

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	3/28/2019
File #	2019-02744

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

Petitioner,

v.

DBPR CASE No. 2018-040011

NESTOR PEREZ,

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 March 7, 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

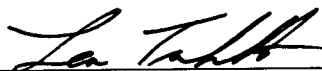
The Conclusions of Law contained in the Recommended Order are hereby adopted as the Conclusions of Law of the Division.

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 is **PERMANENTLY EXCLUDED** from all licensed pari-mutuel facilities within the State of Florida as a result of his permanent exclusion from Hialeah Park on July 25, 2018, and by virtue of violating Rule 61D-11.005(4), *Florida Administrative Code*.
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 26 day of March, 2019, 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 this 28th day of March, 2019, that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to:

Nestor Perez
2536 N.E. 41st Avenue
Homestead, Florida 33033

Brandon M. Nichols

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

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Evette Lawson-Proctor
Date	3/8/2019
File #	

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

Petitioner,

DBPR Case No. 2018-040011

v.

NESTOR PEREZ,

Respondent.

HEARING OFFICER'S RECOMMENDED ORDER

THIS MATTER came before Alison A. Parker, designated Hearing Officer for the Department of Business and Professional Regulation, on February 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 Division of Pari-Mutuel Wagering's ("Petitioner" or "Division") Administrative Complaint filed against Nestor Perez ("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 August 27, 2018, Petitioner filed a one-count Administrative Complaint against the Respondent alleging he was issued a trespass warning from a licensed pari-mutuel facility located in the State of Florida, sanctionable under the provisions of section 550.0251(6), Florida Statutes (2018) ("Administrative Complaint").

2. On or about September 28, 2018, requested a formal hearing pursuant to sections 120.569 and 120.57(1), Florida Statutes ("formal hearing"). However, Respondent failed to specifically indicate which facts were in dispute. Upon Respondent failing to specifically indicate which facts were in dispute a second time, Petitioner set the matter for a section 120.57(2), Florida Statutes.

3. At the informal hearing convened on February 6, 2019, Petitioner raised the issues presented in the Administrative Complaint and cited the Respondent's signed, deficient Election of Rights Forms. Upon Petitioner's motion, the Hearing Officer accepted the findings of fact alleged in the Administrative Complaint as the undisputed facts of this matter and admitted the Division's investigative file into evidence. Respondent then presented his case.

FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating pari-mutuel wagering in accordance with the provisions of chapter 550, Florida Statutes.

2. Hialeah Park is a licensed pari-mutuel facility and cardroom in the state of Florida ("Hialeah Park").

3. On or about July 25, 2018, Respondent was issued a trespass warning and permanent exclusion from Hialeah Park.

4. On August 27, 2018, Petitioner filed its Administrative Complaint against Respondent, based upon the aforementioned exclusion.

5. On or about September 28, 2018, Respondent, via his Election of Rights Form ("Respondent's First EOR"), elected for a formal hearing pursuant to sections 120.569 and 120.57(2), Florida Statutes.

6. Irrespective of Respondent's election, he failed to specifically indicate which facts he disputed, instead writing "I am always playing around and it was a joke that went wrong or way to [sic] far[,] gotten [sic] blown out of proportion – The [sic] guy who made it a big deal have [sic] anything to do with it."

7. On or about November 14, 2018, Petitioner furnished Respondent with a letter indicating that his answer failed to conform to the requirements of sections 120.569(2)(c) and rule 28-106.201, Florida Administrative Code, providing no entitlement to a section 120.57(1) hearing. Additionally, Petitioner furnished Respondent with an Amended Election of Rights Form ("Respondent's Amended EOR").

8. On or about December 19, 2018, Respondent furnished Petitioner with his Amended EOR. Upon receipt, Respondent's Amended EOR again elected for a formal hearing and stated "[a]lways playing here between friends and that was a joke that went to [sic] far and out of proportion and the guy who made a big deal [sic] didn't have anything to do with it."

9. Given that Respondent's Amended EOR twice failed to specifically identify which facts he disputed, the Division set this matter for a hearing under sections 120.569 and 120.57(2), Florida Statutes ("informal hearing").

10. At the informal hearing, the evidence presented established that Respondent should be permanently excluded from all licensed pari-mutuel facilities in the State of Florida.

CONCLUSIONS OF LAW

11. The undersigned hearing officer has jurisdiction to hear this matter pursuant to section 120.57(2), Florida Statutes.

12. The Department of Business and Professional Regulation has jurisdiction over this matter pursuant to chapters 120, 550, and section 849.086, Florida Statutes.

13. Respondent's failure to conform to the requirements of section 120.569(2)(c) and rule 28-106.201, Florida Administrative Code, constitutes a waiver of his right to a formal fact-finding proceeding under section 120.57(1), Florida Statutes.

14. Section 550.0251(6), Florida Statutes (2018), authorizes the Division to permanently exclude any individual who has been trespassed from a licensed pari-mutuel facility from **any and all** licensed pari-mutuel facilities in the State of Florida, providing in pertinent part:

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.

15. While Respondent's explanation for the behavior may be true, it does not effectively mitigate against the severity of the situation, nor does he admit culpability for his own actions.

16. Based on the foregoing, Respondent should be excluded from all licensed pari-mutuel facilities in the State of Florida.

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

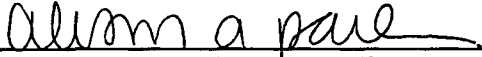
[RECOMMENDATION ON FOLLOWING PAGE]

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 excluding Respondent from all licensed pari-mutuel facilities in the State of Florida.

Respectfully submitted this 7th day of March 2019.


Alison A. Parker, Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify this 8 day of March 2019, that a true copy of the foregoing has been provided by U.S. Mail to:

Nestor Perez
2536 N.E. 41st Avenue
Homestead, Florida 33033


AGENCY CLERK'S OFFICE

Cc:
Alison A. 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 **8/27/2018**
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,

v.

DBPR Case No. 2018-040011

NESTOR PEREZ,

Respondent.

ADMINISTRATIVE COMPLAINT

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

1. Petitioner is the state agency charged with regulating pari-mutuel wagering pursuant to Chapter 550, Florida Statutes.
2. Respondent’s address of record is 2536 N.E. 41st Avenue, Homestead, Florida 33033.
3. Hialeah Park is a licensed pari-mutuel facility and cardroom in the State of Florida.
4. On or about July 25, 2018, Respondent was issued a trespass warning and permanent exclusion from its facility by Hialeah Park.
5. 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 of Florida.

Signed this 27th day of August, 2018.

/s/ Charles Dewrell

CHARLES DEWRELL

Deputy Chief Attorney

Florida Bar No. 0102579

Charles.Dewrell@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, Mail Stop N21
Tallahassee, Florida 32399-2202
Telephone: (850)-717-1585
Facsimile: (850) 921-1311

NOTICE OF RIGHTS TO REQUEST A HEARING

Pursuant to Section 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.