

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF ALCOHOL BEVERAGES AND TOBACCO

DEPARTMENT OF BUSINESS  
PROFESSIONAL REGULATION,  
DIVISION OF ALCOHOLIC  
BEVERAGES AND TOBACCO,

Petitioner,

vs.

CASE NO. PY77 980068  
LICENSE NO. 77-0008  
SERIES 2COP

PERSONAL INVESTMENTS, INC.  
d/b/a PERSONAL INVESTMENTS,

Respondent.

\_\_\_\_\_ /

FINAL ORDER

The Director, Division of Alcoholic Beverages and Tobacco, Department of Business and Professional Regulation (Division), after consideration of the complete record of this case on file with the Division, hereby enters this Final Order.

PRELIMINARY STATEMENT

By Administrative Action dated September 11, 1998, the Division charged Respondent with two counts alleging violations of ss. 849.08 and 849.01, Fla. Stat., respectively. The administrative action was later amended to charge one count of a violation of S. 849.09, Fla. Stat.

The Administrative Action advised the Respondent of its right to request a hearing pursuant to Chapter 120, Florida Statutes. Respondent requested a hearing before an Administrative Law Judge pursuant to S. 120.57(1), Fla. Stat. On December 21, 1998, the Division of Administrative Hearings conducted a hearing in Tallahassee, Florida, before Administrative Law Judge P. Michael Ruff. Both parties filed Proposed Recommended Orders, and the Administrative Law Judge filed the Recommended Order was issued March 31, 1999.

FINDINGS OF FACT

1. The Division hereby adopts and incorporates by reference the Findings of Fact, numbered 1 through 15, as set forth in the Recommended Order.

## CONCLUSIONS OF LAW

2. The Division hereby adopts and incorporates by reference paragraphs 16 through 31 of the Conclusions of Law as set forth in the Recommended Order.

3. Although the Division does not wish to modify or reject any of the Conclusions of Law in the Recommended Order, there are some issued that should be addressed. First, it is a well-established rule of alcoholic beverage license disciplinary actions that an alcoholic beverage licensee is responsible for any illegal activity on the licensed premises about which it knew, should have known, fostered, condoned, or negligently overlooked. See Pauline v. Lee, 147 So.2d 359 (Fla. 2nd DCA 1962); Taylor State Beverage Department, 194 So.2d 321 (Fla. 2d DCA) cert. den., 201 So.2d 464 (Fla. 1967); Woodbury v. State Beverage Department, 219 So.2d 47 (Fla. 1st DCA 1969); G & B of Jacksonville Inc. v. Department of Business Regulation, 366 So.2d 877 (Fla. 1st DCA 1978); Golden Dolphin #2 Inc. v. Division of Alcoholic Beverages and Tobacco, 403 So.2d 1372 (Fla. 5th DCA 1981); Jones v. Division of Alcoholic Beverages and Tobacco, 448 So.2d 1109 (Fla. 1st DCA 1984); Pic N' Save v. Division of Alcoholic Beverages and Tobacco, 601 So.2d 245 (Fla. 1st DCA 1992); and Ganter v. Department of Insurance, 620 So.2d 202 (Fla. 1st DCA 1993). Stockton Hess is an officer of the Respondent corporation, and his direct knowledge of and participation in the game promotion is imputed to the Respondent corporation. Hess' claim that he was "acting solely and exclusively on behalf of WCKC [Washington County Kennel Club] in all matters connected with the game promotion" does not relieve the corporation of its responsibility not to permit illegal activity on the licensed premises.

4. However, in the amended administrative action, Respondent was not charged with "permitting another (i.e., WCKC) on the licensed premises to violate [the law]" under S. 561.29(1)(a), Fla. Stat. Instead, the amended administrative action charges that Respondent "did set up, promote or conduct [a] lottery . . ." The amended administrative action does not cite S. 561.29, Fla. Stat. anywhere. This error affects the Division's ability to properly impose discipline against Respondent. However, because the Division is willing to accept the Recommended Order's interpretation of ss. 849.094, and 849.09, Fla. Stat., it is unnecessary to attempt to remedy this error.

5. The Division brought this action because it appeared that s. 849.094, Fla. Stat., did not apply for three reasons. First, at the time this action was initiated, it appeared that Respondent was requiring an entry fee to participate in the game.

Special Agent Lee paid an entry fee before entering the premises on August 26, 1998, and saw no advertisements or any signs indicating that a patron could enter the premises without payment of an entry fee. If an entry fee were required, the game would not comply with s. 849.094(2)(e), Fla. Stat. However, the Administrative Law Judge found that no entry fee was in fact required.

6. The Division also questioned the applicability of s. 849.094 with respect to whether pari-mutuel wagering is a "sale of consumer products or services," and whether this was an action[1 or transaction[] regulated by the Department of Business and Professional Regulation." The Administrative Law Judge concluded that pari-mutuel wagering is a sale of consumer products or services and that the game was not an action or transaction regulated by the Department of Business and Professional Regulation. Although the Division's counsel argued for a different result to this legal issue in the Proposed Recommended Order, the Division is willing to accept these legal conclusions.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED Case No. PY77 980068, be DISMISSED.

DONE AND ORDERED this 29th day of June, 1999.

---

JOSEPH P. MARTELLI, Director  
Division of Alcoholic Beverages  
And Tobacco  
1940 North Monroe Street  
Tallahassee, Florida 32399-1020  
(850) 488-3227

Copies furnished:

Harold F. X. Purnell, Esquire  
Rutledge, Ecenia, Purnell & Hoffman  
215 South Monroe Street  
Tallahassee, Florida 32301

P, Michael Ruff, Administrative Law Judge  
Division of Administrative Hearings

Lt. Grady Broxton  
Panama City District Supervisor

THIS ORDER SERVED ON \_\_\_\_\_

BY \_\_\_\_\_ DATE \_\_\_\_\_

RIGHT TO APPEAL

This Final Order may be appealed pursuant to Section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure, by filing a Notice of Appeal conforming to the requirements of Rule 9.110(d), Florida Rules of Appellate Procedure, both with the appropriate District Court of Appeal and with this agency within 30 days of rendition of this Order, accompanied by the appropriate filing fee.