

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RONALD A. GRIMALDI,)
)
 Petitioner,)
)
 vs.) Case No. 00-1600RX
)
 FLORIDA STATE BOXING)
 COMMISSION,)
)
 Respondent,)
)
 and)
)
 DANNY SANTIAGO,)
)
 Intervenor.)
 _____)

FINAL ORDER

This case came on for consideration based on the parties' agreement to proceed upon a record presented without a hearing, before the Division of Administrative Hearings, by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner: William M. Powell, Esquire
Powell & Steinburg, P.A.
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For Respondent: Thomas G. Thomas, Esquire
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For Intervenor: Bruce A. Minnick, Esquire
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STATEMENT OF THE ISSUE

The issue is whether Rules 61K1-1.0011(3)(c) and 61K1-1.0011(3)(g), Florida Administrative Code, and a portion of Form BPR-08-451 (currently Form BPR-0009451), which is incorporated therein by reference, constitute an invalid exercise of delegated legislative authority.

PRELIMINARY STATEMENT

On or about April 12, 2000, Petitioner Ronald A. Grimaldi (Petitioner) filed a Petition with the Division of Administrative Hearings pursuant to Sections 120.56(1) and 120.56(3), Florida Statutes. Said petition alleged that Rules 61K1-1.0011(3)(c) and 61K1-1.0011(3)(g), Florida Administrative Code, and a portion of Form BPR-0009451, which is incorporated by reference therein, constitute an invalid exercise of delegated legislative authority.

A Notice of Hearing dated April 20, 2000, scheduled the case for final hearing on May 15, 2000. However, Respondent Florida State Boxing Commission (Respondent) filed an unopposed Motion to Continue on May 3, 2000. By order dated May 4, 2000, the motion was granted and the hearing rescheduled for June 20, 2000.

On April 26, 2000, Intervenor Danny Santiago (Intervenor) filed a Petition for Leave to Intervene. An order granting the Petition for Leave to Intervene was issued May 9, 2000.

On May 18, 2000, Petitioner filed a Motion to Reconsider. Said motion requested the undersigned to reconsider the order granting Intervenor's Petition for Leave to Intervene. Petitioner alleged that he had not had an opportunity to respond to the Petition for Leave to Intervene due to a lack of notice. The undersigned granted this motion by order dated May 23, 2000.

On May 15, 2000, Intervenor filed a Motion for Continuance and Rescheduling of Hearing. On May 22, 2000, Petitioner filed a response in opposition to this motion.

On May 30, 2000, Intervenor filed and served on all parties a Petition for Leave to Intervene.

On June 13, 2000, the undersigned issued two orders. The first order granted Intervenor's Petition for Leave to Intervene. The second order granted Intervenor's request for a continuance and placed the case in abeyance. On June 15, 2000, Petitioner filed a response stating that he had no objection to Intervenor's request for a continuance and for leave to intervene.

On July 13, 2000, the undersigned issued a Third Notice of Hearing. This notice scheduled the case for hearing on August 16, 2000.

On July 24, Petitioner filed a Motion to Compel Answers to Interrogatories. This motion sought sanctions against Respondent.

On August 8, 2000, Respondent filed an unopposed Motion to Continue. That same day, Respondent also filed a Response to Petitioner's Motion to Compel and for Sanctions. By order dated August 10, 2000, the undersigned granted a continuance and rescheduled the hearing for November 1, 2000.

On October 31, 2000, Respondent filed a Motion to Continue and to Hold in Abeyance. The motion stated that Petitioner and Intervenor concurred in the request for a continuance. The undersigned granted the motion and placed the case in abeyance by order dated November 2, 2000.

On November 3, 2000, Intervenor filed a Notice of Objection to any Abeyance and Motion to Amend Order Accordingly. An order dated November 22, 2000, denied this motion.

On November 27, 2000, Petitioner filed an Emergency Motion to Quash Subpoena and Notice of Taking Depositions. After hearing oral argument in a telephone conference on November 28, 2000, the undersigned granted the motion.

On December 18, 2000, Petitioner and Respondent filed a Status Report and Joint Motion for Final Order. On December 20, 2000, Intervenor filed Objections and Request for Final Evidentiary Hearing. In a telephone conference on December 21,

2000, the parties agreed to proceed upon a record presented without hearing.

On January 22, 2001, Petitioner filed the following:

(1) deposition testimony of Louis Grimaldi and John Cristian Meffert; (2) Copies of Sections 120.52 and 548.01-548.09, Florida Statutes; (3) Department of Business and Professional Regulation Form BPR-0009451; (4) Rule 61K1-1.011, Florida Administrative Code; (5) Affidavit of Ronald A. Grimaldi dated January 16, 2001; (6) Memorandum of Law; and (7) proposed Final Order.

On January 22, 2001, Respondent filed a Memorandum of Law.

On January 25, 2001, Intervenor filed the following:

(1) Proposed Findings of Fact and Conclusions of Law; (2) nine documents in support of Intervenor's Proposed Final Order; and (3) transcribed excerpt of Respondent's meeting on December 6, 2000.

On January 29, 2001, Petitioner filed a Motion to Strike Intervenor's Proposed Documents in Support of Memorandum of Law and Proposed Final Judgement. Intervenor filed a response in opposition to this motion on January 31, 2001. The motion is hereby granted as to the Stipulation dated October 31, 2000, and signed by Petitioner and Respondent and as to the Joint Proposed Order offered by Petitioner and Respondent to settle this case. The motion is denied in all other respects.

On February 1, 2001, Intervenor filed copies of Sections 548.001-548.079, Florida Statutes (1997).

FINDINGS OF FACT

1. Respondent, formerly known as the Florida State Athletic Commission, licensed Petitioner as a manager of participants in boxing matches effective September 5, 1997.

2. On or about September 17, 1997, Petitioner and Intervenor entered into a contract for Petitioner to be Intervenor's manager and for Intervenor to render services for Petitioner in professional boxing contests.

3. Petitioner did not file a copy of this contract with Respondent within seven days of its execution.

4. Petitioner and Intervenor had a disagreement after several fights regarding their respective rights and duties under the contract.

5. On or about April 26, 1999, Intervenor filed a Complaint for Declaratory Relief and Permanent Injunction in the Circuit Court, Fifth Judicial Circuit, in and for Marion County, Florida, Case No. 99-781-CA-D. Among other things, Intervenor requested the court to declare the September 17, 1997, contract to be null and void for two reasons: (a) because Petitioner had not filed it with Respondent within seven days of its execution as required by Rule 61K1-1.011(3)(c), Florida Administrative Code; and (b) because the contract did not contain all

provisions specifically set forth in Respondent's Form BPR-0009451, entitled Letter of Agreement Between Participant and Manager, as required by Rule 61K1-1.0011(3)(g), Florida Administrative Code.

6. Petitioner filed a counter-claim in Marion County Circuit Court Case No. 99-78-CA-D, bringing Respondent in as a party. Petitioner's counter-claim alleged that there was no legislative authority for an administrative rule to declare a contract between a manager and a boxer void. As of December 6, 2000, the civil suit was in abeyance pending issuance of the final order in the instant case.

7. On April 5, 2000, Respondent issued a Notice to Show Cause directed to Petitioner. Said notice alleged that Petitioner as a manager had entered into a contract with Intervenor, a licensed boxer, and that Petitioner had not filed the contract with Respondent. The Notice to Show Cause referenced Rules 61K1-1.011(3)(c) and 61K1-1.011(3)(g), Florida Administrative Code.

8. Petitioner filed this rule challenge proceeding on April 11, 2000. Petitioner seeks a determination that Rules 61K1-1.011(3)(c) and 61K1-1.011(3)(g), Florida Administrative Code, including a portion of Form BPR-0009451, constitute an invalid exercise of delegated legislative authority to the extent they purport to automatically void a contract if the

manager is not licensed when the contract is executed or if the manager fails to file a copy of the contract with Respondent within seven days of the execution date.

9. Rules 61K1-1.0011(3), Florida Administrative Code, states as follows in pertinent part:

(3) Contracts Between Manager and Participant.

* * *

(c) All contracts shall be in writing and shall be filed with the commission within 7 calendar days of execution

* * *

(g) All contracts entered into in Florida between a manager and a participant, and all such contracts entered into outside of Florida involving participants and managers licensed by or subsequently licensed by the commission, shall expressly contain all provisions specifically as worded in Form BPR-0009451, entitled Letter of Agreement Between Participant and Manager, incorporated herein by reference and effective May, 1990, and if they do not, shall be deemed to contain such provisions.

10. The specific language in Form BPR-0009451 that Petitioner objects to is:

This contract is automatically void if manager is not licensed on the date this contract is signed or fails to file with the Florida State Athletic Commission, a copy of this contract within 7 calendar days of its execution.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. Sections 120.56(1) and 120.56(3), Florida Statutes.

12. Section 120.56(1), Florida Statutes, provides that "[a]ny person substantially affected by a rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority." Pursuant to Section 120.56(3)(a), "[a] substantially affected person may seek an administrative determination of the invalidity of an existing rule at any time during the existence of the rule." In this case, Petitioner and Intervenor are substantially affected by the rules at issue because they are parties to a contract that is or is not void, depending on the validity of the rules.

13. The burden of proof, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue in a Chapter 120, Florida Statutes, proceeding. See Florida Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981); see also Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932, 934 (Fla. 1996)("The general rule is that a party asserting the affirmative of the issue has the burden of presenting evidence as to that issue.")

14. Because Petitioner is asserting that existing Rules 61K1-1.0011(3)(c) and 61K1-1.0011(3)(g), Florida Administrative Code, and a portion of Form BPR-0009-451 incorporated therein, constitute an invalid exercise of delegated legislative authority, he has the burden of proving the invalidity of the challenged rules. See St. Johns River Water Management Dist. v. Consolidated-Tomoka Land Co., 717 So. 2d 72, 76-77 (Fla. 1st DCA 1998).

15. In accordance with Petitioner's challenge, Section 120.52(8), Florida Statutes, states as follows:

(8) "Invalid exercise of delegated legislative authority" means an action which goes beyond the powers, functions, and duties delegated by the Legislature. A proposed or existing rule constitutes an invalid exercise of delegated legislative authority if any one of the following applies:

* * *

(b) The agency has exceeded its grant of rulemaking authority;

(c) The rule enlarges, modifies, or contravenes the specific provision of law implemented;

* * *

(e) The rule is arbitrary or capricious;

* * *

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may

adopt only rules that implement, interpret or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.

Section 120.536(1), Florida Statutes, repeats verbatim the above quoted language that discusses an agency's rulemaking authority.

16. As identified in the challenged rules, Section 548.003(2), Florida Statutes, sets forth Respondent's specific rulemaking authority as follows:

The Florida State Boxing Commission, as created by subsection (1), shall administer the provision of the chapter. The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to: development of an ethical code of conduct for commissioners, commission staff, and commission officials, procedures for hearings and resolution of disputes; qualifications for appointment of referees and judges; and setting fee and reimbursement of schedules for officials appointed by the commission.

17. Section 548.006, Florida Statutes, states as follows:

The commission has exclusive jurisdiction over every match held within the state which involves a professional. Matches shall be held in accordance with this chapter and the rules adopted by the commission.

18. Section 548.011, Florida Statutes, provides as follows:

The commission has exclusive jurisdiction to issue, withhold, suspend, or revoke any license or permit provided for in this chapter.

19. Section 548.017, Florida Statutes, states as follows:

(1) A professional participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, or booking agent or representative of a booking agent shall be licensed before directly or indirectly acting in such capacity in connection with any match involving a professional.

(2) A violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or 775.083.

20. As to control over the content of contracts between managers and participants, Respondent is charged with implementing Section 548.05, Florida Statutes, which provides as follows:

(1) The commission shall adopt rules governing the form and content of contracts between promoters, foreign co-promoters, and professionals. All such contracts shall be in writing.

(2) Each contract between an manager and a professional shall contain provisions governing its duration, division of the

professional's purses, and any minimum sum guaranteed annually to the professional by the manager. Each contract shall provide that it is automatically terminated if the license of either party is revoked by the commission or if the manager fails to renew her or his license within 30 days after its expiration date. If the license of either party is suspended, the contract is not binding upon the other party during the period of suspension.

(3) The commission may require that each contract contain language authorizing the Florida State Boxing Commission to withhold any or all of any manager's share of a purse in the event of a contractual dispute as to entitlement to any portion of a purse. The commission may establish rules governing the manner of resolution of such dispute. In addition, if the commission deems it appropriate, the commission is hereby authorized to implead interested parties over any disputed funds into the appropriate circuit court for resolution of the dispute prior to release of all or any part of the funds.

(4) Each contract subject to this section shall contain the following clause: "This agreement is subject to the provisions of chapter 548, Florida Statutes, and to the rules of the Florida State Boxing Commission and to any future amendments of either."

21. Section 548.071(1), Florida Statutes, gives Respondent authority to revoke or suspend a license upon a finding that the licensee is guilty of violating Chapter 548, Florida Statutes, or Respondent's rules. Respondent may impose an administrative fine on licensees pursuant to Section 548.075, Florida Statutes.

22. In this case, Respondent has not exceeded or enlarged upon its rulemaking authority as to Rule 61K1-1.0011(3)(c),

Florida Administrative Code. In Section 548.05, Florida Statutes, the Legislature specified that every contract must contain certain provisions. Respondent has the responsibility to enforce those provisions. Sections 548.003(2) and 548.05, Florida Statutes. In order for Respondent to fulfill its responsibility, the contracts must be filed within a reasonable time after execution.

Respondent's rule requiring the contracts to be filed within seven days of execution is reasonable and not arbitrary or capricious.

23. Rule 61K1-1.0011(3)(c), Florida Administrative Code, does not specify which of the parties to the contract is obligated to file the contract with Respondent. Therefore, both parties to the contract, if licensed, would share that duty or face an administrative penalty of license revocation or suspension under Section 548.071(1), Florida Statutes, or an administrative fine under Section 548.075, Florida Statutes. Rule 61K1-1.0011(3)(c), Florida Administrative Code, is not an invalid exercise of delegated legislative authority.

24. Rule 61K101.0011(3)(g), Florida Administrative Code, is invalid to the extent that it exceeds or enlarges upon Respondent's rulemaking authority. The rule requires that all contracts between managers and participants shall contain all provisions set forth in Form BPR-0009451, which is incorporated by reference. The rule also states that contracts not containing the express language in the form are deemed to contain such language.

25. There is no specific statutory authority for Respondent to create a rule inserting any language it chooses into a contract between a manager and a boxer. Section 548.05, Florida Statutes, mandates that certain provisions be contained in contracts, leaving open the prospect of disciplinary action for failure to include the statutory language. Moreover, the Legislature did not go on to declare that if a contract failed to include the statutory provisions, those provisions would automatically become part of the contract by operation of law. As a consequence, the portions of Rule 61K1-1.0011(3)(g), Florida Administrative Code, that attempts to impose provisions into a contract through a "deemer" clause is invalid and must be struck.

26. Form BPR-0009451 includes language that a contract is void if: (a) if the manager is not licensed when the contract is signed; and (b) the manager fails to file the contract within seven days of its execution. Section 548.05(2), Florida Statutes, requires contracts to provide that they are automatically terminated: (a) if Respondent revokes the license of either party; or (b) if a manager does not timely renew his or her license. Section 548.05(2), Florida Statutes, also states that a contract is not binding during the suspension of a party's license. The statute does not address the situation where a manager or a party has never been licensed. The statute does not state that a contract is terminated during the suspension of a

party's license. The statute never references the termination of a contract which has not been timely filed. Respondent's language in Form BPR-0009451 is invalid and must be struck to the extent it contemplates that a contract is void if a manager who has never been licensed enters into a contract and if the manager, licensed or not, fails to file the contract in a timely fashion. Possible statutory penalties for failure to timely file do not extend to voiding a contract.

27. Petitioner is entitled to reasonable costs and attorney's fees pursuant to Section 120.595(3), Florida Statutes. The undersigned retains jurisdiction to make such an award after an evidentiary hearing.

ORDER

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

ORDERED:

that the challenge to Rule 61K1-1.0011(3)(c), Florida Administrative Code, is dismissed, and the challenge to Rule 61K1-1.0011(3)(g), Florida Administrative Code, and Form BPR-0009451 incorporated therein, are determined to be invalid to the extent described.

DONE AND ORDERED this 15th day of February, 2001, in
Tallahassee, Leon County, Florida.

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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this 15th day of February, 2001.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

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 the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a notice of appeal with the Clerk of the Division of Administrative Hearings 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 Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.