

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.: 2021-026233

GUSTAVO MARTIN,

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 December 15, 2021, Alison A. Parker, Hearing Officer for the Department, issued the Recommended Order in this matter. The 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 is hereby **PERMANENTLY EXCLUDED** from all 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.

This Final Order in DBPR Case Number 2021-026233 is DONE AND ORDERED this 27 day of January, 2022, 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

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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 8<sup>th</sup> day of February 2022, that a true and correct copy of the foregoing Final Order has been sent via U.S. Mail to:

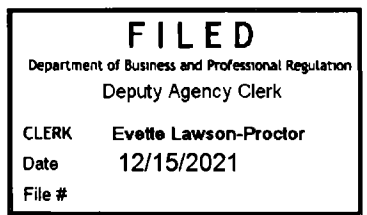
**Gustavo Martin**  
6496 West 11th Avenue  
Hialeah, Florida 33012

*Brandon M. Nichols*

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AGENCY CLERK'S OFFICE  
Department of Business and Professional Regulation

CC: Ebonie Lanier



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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 November 10, 2021, in Tallahassee, Florida, in accordance with the provisions of sections 120.569 and 120.57(2), Florida Statutes, for consideration of the Division's Administrative Complaint filed against Gustavo Martin ("Respondent"), in DBPR Case Number 2021-026233 ("Administrative Complaint"). The Division of Pari-Mutuel Wagering ("Division") was represented by Emily A. Leiva, Assistant General Counsel. Respondent appeared *pro se* and the hearing was held telephonically. Both sides were permitted to present witnesses, proffer items into evidence, and otherwise fully participate in the hearing.

**PROCEDURAL HISTORY**

1. On September 7, 2021, the Division filed an Administrative Complaint against Respondent alleging that on May 29, 2021, Respondent was permanently excluded from South Florida Racing Association ("Hialeah Park Racing & Casino") and that he is subject to exclusion from all licensed pari-mutuel facilities in the State of Florida.

2. On September 22, 2021, Respondent requested an informal hearing pursuant to Section 120.57(2), Florida Statutes.

3. Prior to the hearing, Respondent sent eleven documents explaining the circumstance that lead to his exclusion. These documents were added to the case file and provided to all parties prior to the hearing.

4. At the informal hearing on November 10, 2021, the Division presented the issues raised in its Administrative Complaint. The Division's motion to accept the Findings of Fact in the Administrative Complaint as the undisputed facts in the case was granted. Additionally, the Division successfully moved the investigative report into the record.

5. At the hearing, Respondent testified on a variety of topics:

- a. He admitted to being excluded from Hialeah Park Racing & Casino on May 12, 2021;
- b. He recalled the incident that lead to his permanent exclusion at Hialeah Park Racing & Casino, but stated that the information in the investigative report does not accurately depict the incident;
- c. He explained that the day he was excluded from Hialeah Park Racing & Casino, he was at Hialeah Park Racing & Casino to discuss poker chips he believed to be counterfeit; and
- d. He stated that he has not returned to Hialeah Park Racing & Casino since his permanent exclusion on May 29, 2021 and has no wish to return.

6. Further review by Division investigators confirmed the poker chips were not counterfeit.

#### **FINDINGS OF FACT**

7. At all times material, Respondent was a patron at Hialeah Park Racing & Casino.

8. On or about May 29, 2021, Respondent was ejected and permanently excluded from Hialeah Park Racing & Casino.

### CONCLUSIONS OF LAW

9. The Hearing Officer has jurisdiction to hear this case pursuant to section 120.57(2), Florida Statutes.

10. At all times material, Hialeah Park Racing & Casino was a facility operated by a regulated permitholder authorized to conduct pari-mutuel wagering, cardroom, and slot machine operations in the State of Florida.

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

12. Respondent is subject to exclusion from all licensed pari-mutuel facilities in the State of Florida based on his ejection and permanent exclusion from Hialeah Park Racing & Casino on May 29, 2021. *See* § 550.0251(6), Fla. Stat.

13. Respondent's testimony neither mitigates the fact that Respondent was permanently excluded from Hialeah Park Racing & Casino, nor precludes the Division from permanently excluding Respondent from all licensed pari-mutuel facilities in the State of Florida. *See Id.*

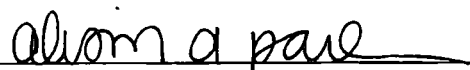
14. The Division is not required to be the arbiter of the underlying allegations that led to a patron's exclusion. Under the simple statement of the law, a patron's exclusion from a licensed pari-mutuel facility is enough to trigger a wholesale exclusion of the patron from all pari-mutuel facilities in the State of Florida.

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

### **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 15<sup>th</sup> day of December 2021.

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

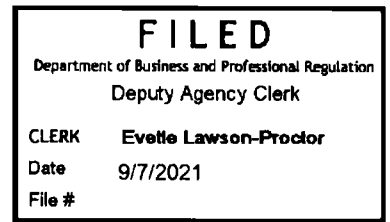
### **CERTIFICATE OF SERVICE**

I hereby certify this 15 day of December 2021 that a true copy of the foregoing Hearing Officer's Recommended Order has been provided by mail to:

**Gustavo Martin**  
6496 West 11th Avenue  
Hialeah, Florida 33012

  
Agency Clerk's Office





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ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (“Petitioner”), files this Administrative Complaint against Gustavo Martin (“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 6496 West 11th Avenue, Hialeah, Florida 33012.
3. At all times material hereto, South Florida Racing Association, LLC (“Hialeah Park”) 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 29, 2021 Respondent was a patron of Hialeah Park.
5. On or about May 29, 2021, Respondent was ejected and permanently excluded from Hialeah Park.
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 Sections 550.0251(6) and 551.112, Florida Statutes, and is subject to exclusion from all licensed pari-mutuel wagering facilities and any facility of a slot machine licensee in the State of Florida based on his ejection from Hialeah Park on or about May 29, 2021.

WHEREFORE, Petitioner respectfully requests the Division Director enter an Order excluding Respondent from all licensed pari-mutuel wagering facilities any facility of a slot

machine licensee 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 Number 2021-026233 is signed this 3rd day of September 2021.

/s/ Emily A. Leiva

Emily A. Leiva

Assistant General Counsel

Florida Bar Number: 1025200

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) 717-1783

Facsimile: (850) 921-1311

Primary: Emily.Leiva@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.