

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, DIVISION )  
OF PARI-MUTUEL WAGERING, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 98-3063  
 )  
FLORIDA GAMING CENTERS, INC., )  
d/b/a TAMPA JAI ALAI, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to the stipulation of the parties filed on October 16, 1998, this matter was submitted to the Division of Administrative Hearings and its duly designated Administrative Law Judge, Carolyn S. Holifield, on the Stipulated Facts without further evidentiary hearing.

APPEARANCES

For Petitioner: Eric H. Miller  
Chief Assistant General Counsel  
Department of Business  
and Professional Regulation  
Division of Pari-Mutuel Wagering  
1940 North Monroe Street  
Tallahassee, Florida 32399

For Respondent: William P. Cagney, III, Esquire  
3400 Financial Center  
200 South Biscayne Boulevard  
Miami, Florida 33131

STATEMENT OF THE ISSUE

Whether Petitioner, the Department of Business and

Professional Regulation, Division of Pari-Mutuel Wagering, is authorized to charge and collect interest from Respondent, Florida Gaming Centers, Inc., on the unpaid value of the outsbook for the 1995-1996 meet from August 29, 1997, the date payment of the value of the outsbook was due, to September 8, 1998, the date payment was received by Petitioner.

PRELIMINARY STATEMENT

On or about June 2, 1998, Petitioner, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (Department), filed an Administrative Complaint against Respondent, Florida Gaming Centers, Inc., d/b/a Tampa Jai Alai (Respondent). The Administrative Complaint alleged that Respondent failed to timely submit the value of its outsbook to the Department and notified Respondent of its intention to impose an "appropriate penalty of revocation or suspension of the permit or license, recovery of the unpaid outs balance and attributable interest, collection of civil penalties, and such other additional penalties as may be provided by law or rule of the Division." Respondent timely challenged the allegations and requested a formal hearing. On July 14, 1998, the matter was forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct the final hearing.

Prior to the hearing, the parties filed a Prehearing Stipulation, Joint Request to Submit Case on Stipulated Facts,

and Request to Cancel Scheduled Hearing. Pursuant to the Order of the Administrative Law Judge dated October 20, 1998, the scheduled hearing was canceled and the Joint Request to Submit the Case on Stipulated Facts was granted. The Order further directed the parties to file proposed recommended orders no later than November 6, 1998. The parties requested and were given until November 16, 1998, to file responses to the legal arguments raised in the opponent's proposed recommended order. Both the Department and Respondent submitted proposed recommended orders and written legal arguments. Thereafter, each party filed a response to the opposing party's legal argument.

#### FINDINGS OF FACT

1. At all times relevant hereto, the Respondent held a permit to conduct jai alai pari-mutuel wagering, under License No. 2909-D Amended, issued by the Department.

2. Between July 1, 1995, and June 30, 1996, inclusive, Respondent held jai alai games for the purpose of conducting pari-mutuel wagering on those games. Respondent's meet for the relevant time period ended on June 30, 1996.

3. One year and sixty days after the end of the State of Florida's (State) fiscal year of June 30, 1996, any "out" tickets that remained uncashed escheated to the State pursuant to Section 550.1645(2), Florida Statutes. Once these tickets or the value thereof escheated to the State, Respondent was required to pay

the value of such tickets, as reflected on its outbook, to the Department no later than August 29, 1997.

4. Pursuant to the outbook prepared by Respondent, the value of the outs for the 1995-1996 meet was \$108,221.20. Nonetheless, Respondent failed to submit to the Department the value of the balance of the outbook within the prescribed time frame and instead held these funds.

5. On June 2, 1998, the Department served an Administrative Complaint on Respondent, alleging that Respondent had failed to timely submit the value of the outbook to Petitioner.

6. By letter dated September 4, 1998, Respondent submitted to the Department a check for \$109,128.60 as payment for the unpaid value of Respondent's outbook for the 1995-1996 meet. The Department received Respondent's payment on September 8, 1998. Of the total amount Respondent paid over to the Department, \$108,221.20 was credited against the unpaid value of the outbook for the 1995-1996 meet, resulting in full payment of the outstanding outbook value. The remaining \$907.40 paid by Respondent to Petitioner was an overpayment.

7. Petitioner alleges that Respondent is responsible for interest accrued on the unpaid value of the outbook for the period of time that amount remained unpaid.

8. According to the Department, the interest owed by Respondent as a result of its failure to timely remit the value

of the outsbook, "shall be determined at a rate per annum . . . equal to the State's average investment rate for the preceding month to the month for which interest is being calculated." The average interest rate earned on the investment of State funds as determined by the State Treasurer and/or Comptroller" for the time period of August 1997 through August 1998, was 6.73 percent. The Department determined that the interest "shall accrue on the unpaid aggregate principal amount due the State for the month(s) from the respective due date." Based on its calculations and after deducting Respondent's overpayment of \$907.40, the Department asserts that Respondent owes the Department approximately \$6,573.85 in accrued interest.

9. Respondent disputes that the Department has authority to collect interest on the unpaid amount of the outsbook and alleges the powers of the Department under Section 550.0251, Florida Statutes, do not include such authority.

#### CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of the proceeding. Section 120.57(1), Florida Statutes.

11. Chapter 550, Florida Statutes, governs the regulation of pari-mutuel wagering establishments in Florida. The Department is charged with the administration, supervision, regulation, and enforcement of that chapter and the rules adopted pursuant thereto. Section 550.0251, Florida Statutes.

12. The provisions of Chapter 550, Florida Statutes, and Chapter 61D, Florida Administrative Code, relevant to this proceeding are set forth below.

13. Rule 61D-7.001, Florida Administrative Code, defines terms used in Chapter 550, Florida Statutes. Terms relevant in the proceeding are defined in that rule as follows:

(25) "Meet" is:

- (a) For the purposes of accounting or taxation, a performance or a series of performances conducted under a single operating license issued by the Division.
- (b) For the purpose of determining racing dates, the conduct of live racing or jai alai for any stake, purse, prize, or premium.

(34) "Outs or Outs Ticket" is a winning or refundable pari-mutuel ticket which is not redeemed.

(35) "Outs Account" is the computer file listing all outstanding pari-mutuel tickets for a particular meet and permitholder.

(36) "Outsbook" is the hard copy report of the outs account.

Rule 61D-7.001(25), (34), (35) and (36), Florida Administrative Code.

14. Section 550.1645(2), Florida Statutes, provides that:

All money or other property represented by any unclaimed, uncashed, or abandoned pari-mutuel ticket which has remained in the custody of or under the control of any licensee authorized to conduct pari-mutuel pools in this state for a period of 1 year after the date the pari-mutuel ticket was issued if the rightful owner or owners thereof have made no claim or demand for such money or other property within the aforesaid period of time, is hereby declared to have

escheated to or to escheat to, and to have become the property of, the state.

15. Section 550.1645(3), Florida Statutes, requires all escheated outs to be paid by the licensee within 60 days of the close of the licensee's meet:

All money or other property that has escheated to and become the property of the state as provided herein, and which is held by such licensee authorized to conduct pari-mutuel pools in this state, shall be paid by such licensee to the Treasurer annually within 60 days after the close of the race meeting of the licensee. Such moneys so paid by the licensee to the Treasurer shall be deposited in the State School Fund to be used for the support and maintenance of public free schools as required by s. 6, Art. IX of the State Constitution.

16. Rule 61D-7.022(6), Florida Administrative Code, which implements Section 550.1645, Florida Statutes, states:

Where the value of the outs is payable to the state, the value of the balance of the outbook shall be remitted to the Department of Business and Professional Regulation, Office of Finance and Accounting, within 1 year and 60 days after the end of the meet and shall be payable to the Treasurer, State of Florida.

17. As a pari-mutuel licensee, Respondent was authorized to hold the money or other property represented by unclaimed, uncashed, or abandoned pari-mutuel ticket for a period of one year after the pari-mutuel tickets were issued. Section 550.1645(2), Florida Statutes. However, if after one year, no claim for payment had been made by the rightful owner, the value of such pari-mutuel tickets escheated to the State by operation

of law. Section 550.1645(2), Florida Statutes. After the one-year period ended and the value of the outs tickets escheated to the State, Respondent then had 60 days to pay to the Treasurer the value of all such tickets as reflected in the outsbook. Section 550.1645(3), Florida Statutes.

18. The stipulated facts provide competent and substantial evidence that Respondent violated Section 550.1645, Florida Statutes, by failing to turn over, within the prescribed time, the value of outs tickets which had escheated to the State.

19. The penalties for any violation of Chapter 550, Florida Statutes, that may be imposed by the Department are delineated in Section 550.0251(10), Florida Statutes. That section states:

The division may impose an administrative fine for a violation under this chapter of not more than \$1,000 for each count or separate offense, except as otherwise provided in this chapter, and may suspend or revoke a permit, a pari-mutuel license, or an occupational license for a violation under this chapter. All fines imposed and collected under this subsection must be deposited with the Treasurer to the credit of the General Revenue Fund.

20. Based on the above-quoted provision, for violations of Chapter 550, Florida Statutes, the Department may impose administrative fines of not more than \$1,000 for each count or separate offense and may suspend or revoke a permit, a pari-mutuel license, or occupational license. Section 550.0251, Florida Statutes.



21. In the instant case, the Department seeks to impose against Respondent an administrative fine of \$1,000 for the violation of Section 550.1645, Florida Statutes. This penalty is a permissible one because it comes within the statutory framework established in Section 550.0251(10), Florida Statutes. However, the Department seeks to not only impose an administrative fine against Respondent, but also seeks to assess and collect accrued interest on the unpaid value of the "outsbook" for the period of time Respondent retained that value.

22. It is well established that an administrative agency has only those powers granted to it by the legislature. Schiffman vs. Department of Professional Regulation, Board of Pharmacy, 581 So. 2d 1375 (Fla. 1st DCA 1991). Moreover, any reasonable doubt as to the lawful existence of a particular power must be resolved against the exercise thereof. Schiffman, 581 So. 2d 1375, at 1379 citing Florida Bridge Company vs. Bevis, 363 So. 2d 799, 802 (Fla. 1978).

23. As an administrative agency, the Department's duties and responsibilities are limited to those prescribed by statute. Accordingly, while the Department is authorized by statute to impose penalties against persons guilty of violating provisions of Chapter 550, Florida Statutes, it may impose only statutorily prescribed penalties. The only penalties expressly provided for in Chapter 550, Florida Statutes, are the imposition of administrative fines and the revocation or suspension of licenses

or permits. Section 550.0251(10), Florida Statutes.

Conspicuously absent from Section 550.0251(10), Florida Statutes, or any other relevant provision of that chapter is language that expressly or impliedly authorizes Petitioner to assess or collect accrued interest from persons who violate Chapter 550, Florida Statutes.

24. The Department's authority to impose penalties, as well as the scope of that authority, is defined and restricted by legislative enactments related thereto. A review of Chapter 550, Florida Statutes, reveals that there is no authority for the Department's assessing and collecting accrued interest on funds not timely remitted to the Department. In absence of statutory authority that allows the Department to assess interest, it is improper for the Department to do so and any action by the Department to assess interest charges constitutes an impermissible enlargement of the Department's legislative powers.

25. If the legislature had intended for the Department to assess and collect interest on funds not timely remitted to the State, it would have done so expressly. A review of Chapter 717, Florida Statutes, which addresses the disposition of unclaimed intangible property, supports this conclusion. Pertinent sections of that chapter provide that (1) if property remains unclaimed for more than 5 years, it is presumed abandoned and, (2) persons holding abandoned property are required to submit a verified report regarding such property on May 1 of each year and

to simultaneously pay or deliver to the Department of Banking and Finance all abandoned property required to be reported or delivered. Sections 717.102, 717.117(1) and (4), and 717.119, Florida Statutes.

26. Pursuant to provisions of Chapter 717, Florida Statutes, the Department of Banking and Finance, is authorized to impose various penalties and fines on persons who violate any provision of that chapter. These include the imposition and collection of administrative fines not to exceed \$2,000.00; a \$10.00 per day penalty for each day the verified report is delinquent; and, the imposition of a penalty of \$500.00 per day and 25 percent of the value of property not reported, paid, or delivered, if such action was willful. See Sections 717.132(3), 717.117(4), and 717.134(1) and (2), Florida Statutes.

27. In addition to the aforementioned penalties and fines that may be assessed by the Department of Banking and Finance, Section 717.134(4), Florida Statutes, mandates that persons liable for such penalties shall also pay interest from the date the unclaimed property should have been paid or delivered. That section, which expressly provides for interest payments and the terms and conditions of such payment, states:

In addition to any damages, penalties, or fines for which a person may be liable under any other provision of law, any person who fails to report or pay or deliver unclaimed property within the time prescribed by this chapter shall pay to the department interest at the rate of 12 percent per annum on such property, or value thereof, from the date

such property shall have been paid or delivered. The department may waive any penalty due under this subsection with appropriate justification. (emphasis supplied)

28. In light of the above-quoted provision, there is no doubt that accrued interest payments are prescribed by statute and may be assessed and collected from persons who fail to timely comply with the requirements of Chapter 717, Florida Statutes. Conversely, no similar provision exists in Chapter 515, Florida Statutes. It, therefore, follows that in absence of express language in Chapter 550, Florida Statutes, authorizing the Department to assess and collect accrued interest from violators of that chapter, no such authority exists.

29. The Legislature has not conferred upon the Department the authority to assess and collect accrued interest from persons who fail to remit funds representing the value of outs tickets. Had the Legislature intended for the Department to assess and collect interest from violators of Chapter 550, Florida Statutes, it would have done so expressly as it did in the statutory scheme set forth in Chapter 717, Florida Statutes, and discussed above in paragraphs 25-28.

30. Any penalties imposed by the Department are limited or restricted to those prescribed by statute. Thus, in the instant case, the Department may impose an administrative fine against Respondent for violating Section 550.1645, Florida Statutes, but

it is not authorized to assess and collect accrued interest for that violation.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that (1) an administrative fine of \$1,000.00 be imposed against the Respondent for the violation Section 550.1645, Florida Statutes; and, (2) Respondent shall receive a credit of \$907.40 toward payment of the administrative fine.

RECOMMENDED this 28th day of January, 1999, in Tallahassee, Leon County, Florida.

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CAROLYN S. HOLIFIELD  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of January, 1999.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of the Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.