available to resolve this Administrative Complaint.