

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SOON YOUNG P. JENNINGS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 09-5367  
 )  
 DEPARTMENT OF BUSINESS AND )  
 PROFESSIONAL REGULATON, )  
 DIVISION OF PARI-MUTUEL )  
 WAGERING, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on April 9, 2010, by video teleconference, with the parties appearing in Fort Lauderdale, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Bart T. Heffernan, Esquire  
Law Offices of Bart T. Heffernan, P.A.  
750 South Dixie Highway  
Boca Raton, Florida 33432

For Respondent: David Perry, Esquire  
Department of Business and  
Professional Regulation  
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Tallahassee, Florida 32399-2202

STATEMENT OF THE ISSUE

Whether the Petitioner's application for a Pari-Mutuel Wagering occupational license and request for a waiver should be granted or denied for the reasons set forth in the Respondent's letter dated August 20, 2009.

PRELIMINARY STATEMENT

In a letter dated August 20, 2009, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("Division"), notified Soon Young P. Jennings that her application for a pari-mutuel wagering occupational license and request for a waiver were denied pursuant to the provisions of Chapters 550 and 849, Florida Statutes (2009).<sup>1</sup> The Department further stated in the denial letter: "This Denial is based upon your January 26, 1995 felony conviction in Broward County, Florida, for Grand Theft. Review of your application and waiver package does not sufficiently establish rehabilitation and present good moral character." Ms. Jennings timely requested an administrative hearing involving disputed issues of material fact, and the Department transmitted the matter to the Division of Administrative Hearings for assignment of an administrative law judge. Pursuant to notice, the final hearing was held on April 9, 2010.

At the hearing, Ms. Jennings testified in her own behalf and presented the testimony of Soon Elizabeth Olson, Misuk Yim,

and Stewart Hart; she did not offer any exhibits into evidence. The Department presented the testimony of Christopher Johnston, and Respondent's Exhibits A, B, and C were offered and received into evidence.

The transcript of the proceedings was filed with the Division of Administrative Hearings on May 20, 2010. Ms. Jennings has not, to date, filed proposed findings of fact and conclusions of law. The Department timely filed its proposed findings of fact and conclusions of law, which have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The Division is the state agency responsible for issuing occupational licenses to employees of pari-mutuel facilities in Florida. See § 550.105(1), Fla. Stat.

2. On or about April 2, 2009, Ms. Jennings submitted an application for a pari-mutuel wagering license, specifically for a cardroom license that would allow her to be a dealer in the poker room of a pari-mutuel facility. Ms. Jennings indicated on the application form that she had never held a pari-mutuel license in Florida.

3. In the section of the license application entitled "To Be Completed by Cardroom Applicants Only," Ms. Jennings answered "no" to the following question: "Have you ever been convicted of, or had adjudication of guilt withheld for, a felony or misdemeanor involving forgery, larceny, extortion or conspiracy to defraud or filing false reports to government agency, racing or gaming commission or authority, in this state or any other stated under the laws of the United States?"

4. In the section of the application entitled "Background Information", Ms. Jennings answered "no" to the following question: "Have you ever been convicted of or had adjudication withheld for any crime, or pled guilty or nolo contendere to any criminal charges against you? If yes, give details in the space provided below."

5. In the space provided, Ms. Jennings wrote: "Had adjudication; As part of a prosecution of someone else, I cooperated and gave testimony. However, I was personally not convicted of any wrongdoing."

6. Upon investigation, the Division learned that Ms. Jennings had been adjudicated guilty of one count of grand theft in the third degree on January 26, 1995, in Brevard County, Florida. She was sentenced to two years' probation and required to report monthly to her probation officer.

Ms. Jennings spent approximately three months in jail prior to her conviction because she could not pay for her bail.

7. On April 22, 2009, Ms. Jennings submitted a request for a waiver from the Division so she could obtain her pari-mutuel wagering license. A waiver must be obtained by, among others, any new applicant for a Florida pari-mutuel license who has been convicted of any felony.

8. Ms. Jennings was 27 years of age when she was convicted of grand theft. She explained that, at the time of the offense, she was involved with a boyfriend who had threatened to kill her and her family when she first became involved with him. She stated that she became "brainwashed and co-dependent on him and basically scared for my life."<sup>2</sup> As a result, Ms. Jennings did whatever her boyfriend wanted her to do.

9. According to Ms. Jennings, she was charged with grand theft because, at her boyfriend's direction, she obtained a cell phone under a false name.

10. Ms. Jennings testified that she answered "no" to the question asking if she had been convicted of a crime because she was told by a federal prosecutor named Larry Turner that she would "have a clean record" if she testified against her boyfriend, who had been charged with murder.<sup>3</sup> Ms. Jennings testified, and her boyfriend was convicted. Ms. Jennings

assumed, therefore, that she would not have "anything in [her] background as a criminal record."<sup>4</sup>

11. Ms. Jennings gave the following testimony at the final hearing:

a. She told the Division's investigators about the circumstances of her criminal conviction but did not tell them that she believed her criminal record had been sealed.

b. She was shocked when the Division's investigators told her they had found records of her conviction: "I was like, Huh?"<sup>5</sup> She had to go look up the records of the conviction and then her recollection of the arrest and conviction "came back to [her] . . . eventually."<sup>6</sup>

c. She was shocked when the Division's investigators told her they had found this conviction because she thought the conviction had been erased.

12. Ms. Jennings has a high school education. After her conviction, Ms. Jennings tried to go to school, but she did not finish. For a time, she worked at a restaurant as a waitress; she had a part-time job doing promotional work for night clubs; and she also worked as a blackjack dealer at a nightclub where blackjack was played for entertainment. When asked what she had done with her life, Ms. Jennings responded: "I had boyfriends and long-term relationships and basically I was taking care of them."<sup>7</sup>

13. Ms. Jennings's current boyfriend, her sister, and her best friend testified that Ms. Jennings had always been honest with them.

14. The totality of the evidence presented by Ms. Jennings is insufficient to establish she is rehabilitated and possesses good moral character: She failed to disclose her conviction for grand theft in her application for licensure; her explanations of the reasons for failing to disclose the conviction are inconsistent; her explanation of the act underlying her conviction of grand theft, procuring a cell phone under a false name, is unconvincing; and her vague description of her life since the conviction fails to demonstrate any accomplishments or any positive change in her circumstances since her conviction.

#### CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes.

16. Because Ms. Jennings has applied for a license, she has the burden of proving by a preponderance of the evidence that she meets all the criteria for a pari-mutuel wagering license. See Department of Banking & Fin. v. Osborne Stern, 670 So. 2d 932, 934 (Fla. 1996)("[W]hile the burden of producing evidence may shift between the parties in an application dispute

proceeding, the burden of persuasion remains upon the applicant to prove her entitlement to the license."); § 120.57(1)(j), Fla. Stat. ("Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure disciplinary proceedings or except as otherwise provided by statute . . . .").

17. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," Black's Law Dictionary 1201 (7th ed. 1999), or evidence that "more likely than not" tends to prove a certain proposition. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000)(relying on American Tobacco Co. v. State, 697 So. 2d 1249, 1254 (Fla. 4th DCA 1997) quoting Bourjaily v. United States, 483 U.S. 171, 175 (1987)).

18. Section 550.105(5)(b), Florida Statutes, provides in pertinent part:

[T]he 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.



19. Based on the findings of fact herein and pursuant to the terms of Section 550.105(5)(b), Florida Statutes, the Division may, in its discretion, deny Ms. Jennings's application for a pari-mutuel wagering license simply because of her conviction for grand theft in the third degree.

20. To provide guidance for the exercise of its discretion in approving or denying licenses to persons who have been convicted of a felony, the Division has provided by rule that an applicant may obtain a waiver of a criminal conviction if the applicant can "establish proof of rehabilitation and demonstrate good moral character." Fla. Admin. Code R. 61D-5.006(1) and (2).

21. Based on the findings of fact herein, Ms. Jennings has failed to demonstrate by a preponderance of the evidence that she is rehabilitated and is of good moral character.

22. The special powers of the Division with respect to the issuance of licenses allowing persons to work in pari-mutuel wagering facilities were addressed by the court in Jacques v. Department of Business & Professional Regulation, 15 So. 3d 793, 797-798 (Fla. 1st DCA 2009), as follows:

[T]he legislature has broad discretion in regulating and controlling gambling under its police powers, and the state may exercise its police power in a more arbitrary manner because gambling is inherently dangerous to society. Div. of

Pari-Mutuel Wagering, Dep't of Bus. Regulation v. Fla. Horse Council, Inc., 464 So. 2d 128, 130 (Fla. 1985). . . . Because gambling historically has been susceptible to criminal influences, the legislature could reasonably conclude that denying licensure to those with felony convictions would promote the safe and lawful operation of slot machine gaming facilities.

Under the circumstances in this case, the Department should exercise its discretion and deny Ms. Jennings's application for a pari-mutuel wagering license.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, enter a final order denying the application of Soon Young P. Jennings for a pari-mutuel wagering license.

DONE AND ENTERED this 28th day of June, 2010, in Tallahassee, Leon County, Florida.



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PATRICIA M. HART  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of June, 2010.

ENDNOTES

- <sup>1</sup>/ All references herein to the Florida Statutes are to the 2009 edition unless indicated otherwise.
- <sup>2</sup>/ Transcript at page 16-17.
- <sup>3</sup>/ Transcript at page 15.
- <sup>4</sup>/ Transcript at page 15.
- <sup>5</sup>/ Transcript at page 22.
- <sup>6</sup>/ Transcript at page 22.
- <sup>7</sup>/ Transcript at page 29.

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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.