

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.: 2021-054066

v.

VICTOR MANUEL TARIN,

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 May 2, 2022, 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.

AGENCY STANDARD FOR REVIEW

Pursuant to section 120.57(1)(l), Florida Statutes, when rejecting or modifying conclusions of law or interpretations of administrative rules, the agency must state with particularity its reasons for rejecting or modifying such conclusions of law or interpretations of administrative rules and must make a finding that its substituted conclusions of law or interpretation of administrative rules are as, or more reasonable than, those which were rejected or modified. Crim. Justice Standards & Training Comm’n v. Bradley, 596 So. 2d 661, 663-64 (Fla. 1992) (citing Hambley v. Dep’t of Prof’l Reg., Div. of Real Estate, 568 So. 2d 970, 971 (Fla. 2d DCA 1990) (Altenbernd, J., dissenting)); see e.g., Phillips v. Bd. of Dentistry, Dep’t of

Health, 884 So. 2d 78, 81 (Fla. 4th DCA 2004) (board did not err in modification of hearing officer's penalty when it expressly adopted agency's filed exceptions and incorporated them into its final order).

RULING ON RECOMMENDATION

The Division "may accept the recommended penalty in a recommended order" but "may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action." § 120.57(1)(l), Fla. Stat.

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

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

2. Additionally, the Hearing Officer accepted the Findings of Fact alleged in Petitioner's Administrative Complaint, specifically that Magic City Casino is a facility operated by a permitholder authorized to conduct slot machine operations in the State of Florida.

3. Because Magic City Casino is authorized to conduct slot machine operations in the State of Florida, The Division proved that Respondent was ejected from a slot machine facility in the State of Florida.

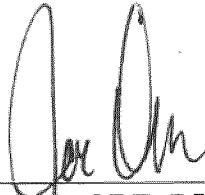
4. The Division finds that its conclusions of law are as or more reasonable than the conclusions that it modifies. § 120.57(1)(l), Fla. Stat.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law it is hereby ORDERED that:

- 1) Respondent is hereby **EXCLUDED** from all pari-mutuel facilities within the State of Florida for a period of three (3) YEARS.
- 2) Respondent is hereby **EXCLUDED** from all slot machine facilities within the State of Florida for a period of three (3) YEARS.
- 3) 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 2021-054066 is DONE AND ORDERED this 28 day of JUNE, 2022, in Tallahassee, Florida.



JOE DILLMORE, DIRECTOR
Division of Pari-Mutuel Wagering
Department of Business and Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399-1035

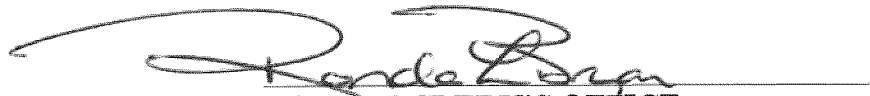
NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

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

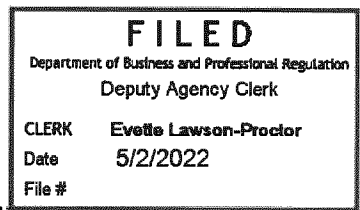
I HEREBY CERTIFY this 30th day of June 2022, that a true and correct copy of the foregoing Final Order has been sent via U.S. Mail to:

Victor Manuel Tarin
7800 Southwest 70th Street
Miami, Florida 33143



AGENCY CLERK'S OFFICE
Department of Business and Professional Regulation

cc: Ebonie Lanier



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.: 2021-054066

v.

VICTOR MANUEL TARIN,

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 April 6, 2022, 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 Victor Manuel Tarin ("Respondent"), in DBPR Case Number 2021-054066 ("Administrative Complaint"). The Division of Pari-Mutuel Wagering ("Division") was represented by Eric Saccomanno, 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 December 22, 2021, the Division filed a one-count Administrative Complaint against Respondent alleging that on September 18, 2021, Respondent was permanently excluded from West Flagler Associates, LTD d/b/a Magic City Casino ("Magic City"), and that he is subject to exclusion from all licensed pari-mutuel facilities in the State of Florida.

2. On January 28, 2022, Respondent requested a formal hearing pursuant to section 120.57(1), Florida Statutes, via his Election of Rights response.

3. After a review of the Respondent's Election of Rights response, the Division determined there were no material facts in dispute and issued a deficiency letter to Respondent on February 1, 2022. The Division requested Respondent submit an amended Election of Rights response specifically disputing any allegations of material facts as alleged in the Administrative Complaint. Additionally, the deficiency letter put Respondent on notice that if he failed to dispute issues of material fact that he would be scheduled for an informal hearing.

4. By March 14, 2022, Respondent had not specifically disputed any allegations of material fact as alleged in the Administrative Complaint. Consequently, this matter was set for an informal hearing pursuant to section 120.57(2), Florida Statutes. Proper and timely notice was sent to Respondent via a Notice of Telephone Hearing, which was furnished to Respondent on March 16, 2022.

The Informal Hearing – April 6, 2022

5. The informal hearing transpired as scheduled on April 6, 2022, with all parties in attendance.

6. During the informal hearing, the Division presented the issues raised in its Administrative Complaint. The Division moved to accept the Findings of Fact in the Administrative Complaint as the undisputed facts in the case, which was granted. Additionally, the Division successfully moved the investigative report into the record.

7. Respondent testified during the informal hearing regarding the incident that led to his permanent exclusion from Magic City:

- a. He stated that he went to the casino bar and spoke to a female patron present. While at the bar, he was approached by a male patron who began yelling at him for speaking to the female patron; and
- b. Respondent stated that security arrived and escorted Respondent and the male patron out of the casino. Respondent stated that there were no further altercations between them after being escorted out of the casino. He emphasized that he and the other male patron did not physically touch one another.

FINDINGS OF FACT

8. At all times pertinent to the allegations contained herein, Respondent was a patron at Magic City.
9. On or about September 18, 2021, Respondent was ejected and permanently excluded from Magic City.

CONCLUSIONS OF LAW

10. The Hearing Officer has the jurisdiction to hear this case pursuant to section 120.57(2), Florida Statutes.
11. At all times material, Magic City was a facility operated by a permit holder authorized to conduct pari-mutuel wagering, cardroom, and slot machine operations in the State of Florida.
12. 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.

13. Respondent is subject to exclusion from all licensed pari-mutuel facilities and any facility of a slot machine licensee in the State of Florida based on his ejection and permanent exclusion from Magic City, on September 18, 2021. *See* § 550.0251(6), Fla. Stat.

14. Respondent's testimony neither mitigates the fact that Respondent was permanently excluded from Magic City, nor precludes the Division from permanently excluding Respondent from all licensed pari-mutuel facilities in the State of Florida. *See Id.*

15. Respondent credibly testified that he did not physically touch the other male patron. The evidence certainly corroborates this. However, Magic City did not eject him for fighting. Its weekly exclusion spreadsheet categorizes the incident type broadly as "disorderly conduct". *Pet. 's Ext. 3, pp. 1-6.* Disorderly conduct, in the common parlance, does not require some sort of physicality with another person as part of the transgression; one person alone can engage in disorderly conduct. The associated Magic City trespass warning for Respondent also lists the reason for trespassing as "disorderly conduct". *Pet. 's Ext. pp. 2; 7.* Similarly, the Magic City incident report lists the incident type as "disorderly conduct". *Pet. 's Ext. 2, p. 2.* The narrative in that same report reference "almost fighting" and does not contradict Respondent's testimony that no physical altercation occurred. *Pet. 's Ext. 2, pp. 2-3.*

16. Respondent only offered that he did not get into a physical altercation as mitigation. However, as shown above, this is not relevant since the casino never alleged that he engaged in physical fighting, and thus did not base his ejection and permanent exclusion on this. Instead, pursuant to section 550.0251(6), Florida Statutes, the Division must only prove: 1) that

Respondent was a patron of a pari-mutuel wagering facility in this state and then 2) Respondent was rejected from that pari-mutuel wagering facility. These are really the only salient issues.

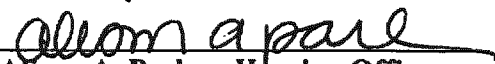
17. The Division proved that Respondent, a patron, was ejected from a pari-mutuel wagering facility in the state of Florida.

18. 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 requested that the Division issue a Final Order excluding Respondent from all pari-mutuel facilities in the State of Florida for a term of three (3) years. The effective date of this exclusion will start on the effective filing date of the applicable Final Order entered in this matter.

Respectfully submitted this 29th day of April 2022.


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

[CERTIFICATE OF SERVICE ON FOLLOWING PAGE]

CERTIFICATE OF SERVICE

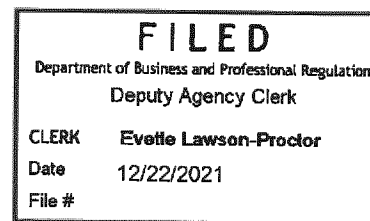
I hereby certify this 2 day of May 2022 that a true copy of the foregoing Hearing Officer's Recommended Order has been provided by mail to:

Victor Manuel Tarin
7800 Southwest 70th Street
Miami, Florida 33143


AGENCY CLERK'S OFFICE

Copies:

Alison A. Parker, Hearing Officer
Eric Saccomanno, Assistant General Counsel



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

DEPARTMENT OF BUSINESS
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VICTOR MANUEL TARIN,

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_____ /

ADMINISTRATIVE COMPLAINT

The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("Petitioner"), files this Administrative Complaint against Victor Manuel Tarin ("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 7800 South West 70th Street, Miami, Florida 33143.
3. At all times material hereto, West Flagler Associates, LTD, 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 18, 2021, Respondent was a patron of West Flagler Associates, LTD.
5. On or about September 18, 2021, Respondent was ejected and permanently excluded from West Flagler Associates, LTD.

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 West Flagler Associates, LTD, on or about September 18, 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 2021-054066 is signed this 21st day of December 2021.

/s/ Eric Saccomanno

Eric Saccomanno

Assistant General Counsel

FBN: 1032559

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) 717-1786

Facsimile: (850) 921-1311

Primary: Eric.Sacomanno@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.