

Final Order No. BPR-2008-05244 Date: 6-19-08  
FILED

Department of Business and Professional Regulation  
AGENCY CLERK

Sarah Wachman, Agency Clerk

By:

*Brandon M. Nichols*

2008 JUN 23 A 11: 23

DIVISION OF ADMINISTRATIVE HEARINGS

**Department of Business and Professional Regulation  
Division of Alcoholic Beverages and Tobacco  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-1020**

Department of Business and Professional Regulation  
Division of Alcoholic Beverages and Tobacco  
*PETITIONER*

vs.

**Rick's of South Florida  
d/b/a Tubby's**

*RESPONDENT*

CASE NO. 2007-057233  
DOAH NO. 08-1085  
LICENSE NO. 46-00355  
SERIES: 4COP

**FINAL ORDER**

This matter comes before me for final Agency Order.

The issue before me is whether Respondent unlawfully conducted gambling operations at its licensed business establishment, and, if so, what penalty is warranted.

**PRELIMINARY STATEMENT**

1. On October 22, 2007, the Division issued an administrative action against Respondent.
2. Respondent filed a timely request for hearing, citing disputed issues of fact and the matter was forwarded to the Division of Administrative Hearings for a formal proceeding.
3. A formal hearing was conducted by Administrative Law Judge R. Bruce McKibben on April 17, 2008.
4. A Recommended Order was issued by the Administrative Law Judge on May 29, 2008.
5. Exceptions to the Recommended Order were not received from either party.

**FINDINGS OF FACT**

6. A thorough review of the entire record of this matter reveals that the findings of fact contained in the recommended order are based on competent, substantial evidence and that the proceedings on which the findings were based complied with the essential requirements of the law.

7. The Division hereby adopts and incorporates by reference the Findings of Fact as set forth in the Recommended Order.

**CONCLUSIONS OF LAW**

8. A thorough review of the entire record in this matter indicates that the Conclusions of Law contained in the Recommended Order are reasonable and correct interpretations of the law based on the Findings of Fact.

9. The Division hereby adopts and incorporates by reference the Conclusions of Law as set forth in the Recommended Order.

10. This Final Order is entered after a review of the complete record.

**ORDER**

Having fully considered the complete record of this case, the Recommended Order of the presiding officer and the exceptions filed, I hereby adopt the Recommended Order of the Administrative Law Judge.

It is hereby ORDERED that Respondent is not guilty of the alleged violations therefore this case shall be closed without further action. It is further ORDERED that Exhibits 5, 8, and 10 shall be returned to Respondent on or before July 31, 2008.

DONE and ORDERED at Tallahassee, Florida, this 18 day of June, 2008.



*C Hill*

CYNTHIA HILL, Director of Alcoholic Beverages and Tobacco

This *Order* of the Director of the Division of Alcoholic Beverages and Tobacco will become final unless judicial review is initiated within 30 days of the date of rendition. The rendition date is the date the *Order* is filed by the Agency Indexing Clerk. Judicial review may be commenced by filing an original *Notice of Appeal* with the Clerk of the Division of Alcoholic Beverages and Tobacco and a copy, accompanied by filing fees prescribed by law, with the appropriate District Court of Appeal, pursuant to Section 120.68, Florida Statutes and Rule 9.110, F.R.A.P. A transcript of the informal hearing may be obtained upon written request received no later than 60 days from the rendition date of this *Order*.

Mail Certification: This Final Order was sent by Certified Mail  
7008 0150 0002 9787 9391 to:  
Richard Goulet  
12931 Parkline Drive  
Fort Myers, FL 33913

By: *J Caprese* Mail Date: 6/20/08

*Additional copies mailed to:*

District Enforcement/Licensing Office  
  
Assistant General Counsel  
Department of Business and Professional Regulation  
1940 North Monroe Street  
Tallahassee, FL 32399

Ned Luczynski, General Counsel  
DBPR  
Northwood Center  
1940 North Monroe Street  
Tallahassee, FL 32399-0792

R Bruce McKibben  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-3060

State of Florida  
Division of Administrative Hearings

Charlie Crist  
Governor

Robert S. Cohen  
Director and Chief Judge

Claudia Liadó  
Clerk of the Division



May 29, 2008

Harry L. Hooper  
Deputy Chief  
Administrative Law Judge

David W. Langham  
Deputy Chief Judge  
Judges of Compensation Claims

Cynthia Hill, Director  
Division of Alcoholic Beverages and Tobacco  
Department of Business and Professional Regulation  
Northwood Centre  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792

Re: DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION,  
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO vs. RICK'S OF  
SOUTH FLORIDA, INC., d/b/a TUBBY'S, DOAH Case No. 08-1085

Dear Ms. Hill:

Enclosed is my Recommended Order in the referenced case. Also enclosed are the Petitioner's Exhibits numbered 1-4, 6, 7, 9, and 11 and the Respondent's Exhibit numbered 1. Copies of this letter will serve to notify the parties that my Recommended Order and the hearing record have been transmitted this date.

As required by Subsection 120.57(1)(m), Florida Statutes, you are requested to furnish the Division of Administrative Hearings with a copy of the Final Order, along with any exceptions to the Recommended Order, within 15 days of its rendition.

Sincerely,

A handwritten signature in black ink that reads "R. Bruce McKibben".

R. BRUCE MCKIBBEN  
Administrative Law Judge

RBM/gr

Enclosures

cc: Richard Goulet  
Joshua B. Moye, Esquire  
Ned Luczynski, General Counsel

**RECEIVED**

**JUN - 2 2008**

**DIVISION OF AB&T  
DIRECTOR'S OFFICE/LEGAL**

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RE: CASE NO. 2007057233  
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO  
PETITIONER,  
VS.  
RICKS OF SOUTH FLORIDA INC  
D/B/A TUBBYS  
LIC NO. BEV4600355 SERIES 4COP  
RESPONDENT

**ADMINISTRATIVE ACTION**

COMES NOW THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, HEREIN AFTER REFERRED TO AS "PETITIONER," AND FILES THIS ADMINISTRATIVE ACTION AGAINST **RICKS OF SOUTH FLORIDA INC** HEREIN AFTER REFERRED TO AS "RESPONDENT," AND ALLEGES

1. PETITIONER IS THE STATE AGENCY CHARGED WITH SUPERVISING BUSINESSES LICENSED UNDER THE FLORIDA BEVERAGE, TOBACCO AND TAX AND TOBACCO PRODUCTS PERMIT LAWS PURSUANT TO SECTIONS 559.061, 561.07, 561.15, 561.19, 561.29, 561.501, 210.15, 210.16, 210.45, 210.50, 569.003, AND 569.006, FLORIDA STATUTES.

2. RESPONDENT IS AND HAS BEEN AT ALL TIMES MATERIAL HERETO, THE HOLDER OF A VALID LICENSE/PERMIT ISSUED IN THE STATE OF FLORIDA, BY THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO. RESPONDENT'S LAST KNOWN MAILING ADDRESS IS AS FOLLOWS:

RICKS OF SOUTH FLORIDA INC  
4350 FOWLER STREET  
FORT MYERS, FL 33901

AND THE DIVISION HAS NOT BEEN NOTIFIED OF ANY OTHER DESIGNATED PERSON OR ADDRESS FOR THE SERVICE OF PROCESS AND NOTICES AUTHORIZED BY RULE 61A-2-012, FLORIDA ADMINISTRATIVE CODE.

3. PETITIONER INTENDS TO REVOKE, SUSPEND, ANNUL, IMPOSE ADMINISTRATIVE FINES, INVESTIGATIVE COSTS, AND LATE PENALTIES, OR ANY COMBINATION OF THESE AUTHORIZED PENALTIES. THIS INTENDED ACTION IS BASED ON THE BELOW DESCRIBED FACTS OR CONDUCT.

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RE: CASE NO. 2007057233

DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO  
VS.

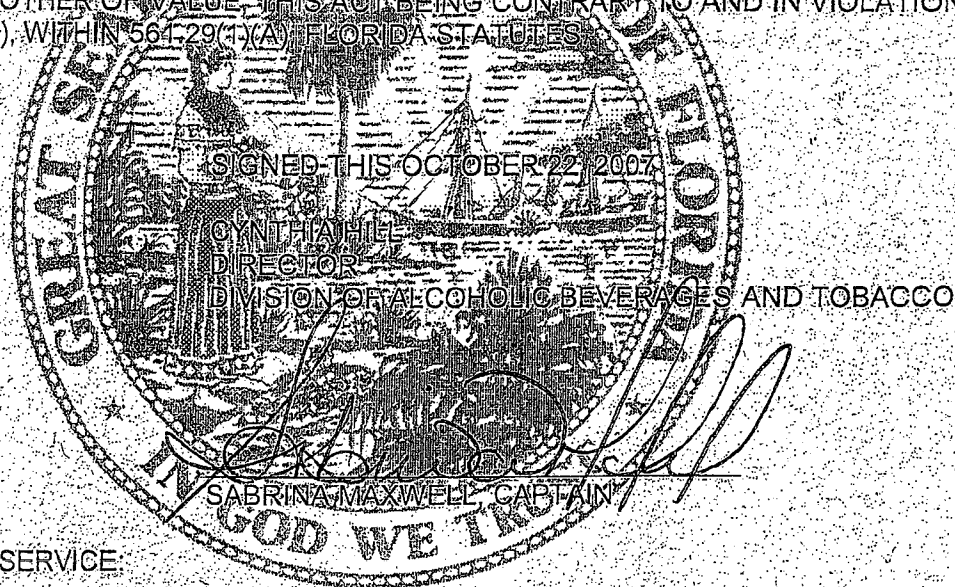
RICKS OF SOUTH FLORIDA, INC

D/B/A TUBBYS

LIC. NO. BEV4600355

YOU, RICKS OF SOUTH FLORIDA, INC, D/B/A TUBBYS, ARE CHARGED WITH THE FOLLOWING COUNT(S):

1. ON OR ABOUT 10/20/2007, YOU, THE AFOREMENTIONED LICENSEE, HOLDING A LICENSE UNDER THE BEVERAGE LAW, OR YOUR AGENT(S), OFFICER(S), SERVANT(S), OR EMPLOYEE(S), DID UNLAWFULLY ON YOUR LICENSED PREMISES PERMIT, ALLOW, OR POSSESS GAMBLING MACHINE(S) OR DEVICE(S) TO WIT, STONE AGE, HAUNTED HOUSE, AND TWO "VIDEO" VIDEO GAME SLOT MACHINES WHICH UPON THE INSERTION OF ANY PIECE OF MONEY, COIN, OR OTHER OBJECT IS CAUSED TO OPERATE SUCH MACHINE(S) OR DEVICE(S) AND THE USER, BY REASON OF ANY ELEMENT OF CHANCE OR OF ANY OTHER OUTCOME OF SUCH OPERATION UNPREDICTABLE, MAY RECEIVE MONEY, CREDIT, ALLOWANCE, OR OTHER OF VALUE, THIS ACT BEING CONTRARY TO AND IN VIOLATION OF SECTION 849.16(1), WITHIN 561.29(1)(A) FLORIDA STATUTES.



EXPLANATION OF SERVICE

DATE SERVED \_\_\_\_\_

RECEIVED BY \_\_\_\_\_  
PERSONAL \_\_\_\_\_  
SERVICE BY \_\_\_\_\_

CERTIFIED MAIL # \_\_\_\_\_

ATTACH RECEIPT IF SERVED BY MAIL

21 days up  
11/30/07

<b>U.S. Postal Service™</b> <b>CERTIFIED MAIL™ RECEIPT</b> (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a>	
<b>OFFICIAL USE</b>	
Postage \$ <span style="border: 1px solid black; padding: 2px;">10-30-07</span>	Postmark Here
Certified Fee <span style="border: 1px solid black; padding: 2px;"></span>	<i>Rick's of South Florida Inc.</i>
Return Receipt Fee (Endorsement Required) <span style="border: 1px solid black; padding: 2px;"></span>	
Restricted Delivery Fee (Endorsement Required) <span style="border: 1px solid black; padding: 2px;"></span>	
Total Postage & Fees <span style="border: 1px solid black; padding: 2px;">\$5.33</span>	
Sent To <i>Fulbright</i>	
Street, Apt. No., or PO Box No. <i>4350 Sawler St.</i>	
City, State, ZIP+4 <i>Fort Myers Fl. 33901</i>	
PS Form 3800, August 2000 See Reverse for Instructions	

7007 1490 0004 1545 3727

21-days 2007-057233	
<b>SENDER: COMPLETE THIS SECTION</b> <ul style="list-style-type: none"> <li>■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<b>COMPLETE THIS SECTION ON DELIVERY</b> A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee B. Received by (Printed Name) <i>RICHARD ADAMS</i> C. Date of Delivery <i>10/17/07</i> D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
1. Article Addressed to: <i>Rick's of South Florida Inc.</i> <i>DBA: Fulbright</i> <i>4350 Sawler St.</i> <i>Fort Myers, Fl.</i> <i>33901</i>	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes
2. Article Number (Transfer from service label) <span style="border: 1px solid black; padding: 2px;">7007 1490 0004 1545 3727</span>	
PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540	