

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.: 2021-004173

RIGOBERTO DIAZ,

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 August 23, 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 is hereby **PERMANENTLY EXCLUDED** from all pari-mutuel facilities in 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 2021-004173 is DONE AND ORDERED this 14 day of September, 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

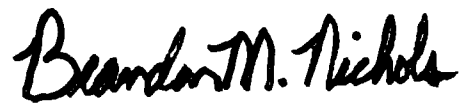
NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

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 17th day of September 2021, that a true and correct copy of the foregoing Final Order has been sent via U.S. Mail to:

Rigoberto Diaz
3380 North West 17th Avenue, Apt. 812
Miami, Florida 33142



AGENCY CLERK'S OFFICE
Department of Business and Professional Regulation

CC: Ebonie Lanier

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK **Evette Lawson-Proctor**
Date **8/23/2021**
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.: 2021-004173

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RIGOBERTO DIAZ,

Respondent.

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 August 4, 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 Rigoberto Diaz ("Respondent"), in DBPR Case Number 2021-004173 ("Administrative Complaint"). The Division of Pari-Mutuel Wagering ("Division") was represented by Emily A. Leiva, Assistant General Counsel and the hearing was held telephonically.

PROCEDURAL HISTORY

1. On March 22, 2021, the Division filed an Administrative Complaint against Respondent alleging that on or about September 12, 2020, Respondent was excluded and ejected from Miami Casino, LLC and that he is subject to exclusion from all licensed pari-mutuel facilities in the State of Florida

2. On or about April 9, 2021, Respondent requested a formal hearing pursuant to Section 120.57(1), Florida Statutes.

3. After review, the Division determined there was no material facts in dispute and issued a deficiency letter to Respondent. The Division requested an amended Election of Rights form specifically identifying the issues of material fact Respondent disputed.

4. On May 5, 2021, the Division received an amended Election of Rights form. As there was still no issue of material fact, this matter was set for an informal hearing pursuant to Section 120.57(2), Florida Statutes.

5. At the informal hearing scheduled on June 2, 2021 (June 2nd hearing), Respondent attended with a Spanish speaking translator.

6. During the June 2nd hearing, Respondent, via his interpreter, requested a continuance in order to seek representation. The undersigned Hearing Officer granted this continuance and the hearing was rescheduled for July 14, 2021.

7. On July 14, 2021, Hearing Officer Lateefah A. Muhammad telephoned Respondent for the scheduled informal hearing (the July 14th hearing)

8. At the July 14th hearing, Respondent did not have a Spanish speaking translator present. The Hearing Officer again continued the informal hearing to allow Respondent time to seek a translator.

9. At the informal hearing scheduled on August 4, 2021 (August 4th hearing), the undersigned Hearing Officer attempted to reach Respondent three times via telephone. On the third attempt, Respondent answered stating he did not speak English and did not have a translator present.

10. Therefore, the August 4th hearing was conducted without Respondent or an agent or Respondent present.

11. During the August 4th hearing, the Division proceeded to present the issues raised in its Administrative Complaint. The undersigned Hearing Officer granted the Division's motion to accept the Findings of Fact in the Administrative Complaint as the undisputed facts in the case, and accepted the investigative report into the record.

12. To date, Respondent has not contacted the Division (with or without a translator) to request a new hearing or to explain his failure to provide himself a translator.

FINDINGS OF FACT

13. At all times pertinent to the allegations contained herein, Respondent was a patron at Miami Casino, LLC.

14. On or about September 12, 2020, Respondent was ejected and excluded from Miami Casino, LLC.

CONCLUSIONS OF LAW

15. The undersigned Hearing Officer has jurisdiction over the subject matter and the Parties pursuant to Chapter 120, Florida Statutes.

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

17. 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).

18. Respondent did not supply any rehabilitation, mitigation, defense, or context for his exclusion.

19. Respondent had ample time and notice to provide himself a translator.

20. The duty to provide a translator rested solely on Respondent. Celaya v. Dep't of Pro. Regul., Bd. of Med., 560 So. 2d 383 (Fla. Dist. Ct. App. 1990).

21. Respondent has not disputed that he was ejected and/or excluded from Miami Casino, LLC.


22. Respondent is subject to exclusion from all licensed pari-mutuel facilities in the State of Florida based on his ejection and permanent exclusion from Miami Casino, LLC on September 12, 2020. *See* § 550.0251(6), Fla. Stat.

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

RECOMMENDATION

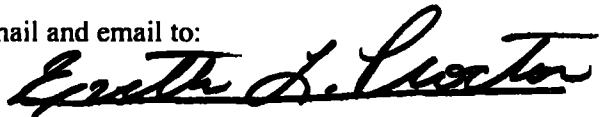
Based upon the Findings of Fact and Conclusions of Law, it is hereby recommended that the Division issue a Final Order excluding Respondent from all pari-mutuel facilities in the State of Florida.

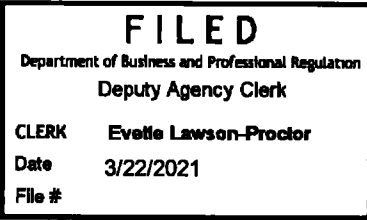
Respectfully submitted this 23rd day of August 2021.


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 23 day of August 2021 that a true copy of the foregoing "Petitioner's Proposed Recommended Order" has been provided by U.S. mail and email to:


Rigoberto Diaz
3380 N.W. 17th Avenue
Miami, Florida 33142
drigoberto508@gmail.com



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

DEPARTMENT OF BUSINESS
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RIGOBERTO DIAZ,

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_____ /

ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (“Petitioner”), files this Administrative Complaint against Rigoberto Diaz (“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 3380 N.W. 17th Avenue, Miami, Florida 33142.
3. At all times material hereto, Miami Casino, LLC 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 September 12, 2020, Respondent was a patron of Miami Casino, LLC.
5. On or about September 12, 2020, Respondent was ejected and excluded from Miami Casino, LLC.

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 in the State of Florida based on his ejection from Miami Casino, LLC on or about September 12, 2020.

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 chapters 550 and 551, Florida Statutes, and/or the rules promulgated thereunder.

This Administrative Complaint for DBPR Case Number 2021-004173 is signed this 22nd day of March 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: Linda.Turnage@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.