

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JOSEPH L. NACCA,)
)
 Petitioner,)
)
 vs.) Case No. 05-3208
)
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION,)
 DIVISION OF PARI-MUTUEL)
 WAGERING,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case by video teleconference on January 6, 2006, at sites in Lauderdale Lakes and Tallahassee, Florida, before Florence Snyder Rivas, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Joseph L. Nacca, pro se
268 West Walk
West Haven, Connecticut 06516

For Respondent: S. Thomas Peavey Hoffer
Department of Business and
Professional Regulation
Division of Pari-Mutuel Wagering
1940 North Monroe Street
Tallahassee, Florida 32399-2202

STATEMENT OF THE ISSUES

The issues are: (1) whether Petitioner is qualified for a pari-mutuel wagering occupational license; and (2) whether Petitioner is entitled to waiver of his felony conviction in accordance with Chapter 550, Florida Statutes (2006).

PRELIMINARY STATEMENT

By letter dated June 30, 2005, Respondent, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (Division), notified Petitioner, Joseph L. Nacca (Petitioner), that his application for a pari-mutuel wagering occupational license as a racehorse owner and request for waiver were denied. Petitioner timely requested a formal hearing to challenge the denial of his application and request for waiver.

At the hearing, Petitioner testified in his own behalf. Petitioner did not offer any exhibits. The Division presented the testimony of its investigator Dennis Badillo and offered three Exhibits, which were received into evidence without objection.

The parties elected not to provide a transcript of the proceedings. The parties were afforded an opportunity to submit a proposed recommended order on or before January 23, 2006. The Division timely filed a Proposed Recommended Order which has been duly-considered; Petitioner did not file a proposed recommended order.

FINDINGS OF FACT

1. Petitioner submitted an application for a pari-mutuel wagering occupational license as a racehorse owner on or about March 30, 2005. On his application, Petitioner accurately reported that he had been convicted on one count of Conspiracy to Transport Stolen Property and Evade Taxes, a felony.

2. Due to Petitioner's felony conviction, his application for a pari-mutuel wagering occupational license was subject to denial. Consequently, Petitioner also requested that a waiver be granted so that he could obtain the license.

3. Petitioner's application and his request for waiver failed to include any information which would establish his rehabilitation or demonstrate that he is of good moral character.

4. In the regular course of the Division's review of Petitioner's application and request for waiver, on or about April 11, 2005, Petitioner was interviewed by Dennis Badillo, an investigator for the Division. During the interview, Mr. Badillo completed a waiver interview form based upon the answers provided by Petitioner. Petitioner was afforded a full and fair opportunity to present information to establish his rehabilitation and to demonstrate his present good moral character, but Petitioner did not provide such information.

5. In light of the information regarding Petitioner's felony conviction, which is undisputed and admitted by Petitioner on his application form and at the final hearing, Petitioner does not meet the eligibility requirements for the license he seeks.

6. At hearing, Petitioner attempted to minimize his role in the crime of which he was convicted, and expressed the view that he "doesn't have much time" to fulfill his desire to "participate in the racing industry" in Florida, inasmuch as he has passed his 70th birthday.

7. Petitioner failed to present any testimony from friends, relatives, associates, employers, probation officers, or other individuals to establish good conduct and reputation subsequent to the date of his felony conviction. Absent such evidence, the Division has no basis upon which to conclude that Petitioner is rehabilitated or that Petitioner is of present good moral character.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Section 120.57(1), Florida Statutes (2006).

9. The Division is authorized to issue or deny pari-mutuel wagering occupational licenses pursuant to the provisions of Section 550.105, Florida Statutes (2006).

10. As an applicant, Petitioner bears the burden of proving his entitlement to the license he seeks. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932, 934, (Fla. 1996); Florida Department of Transportation v. J.W.C., Co., Inc., 396 So. 2d 778 (1st DCA 1981). Petitioner has failed to meet this burden.

11. The reasons for which the Division may deny an application for a pari-mutuel wagering occupational license are set forth in Section 550.105(5)(b), Florida Statutes (2006), which provides in pertinent part:

The division may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for or holder thereof has violated the provisions of this chapter or the rules of the division governing the conduct of persons connected with racetracks and frontons. In addition, the division may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for such license has been convicted in this state, in any other state, or under the laws of the United States of a capital felony, a felony, or an offense in any other state which would be a felony under the laws of this state involving arson; trafficking in, conspiracy to traffic in, smuggling, importing, conspiracy to smuggle or import, or delivery, sale, or distribution of a controlled substance; or a crime involving a

lack of good moral character, or has had a pari-mutuel license revoked by this state or any other jurisdiction for an offense related to pari-mutuel wagering.

12. Here, Petitioner's application for licensure was properly denied on the basis of Petitioner's criminal record; Petitioner does not dispute that he was convicted of Conspiracy to Transport Stolen Property and Evade Taxes, a felony. This conviction established a valid basis for the Division's denial of Petitioner's application for a pari-mutuel wagering occupational license. See Section 550.105(5)(b), Florida Statutes (2006).

13. Petitioner's felony conviction is not necessarily a permanent bar to his obtaining a pari-mutual wagering occupational license. Pursuant to the Division's rulemaking authority set forth in Section 550.0251(3), Florida Statutes (2004), the Division adopted Florida Administrative Code Rule 61D-5.006, which provides in relevant part:

(1) Any applicant for an occupational license who is subject to denial on the basis of a criminal conviction or discipline by any racing jurisdiction may seek a waiver from the division director. The applicant shall submit an Individual Occupational License Application BPR Form 15-027, incorporated by Rule 61D-10.001, Florida Administrative Code, the annual license fee and fingerprint fee, a complete set of fingerprints on a card supplied by the division, and a Request for Waiver BPR Form 15-022, incorporated by Rule 61D-10.001, Florida Administrative Code. The applicant

must also schedule a waiver interview with the Bureau of Investigations. Failure to participate in a waiver interview or to disclose any pertinent information regarding convictions, rulings, revocations or denials from other jurisdictions will result in a denial of the request for waiver.

(2) The applicant must establish rehabilitation and must demonstrate present good moral character. The waiver applies to convictions or enforcement actions disclosed to the division, unless revoked by the division for violation of Chapter 550, Florida Statutes, or these rules. . . .

14. In this case, Petitioner has been afforded an opportunity, pursuant to Florida Administrative Code Rule 61D-5.006, to obtain a waiver. The waiver was properly denied because Petitioner failed to establish rehabilitation and failed to demonstrate present good moral character.

15. In light of the foregoing, Petitioner failed to meet his burden of proof and, thus, he is not entitled to the pari-mutuel wagering occupational license under the waiver provisions of Florida Administrative Code Rule 61D-5.006.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Division enter a final order denying Petitioner's application for a pari-mutuel wagering occupational license and his request for waiver.

DONE AND ENTERED this 31st day of January 2006, in
Tallahassee, Leon County, Florida.

Florence Snyder Rivas

FLORENCE SNYDER RIVAS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of January, 2006.

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 this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.