

Final Order No. BPR-2007-00286 Date: **1-9-07**
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Department of Business and Professional Regulation
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By: Sarah Wachman

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

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DIVISION OF
ADMINISTRATIVE
HEARINGS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL WAGERING,

Petitioner,

vs.

DBPR Case No. 2006039141

CHAD E. MICHAUD,

Respondent.
_____ /

FINAL ORDER

THIS MATTER came before the Presiding Officer of the Division of Pari-Mutuel Wagering on October 4, 2006, in Tallahassee, Florida, in accordance with the provisions of Section 120.57(2), Florida Statutes, for consideration of the Division's Administrative Complaint issued against Chad E. Michaud (the Respondent) in DBPR Case No. 2006039141. The Division of Pari-Mutuel Wagering was represented by Ralf E. Michels, Assistant General Counsel.

PRELIMINARY STATEMENT

On or about July 28, 2006, the Division of Pari-Mutuel Wagering issued an Order of Summary Suspension and an Administrative Complaint against the Respondent alleging that Respondent violated Section 550.2415(1)(a), Florida Statutes.

On or about August 15, 2006, Respondent returned an Election of Rights Form whereby Respondent marked the box indicating that he elected to proceed with a post-suspension hearing as provided in Section 550.2415(3)(c), Florida Statutes. Similarly, on or about August 15, 2006, Respondent returned an Election of Rights form whereby he disputed the material facts alleged in the Administrative Complaint and requested a hearing pursuant to Section 120.57(1), Florida Statutes. On both of his Election of Rights Forms, Respondent indicated that his current address was 27 Vacation Ct., Casselberry, FL 32707.

On August 22, 2006, a post-suspension hearing was conducted in Orlando, Florida before Administrative Law Judge R. Bruce McKibben. At issue was whether or not Respondent's license should be summarily suspended in accordance with Subsection 550.2415(3)(b), Florida Statutes.

On August 28, 2006, the Petitioner filed a Motion to Relinquish Jurisdiction based upon the absence of any issues of disputed material facts. By Order dated August 29, 2006, Administrative Law Judge McKibben granted Petitioner's motion and relinquished jurisdiction to the Division of Pari-Mutuel Wagering.

UNDISPUTED FACTS

1. At all times material hereto, Respondent held a pari-mutuel wagering occupational license, license number 16293-1021, issued by the Division.
2. Cocaine is a Class 1 drug under the Uniform Classification Guidelines for Foreign Substances, as promulgated by the Association of Racing Commissioners International, Inc.
3. Respondent was the trainer of record of a racing greyhound named "Ikes Trudy" on June 23, 2006.

4. On June 23, 2006, "Ikes Trudy" was entered in the seventh (7th) race of the performance at CCC Racing.
5. CCC Racing is a facility authorized to conduct pari-mutuel wagering in the State of Florida.
6. "Ikes Trudy" participated in the seventh (7th) race of the performance at CCC Racing on June 23, 2006.
7. "Ikes Trudy" was immediately thereafter sent to a Division employee for the taking of a urine sample.
8. Urine sample number 169563 was collected from the racing greyhound "Ikes Trudy" and was processed in accordance with established procedures and forwarded to the University of Florida Racing Laboratory for analysis.
9. The University of Florida Racing Laboratory tested urine sample number 169563 and found it to contain Benzoyllecgonine (a metabolite of Cocaine), and/or a derivative thereof.
10. The University of Florida Racing Laboratory tested urine sample number 169563 and found it to contain Ecgonine Methyl Ester (a metabolite of Cocaine), and/or a derivative thereof.
11. The concentration of Benzoyllecgonine (a metabolite of Cocaine) found in urine sample number 169563, drawn from "Ikes Trudy" on June 23, 2006, is extraordinarily high.
12. According to the testimony of Mr. David Tiffany of the University of Florida Racing Laboratory, presented during the Division of Administrative Hearings proceeding on August 22, 2006 in Orlando, Florida and adopted in the Administrative Law Judge's Findings of Fact contained in the Recommended Order dated August 28, 2006, the concentration of Benzoyllecgonine contained in urine sample number 169563 was "greater than 720 nanograms

per milliliter.” It was further testified to, and adopted in the Administrative Law Judge’s Findings of Fact, that the concentration of Benzoylecgonine in urine sample 169563 was the highest level that Mr. Tiffany had ever seen.

CONCLUSIONS OF LAW

13. The Division has jurisdiction over this matter pursuant to Chapters 120 and 550, Florida Statutes.

14. Section 550.2415(3)(b), Florida Statutes, provides:

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.

15. Section 550.2415(3)(c), Florida Statutes, provides:

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.

16. Section 550.2415(1)(c) Florida Statutes, provides that:

The finding of a prohibited substance in a race-day specimen constitutes prima facie evidence that the substance was administered and was carried in the body of the animal while participating in the race.

17. Rule 61D-6.002(1), Florida Administrative Code, provides:

The trainer of record shall be responsible for and be the absolute insurer of the condition of the horses or racing greyhounds, he/she enters to race. Trainers, kennel owners and operators are presumed to know the rules of the division.

18. “Rule 61D-6.002(1), Florida Administrative Code, also known as the Absolute Insurer Rule, is based on a theory of strict liability as a condition of licensure, which is necessary

to protect the industry's integrity." Final Order in Department of Business and Professional Regulation v. Levkoff, Case No. 01-0262PL, Florida Division of Administrative Hearings - March 29, 2001; Final Order in Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, v. Pettillo, Case Nos. 00-3890PL and 03-3891PL, Florida Division of Administrative Hearings – January 09, 2003; Final Order in Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, v. Abbey, Case No. 02-1058PL, Florida Division of Administrative Hearings – November 04, 2002; See also, Final Order in Department of Business and Professional Regulation v. Smith, Case No. 02-4028PL, Florida Division of Administrative Hearings – January 30, 2003 (stating that Respondent is strictly liable under Rule 61D-6.002(1), Florida Administrative Code, to ensure compliance with the regulations governing the areas over which he had responsibility).

19. The validity of Rule 61D-6.002(1), Florida Administrative Code, was upheld by the First District Court of Appeal in Hennessey, Warren and Gangemi v. Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, 818 So. 2d 697 (Fla. 1st DCA 2002). In that case, the First District Court of Appeal upheld the Division of Administrative Hearing's Final Order, in Case Nos. 99-5254RX, 00-2821RX, and 00-3809RX, and stated that Rule 61D-6.002(1), Florida Administrative Code, was a proper exercise of administrative authority by the Department of Business and Professional Regulation because the legislature gave the Division of Pari-Mutuel Wagering specific authority to hold trainers so responsible.

20. In an earlier case involving the validity of Rule 61D-6.002(1), Florida Administrative Code, the Supreme Court of Florida, in Division of Pari-Mutuel Wagering, Department of Business Regulation v. Caple, 362 So. 2d 1350 (Fla. 1978), stated:

On review of these more recent authorities, we are now persuaded that Florida should align itself with the well reasoned majority view. To protect the integrity

of this unique industry, it is really immaterial whether 'guilt' should be ascribed either directly or indirectly to the trainer. The rules were designed, and reasonably so, to condition the grant of a trainer's license on the trainer's acceptance of an absolute duty to ensure compliance with reasonable regulation governing the areas over which the trainer has responsibility. Whether a violation occurs as a result of the personal acts of the trainer, or persons under his supervision, or even of unknown third parties, the condition of licensure has been violated by the failure to provide adequate control, and the consequences of the default is possible suspension of the trainer's license or a fine. We have no doubt that a rule which both conditions a license and establishes with specificity reasonable precautionary duties within the competence of the licensee to perform is both reasonable and constitutional. [Emphasis supplied.]

21. Cocaine, and/or derivatives thereof, are impermissible substances which were carried in the body of "Ikes Trudy" while participating in the seventh (7th) race at CCC Racing on June 23, 2006.

22. It is undisputed that Respondent was the trainer of record for the racing greyhound "Ikes Trudy." Therefore, by operation of Rule 61D-6.002(1), Florida Administrative Code, Respondent, as the trainer of the greyhound "Ikes Trudy," is legally responsible for the racing of the greyhound with a substance which is prohibited under Section 550.2415(1)(a), Florida Statutes.

23. Rule 61D-6.011(2)(a), Florida Administrative Code, provides that for Class 1 impermissible substances a first violation carries a penalty of between five hundred (\$500.00) and one thousand dollars (\$1,000.00) along with suspension or revocation of license. This is the standard penalty guideline. However, Rule 61D-2.021, Florida Administrative Code, permits a penalty to be aggravated.

24. Section 550.2415(3)(a), Florida Statutes, states, in pertinent part, that "[u]pon the finding of a violation of this section, the division may revoke or suspend the license or permit of the violator or deny a license or permit to the violator; impose a fine against the violator in an amount not exceeding \$5,000.00...."

25. Based upon the Findings of Fact and Conclusions of Law, it is hereby ORDERED and ADJUDGED that Respondent's pari-mutuel occupational license, number 16293-1021 is REVOKED, and Respondent is FINED in the amount of five thousand dollars (\$5,000.00). The proposed penalty, including the departure from the maximum fine contained in Rule 61D-6.011, Florida Administrative Code, is an appropriate penalty based upon the severity of the violation evidenced by the testimony of Mr. Tiffany, adopted by Administrative Law Judge McKibben's Findings of Fact in his Recommended Order dated August 28, 2006, that the concentration of Benzoyllecgonine, a metabolite of Cocaine, found in urine sample number 169563 was the highest level ever recorded. Such a fine is also within the maximum fine contemplated by the Legislature evidenced by Section 550.2415(3)(a), Florida Statutes. Therefore, due to the severity of the violation, this proposed penalty is appropriate.

This Final Order shall become effective on the date filed with the Agency Clerk.

DONE AND ORDERED this 8TH day of JANUARY, 2007.




David J. Roberts, Director
Division of Pari-Mutuel Wagering
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1035

NOTICE OF RIGHT TO APPEAL

Unless expressly waived, any party substantially affected by this Final Order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty days rendition of this Order, in accordance with Fla. App. P. 9.110, and section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I hereby certify that this Final Order been provided by U.S. Certified Mail to Mr. Chad E. Michaud, 27 Jackson Court, Casselberry, Florida 32707 this 9th day of January, 2007.



Agency Clerk

cc: Office of Operations/Licensing Section
Office of Investigations
General Manager, Sanford-Orlando Kennel Club
Chief Inspector, Sanford-Orlando Kennel Club
Judges/Stewards
National Greyhound Association
Florida Kennels, Inc.

Nancy Terrel, Hearing Officer
Ralf E. Michels, Assistant General Counsel