

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND )  
PROFESSIONAL REGULATION, )  
DIVISION OF PARI-MUTUEL )  
WAGERING, )  
 )  
Petitioner, )  
 )  
vs. ) Case No. 06-0736PL  
 )  
JOSE PARADELO, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on May 2, 2006, in Ocala, Florida, before Barbara J. Staros, Administrative Law Judge with the Division of Administrative Hearings.

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: Larry Collins, Esquire  
4326 Northeast County Highway 329  
Anthony, Florida 32617

STATEMENT OF THE ISSUE

Whether Petitioner committed the offenses alleged in the Administrative Complaint and, if so, what discipline should be

imposed against Respondent's Pari-Mutuel Wagering Occupational License?

PRELIMINARY STATEMENT

On December 14, 2005, Petitioner issued an Administrative Complaint against Respondent which charged Respondent with falsifying his license application in violation of Sections 559.791 and 550.105(10), Florida Statutes. Respondent disputed the material facts in the Administrative Complaint and requested a hearing pursuant to Section 120.57(1), Florida Statutes.

Petitioner transmitted the case to the Division of Administrative Hearings on or about February 28, 2006. The case was assigned to Administrative Law Judge Charles C. Adams. On March 28, 2006, Judge Adams issued a Notice of Hearing scheduling the final hearing for May 2, 2006.

Prior to the hearing, Petitioner instituted discovery. Petitioner sought to shorten the time for responses to the discovery. On April 4, 2006, an Order was entered requiring Respondent to provide answers and responses to the pending discovery no later than April 24, 2006. On April 25, 2006, Petitioner filed a Motion to Relinquish Jurisdiction. Respondent filed a response in opposition. On April 27, 2006, an Order was entered denying the Motion to Relinquish Jurisdiction.

At hearing Petitioner presented the testimony of Steven Toner. Petitioner offered Exhibits numbered 1 through 3. Petitioner's Exhibits 1 and 3 were admitted into evidence. Respondent testified on his own behalf and did not offer any exhibits into evidence.

A Transcript consisting of one volume was filed on May 26, 2006.

On June 12, 2006, the parties filed proposed recommended orders, which were considered in the preparation of this Recommended Order. All references to the Florida Statutes are to 2005 unless otherwise indicated.

#### FINDINGS OF FACT

1. Respondent submitted an application to Petitioner, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (Division) on or about October 6, 2004, for a pari-mutuel wagering occupational license. The Division issued license number 7244830-1021, at Ocala Jai-Alai to Respondent. The nature of the license is an "owner's license" regarding owning racehorses.

2. The Division is the state agency charged with regulation of pari-mutuel wagering pursuant to Chapter 550, Florida Statutes, and is responsible for licensing employees of pari-mutuel facilities.

3. The following question appeared on Respondent's application for licensure:

Have you ever been convicted of a crime, found guilty, or entered a plea of guilty or nolo contendere (no contest) to, even if you received a withhold of adjudication? This question applies to any violation of the laws of any municipality, county, state or nation, including felony, misdemeanor and traffic offenses (but not parking, speeding, inspection, or traffic signal violations), without regard to whether you were placed on probation, had adjudication withheld, were paroled, or pardoned. If you intend to answer "NO" because you believe those records have been expunged or sealed by court order pursuant to Section 943.058, Florida Statutes, or applicable law of another state, you are responsible for verifying the expungement or sealing prior to answering "NO." YOUR ANSWER TO THIS QUESTION WILL BE CHECKED AGAINST LOCAL, STATE AND FEDERAL RECORDS. FAILURE TO ANSWER THIS QUESTION ACCURATELY MAY RESULT IN THE DENIAL OR REVOCATION OF YOUR LICENSE. IF YOU DO NOT FULLY UNDERSTAND THIS QUESTION, CONSULT WITH AN ATTORNEY OR CONTACT THE DEPARTMENT.

4. If an applicant answers "yes" to the above question, he or she is then required to complete form 0050-1.

5. Respondent answered "yes" to the question and submitted form 0050-1 which contained the following explanation:

Offense: Tax Evasion

County: New York

State: New York

Penalty/ Disposition: Restitution  
misdemeanor-probation

Date of offense: 1985

Have all sanctions been satisfied: yes

Description: Sold property failed to pay tax liens-ultimately bank was money damaged so I had to pay restitution + serve 2y probation.[<sup>1/</sup>]

6. In April 1995, the United State District Court for the Western District of New York issued a Judgment against Respondent finding him guilty of the crime of Bank Larceny and Theft. The Judgment lists the date the offense concluded as "03/03/89." Respondent was ordered to pay a special assessment of \$25, restitution in the amount of \$59,000 in installments to Empire of America, and was placed on one year probation.

7. Steven Toner is an investigator for the Division. He was assigned Respondent's case and conducted an interview of Respondent.

8. During cross-examination, Mr. Toner described part of the interview:

Q: Did Mr. Paradelo in the course of your interview in my office indicate to you that the entire thing on his application for 1985 tax evasion, which he stated to you for the 1995 conviction, was all a single case?

A: It was told to me that it was a run-on. Now, I'm not trying to be evasive, but it was a run-on between the criminal and the civil matters that were in the Landlord/Tenant things that were going, that were happening during that period of time.

9. Respondent described the general chain of events leading up to the 1995 Judgment: in 1985, the Internal Revenue Service (IRS) filed a tax lien against Respondent; in 1988 Respondent applied to Empire of America Bank to refinance apartments which he owned; at the closing for the refinancing, the tax lien was revealed to the bank and to Respondent; the closing went forward; Respondent filed for bankruptcy in 1991; the bank failed and was taken over by a trust company; in 1991, the IRS commenced foreclosure proceedings based upon the 1985 tax lien; the matter was ultimately resolved in the criminal case which resulted in the Judgment wherein Respondent was required to pay \$59,000 in restitution. Respondent considers the Judgment as a continuation of, and not distinct from, the tax lien matter that initially arose in the 1980's. The undersigned finds Respondent's testimony in this regard to be credible.

10. The details of the events leading up to the 1995 judgment are important to the extent that they lend support to Respondent's position that he did not falsify the license application. Respondent answered "yes" to the question that he had a criminal conviction. He disclosed that he sold property, had to pay tax liens, had to pay restitution, and was placed on probation.

11. While Respondent's description of his criminal conviction was imprecise, it was not false.

CONCLUSIONS OF LAW

12. DOAH has jurisdiction over the parties and the subject matter of this proceeding in accordance with Sections 120.569, 120.57(1), and 550.2415(3)(d), Florida Statutes.

13. Because Petitioner seeks to impose disciplinary action against Respondent's license, Petitioner has the burden of proving the allegations of the Administrative Complaint by clear and convincing evidence. § 120.57(1)(j), Fla. Stat.; Pou v. Department of Insurance and Treasurer, 707 So. 2d 941 (Fla. 3rd DCA 1998); Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). Petitioner has not met its burden.

14. The Administrative Complaint charges Respondent with violating Sections 559.791 and 550.105(10), Florida Statutes, by falsifying his license application. Respondent disclosed his conviction and described it in sufficient detail. He did not falsely swear to a material statement and, therefore, did not falsify his application.

15. Additionally, Petitioner cites Section 550.105(5)(b), Florida Statutes, which authorizes, but does not require, the Division to deny, suspend, or revoke a license if the applicant

for such license has been convicted of a crime involving a lack of good moral character. Based upon this statute, Petitioner argues that Respondent's license should be revoked for committing bank larceny and theft, which Petitioner characterizes as a crime involving a lack of good moral character.

16. The Administrative Complaint quotes Section 550.105(5)(b) in paragraph 8 and refers to the statute in the prayer for relief. However, the Administrative Complaint does not charge Respondent with being convicted of a crime involving a lack of good moral character. The Administrative Complaint only charges Respondent with falsifying the application for licensure. The reference to the statute without clearly charging Respondent with being convicted of a crime involving a lack of good moral character is insufficient to place Respondent on notice of the charge against him. See Trevisani v. Department of Health, 908 So. 2d 1108 (Fla. 1st DCA 2005); and Ghani v. Department of Health, 714 So. 2d 1113 (Fla. 1st DCA 1998).

17. Moreover, the 1995 conviction occurred nine years prior to the Division's issuance of the license to Respondent. No evidence was presented that Petitioner inquired about Respondent's criminal conviction prior to the issuance of the license. Having failed to prove falsification on Respondent's



part in obtaining the license, the Division cannot now discipline him for an act committed prior to his licensure. See Taylor v. Department of Professional Regulation, Board of Medical Examiners, 534 So. 2d 782 (Fla. 1st DCA 1988).

RECOMMENDATION

Upon consideration of the facts found and the conclusions of law reached, it is

RECOMMENDED:

That a final order be entered dismissing the Administrative Complaint filed against Respondent.

DONE AND ENTERED this 10th day of July, 2006, in Tallahassee, Leon County, Florida.



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BARBARA J. STAROS  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 10th day of July, 2006.

ENDNOTE

1/ Respondent completed form 0050-1 by hand and it is difficult to determine if he wrote "serve 2y probation" or "serve 24 probation." In either event, he disclosed that the court placed him on probation.

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.