

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS)
AND PROFESSIONAL REGULATION,)
DIVISION OF PARI-MUTUEL)
WAGERING,)
)
Petitioner,)
)
vs.) Case No. 05-2345PL
)
THOMAS M. DUDLEY, SR.,)
)
Respondent.)
_____)

FINAL ORDER

On July 21, 2005, at 11:00 Eastern Time (10:00 a.m. Central Time), a postsuspension hearing was held in accordance with Section 550.2415(3)(c), Florida Statutes (2004). The hearing was held by video-teleconference with Respondent located at a site in Pensacola, Florida, with the court reporter, and other participants located in Tallahassee, Florida. The hearing was conducted in relation to the Order of Summary Suspension entered in the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, Petitioner, vs. Thomas M. Dudley, Sr., Respondent, Case Nos. 2005033377 and 2005033379, under authority set forth in Section 550.2415(3)(b), Florida Statutes (2004).

APPEARANCES

For Petitioner: Stefan Thomas Hoffer, Esquire
Department of Business and
Professional Regulation
Division of Pari-Mutuel Wagering
1940 North Monroe Street
Tallahassee, Florida 32399-2202

For Respondent: Thomas M. Dudley, Sr., pro se
Post Office Box 425
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In the Order of Summary Suspension, reference is made to Respondent's Pari-Mutuel Wagering occupational license Number 1102016(1021), issued by the Division of Pari-Mutuel Wagering and the expectation in accordance with Florida Administrative Code Rule 61D-6.002(1) that Respondent as "The trainer of record shall be responsible for and be the absolute insurer of the condition of the . . . greyhounds he . . . enters to race."

The Order of Summary Suspension goes on to state that Respondent was the trainer of record and the absolute insurer of the condition of greyhounds that tested positive for the substance Benzoyllecgonine following races they participated in.

The basis for the Order of Summary Suspension is premised upon a two-count Administrative Complaint under the same case numbers, alleging violations of Section 550.2415(1)(a),

Florida Statutes (2004), in relation to the greyhounds trained by Respondent. The Administrative Complaint was attached to the Order of Summary Suspension.

Section 550.2415(1)(a), Florida Statutes (2004), prohibits the racing of an animal with any drug, narcotic, or anesthetic in its system. The Order of Summary Suspension and Administrative Complaint refer to Benzoylecgonine as an impermissible substance carried in the bodies of the aforementioned greyhounds. Benzoylecgonine is described as being a metabolite of Cocaine, a Class I drug.

The Administrative Complaint in its two counts specifically describes two greyhounds on separate dates, for whom Respondent was the trainer of record, who had raced at Pensacola Greyhound Track, Inc. and tested positive for Benzoylecgonine (a metabolite of Cocaine) and/or a derivative thereof.

On June 24, 2005, the Order of Summary Suspension and Administrative Complaint were entered and served on Respondent. Respondent was noticed of his right to a postsuspension hearing to challenge the Order of Summary Suspension consistent with the criteria set forth in Section 550.2415(3)(c), Florida Statutes (2004). On June 24, 2005, Respondent elected to proceed with the postsuspension hearing. At the time of the postsuspension hearing Respondent had not made an election concerning his right to a separate hearing to contest the Administrative Complaint.

On June 29, 2005, the Division of Pari-Mutuel Wagering forwarded the case to the Division of Administrative Hearings for the conduct of the postsuspension hearing pursuant to Section 550.2415(3)(c), Florida Statutes (2004). That hearing was scheduled to be heard on July 13, 2005. It was continued until July 21, 2005, due to the consequences of Hurricane Dennis, which made access to facilities in Pensacola, Florida, impossible.

Petitioner moved for permission to amend the Administrative Complaint and Order of Summary Suspension, to add a third count to the Administrative Complaint involving another racing greyhound, while referring to the proposed amended Administrative Complaint through the proposed Order of Summary Suspension. The motion was filed July 19, 2005. The motion was heard on July 21, 2005, when the postsuspension hearing commenced. Respondent had opposed the motion given its timing. The motion was denied. It was denied with the explanation that should Petitioner intend to proceed with the second Order of Summary Suspension and second Administrative Complaint, to address the circumstances in relation to the third racing greyhound, it must be done separate and apart from the case involving the original Order of Summary Suspension and original Administrative Complaint.

At the postsuspension hearing Petitioner presented the testimony of Margaret Wilding and Ernest Barnes. Petitioner's Exhibits one through nine were admitted. Respondent testified in his own behalf.

FINDINGS OF FACT

At hearing Petitioner produced the laboratory reports and other documentation related to the greyhounds "Lips Are Sealed" and "Red Eyed Fever," which on their face established the following:

1. At times relevant to this inquiry Respondent held Pari-Mutuel Wagering occupational license number 1102016(1021) issued by Petitioner.

2. On May 25, 2005, Respondent was the trainer of record for a racing greyhound named "Lips Are Sealed," whose identifying tattoo number was 93C2231. On that date "Lips Are Sealed" raced in the second race of the performance at Pensacola Greyhound Track, Inc. (Track 150).

3. At the conclusion of the race a urine specimen was collected of "Lips Are Sealed," specimen 129287, using established procedures.

4. The urine sample 129287 was forwarded and processed in accordance with established procedures, by the University of Florida, College of Veterinary Medicine, Racing Laboratory.

5. On June 22, 2005, in a report prepared by the Director and the Associate Director of the racing laboratory, it was concluded "Sample 129287 has been analyzed by gas chromatography/mass spectrometry (GC/MS) and found to contain Benzoylecgonine (a metabolite of Cocaine), and/or a derivative thereof. Cocaine is a topical anesthetic and a Class I drug. The concentration of Benzoylecgonine is 20.4 ng/mL."

6. On June 1, 2005, Respondent was the trainer of record of racing greyhound "Red Eyed Fever." The identifying tattoo for the greyhound was 32A11137. On that date "Red Eyed Fever" raced in the fourth race of the performance at Pensacola Greyhound Track, Inc. (Track 150). Following the race a urine sample was collected from the racing greyhound, using established procedures and assigned specimen number 12348.

7. After the urine sample was collected from "Red Eyed Fever," it was forwarded to the University of Florida, College of Veterinary Medicine, Racing Laboratory for analysis.

8. The Racing Laboratory at the University of Florida performed an analysis consistent with established procedures, as reflected in a report dated June 22, 2005, prepared by the Director and Associate Director of the Racing Laboratory. The report concluded "Sample 12348 has been analyzed by gas chromatography/mass spectrometry (GC/MS) and found to contain Benzoylecgonine (a metabolite of Cocaine), and/or a derivative

thereof. Cocaine is a topical anesthetic and a Class I drug. The concentration of Benzoyllecgonine is 22.3 ng/mL."

9. In his hearing testimony Respondent stated several times that he had never given his dogs, taken to mean racing greyhounds, drugs of any kind. No other explanation was offered concerning the circumstances related to "Lips Are Sealed" and "Red Eyed Fever," in which they raced and were found to have Benzoyllecgonine (a metabolite of Cocaine) and/or a derivative thereof in their systems on the dates described.

CONCLUSIONS OF LAW

10. Respondent was at times relevant to the inquiry, the holder of occupational license number 1102016(1021) issued by Petitioner, allowing him to act as trainer for the racing greyhounds "Lips Are Sealed" and "Red Eyed Fever."

11. As such, according to Florida Administrative Code Rule 61D-6.002(1), he was:

. . . responsible for and . . . the absolute insurer of the condition of the . . . greyhounds he . . . enters to race.

12. As the responsible person, Respondent was held to comply with Section 550.2415(1)(a), Florida Statutes (2004), which states:

The racing of an animal with any drug, medication, stimulant, depressant, hypnotic, narcotic, local anesthetic, or drug-masking agent is prohibited. . . .

13. Concerning the Order of Summary Suspension, Section 550.2415(3)(b), Florida Statutes (2004), states the following:

The division, notwithstanding the provisions of Chapter 120, may summarily suspend the license of an occupational licensee responsible under this section or division rule for the condition of a race animal if the division laboratory reports the presence of an impermissible substance in the animal or its blood, urine, saliva, or any other bodily fluid, either before a race in which the animal is entered or after a race the animal has run.

14. After the Order of Summary Suspension was entered, Respondent was presented the opportunity to contest the Order under the terms set forth in Section 550.2415(3)(c), Florida Statutes (2004), which states:

If an occupational licensee is summarily suspended under this section, the division shall offer the licensee a prompt postsuspension hearing within 72 hours, at which the division shall produce the laboratory report and documentation which, on its face, establishes the responsibility of the occupational licensee. Upon production of the documentation, the occupational licensee has the burden of proving his or her lack of responsibility.

15. The nature of the postsuspension hearing is further explained in Section 550.2415(3)(d), Florida Statutes, (2004), which states:

Any proceeding for administrative action against a licensee or permittee, other than a proceeding under paragraph (c), shall be conducted in compliance with Chapter 120.

16. Although the postsuspension hearing is not conducted in compliance with Chapter 120, it is a due process proceeding entailed by Section 550.2415(3)(c), Florida Statutes (2004).

17. In this case Petitioner, through laboratory reports and other documentation, on the face of that material, has established that Respondent is the occupational licensee and trainer of "Lips Are Sealed" and "Red Eyed Fever," who raced. Based upon results of urine samples that were examined in a laboratory, the animals participated in a performance with impermissible substances in their systems, namely Benzoylecgonine (a metabolite of Cocaine) and/or a derivative thereof, a topical anesthetic and a Class I drug. This was prohibited by Section 550.2415(1)(a), Florida Statutes (2004). Respondent was responsible for the violations, according to Florida Administrative Code Rule 61D-6.002(1). Petitioner having produced the necessary documentation to sustain the imposition of the Order of Summary Suspension, Respondent failed to meet his burden of proving a lack of responsibility for the findings within the laboratory reports pertaining to "Lips Are Sealed" and "Red Eyed Fever."

Upon Consideration, it is ordered:

There is justification for the Order of Summary Suspension at issue. It shall remain in effect pending disposition of the Administrative Complaint associated with the Order of Summary Suspension.

DONE AND ORDERED this 26th day of July, 2005, in Tallahassee, Leon County, Florida.



CHARLES C. ADAMS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of July, 2005.

COPIES FURNISHED:

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