

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES L. ELLIS,)
)
 Petitioner,)
)
 vs.)
)
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION,) Case No. 10-0380
 DIVISION OF PARI-MUTUEL)
 WAGERING,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on March 11, 2010, via video teleconferencing with sites in Jacksonville and Tallahassee, Florida, before Barbara J. Staros, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: James L. Ellis pro se
Post Office Box 569
Lumbercity, Georgia 31549

For Respondent: David N. Perry, Esquire
Department of Business and
Professional Regulation
Division of Pari-Mutuel Wagering
1940 North Monroe Street
Tallahassee, Florida 32399-2202

STATEMENT OF THE ISSUE

Whether Petitioner should receive a waiver of criminal conviction, making him eligible to receive an occupational license from Respondent, the Division of Pari-Mutuel Wagering?

PRELIMINARY STATEMENT

On or about July 25, 2009, Petitioner applied for a pari-mutuel wagering license. On the application, Petitioner disclosed a criminal conviction. Petitioner then completed a waiver application and attended a waiver interview.

In a letter dated December 14, 2009, Petitioner was notified that his application and request for waiver were denied. Specifically, the denial letter referenced felony convictions of May 19, 1997, for Trafficking in Cocaine, and for Willful Obstruction of Law Enforcement Officer by Use of Threat or Violence in Dodge County, Georgia.

Petitioner disputed the material facts in the denial letter and requested a hearing pursuant to Section 120.57(1), Florida Statutes.

Respondent transmitted the case to the Division of Administrative Hearings on or about January 26, 2010. On February 3, 2010, a Notice of Hearing was issued scheduling the final hearing for March 11, 2010. The hearing was heard as scheduled.

At hearing, Petitioner testified on his own behalf and did not offer any exhibits into evidence. Respondent offered Exhibits lettered A through C which were admitted into evidence. Respondent presented the testimony of Charles Taylor.

A Transcript consisting of one volume was filed on April 2, 2010.

Respondent timely filed a Proposed Recommended Order, which was considered in the preparation of this Recommended Order. Petitioner did not file a post-hearing submission. All references to the Florida Statutes are to 2009 unless otherwise indicated.

FINDINGS OF FACT

1. Petitioner submitted an application to Petitioner, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (Division) on or about July 25, 2009, for a pari-mutuel wagering occupational license.

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 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.

4. In the space provided, Petitioner disclosed a 1996 felony conviction for Trafficking Cocaine in Dodge County, Georgia.

5. In August 1996, in the Superior Court of Dodge County, Georgia, Petitioner pled guilty to the charges of Trafficking in Cocaine, a felony, and to the lesser included offense of Obstruction of an Officer, a misdemeanor. Petitioner was sentenced to 10 years in prison.^{1/}

6. On August 13, 2009, Petitioner completed a waiver application for a pari-mutuel wagering license (PMW license).

7. Charles Taylor is an investigator for the Division. He was assigned Petitioner's case and conducted a waiver interview of Petitioner. Mr. Taylor has been an investigator for the Division for approximately three years. His duties include conducting investigations of waiver cases, processing any documents, and obtaining any necessary information. He also performs other types of investigations for the Division and has approximately 18 years of experience in the pari-mutuel wagering industry.

8. Mr. Taylor conducts such interviews to meet the waiver applicant and obtain any mitigating or aggravating circumstances regarding their criminal history and to discuss with the

applicant what has happened since the conviction. That is, Mr. Taylor looks for evidence of rehabilitation and evidence of good moral character.

9. While Petitioner received a 10-year sentence, he left prison in 1999 and was placed on parole for six years, which terminated in 2005. Petitioner attended A.A. and N.A. meetings while incarcerated. While on parole, he submitted to drug tests.

10. Since leaving prison, Petitioner has not been in any trouble with the law. He has been driving a truck and training horses in Georgia. He wants his Florida PMW license to train horses at Hialeah.

11. Petitioner believes that he has changed and has turned his life around from his criminal past. Petitioner has four children, one of which lives with him. He participates in church.

CONCLUSIONS OF LAW

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

13. Section 550.105(5)(b) reads in pertinent part:

. . . 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.

14. Florida Administrative Code Rule 61D-5.006 states in pertinent 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. . . .

(2) The applicant shall establish proof of rehabilitation and demonstrate good moral character. The waiver applies to criminal convictions or discipline by any racing jurisdiction disclosed to the division, unless revoked by the division for violation of Section 550, Florida Statutes, or these rules.

15. Petitioner is an applicant for an occupational license who was subject to a denial of said application on the basis of a criminal conviction. Petitioner has the burden of proving by a preponderance of the evidence that he should be granted the waiver and, ultimately, the license he seeks. § 120.57(1)(j), Fla. Stat.; Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996).

16. Respondent denied Petitioner's request for waiver, and therefore his application for licensure, because of his criminal conviction of a felony in the State of Georgia. The Division relies on as authority Section 550.105(5)(b), Florida Statutes, which authorizes the Division to deny, suspend, or revoke a license if the applicant for such license has been convicted of a crime involving trafficking in cocaine. Further, Florida Administrative Code Rule 61D-5.006 requires the applicant to establish proof of rehabilitation and demonstrate good moral character.

17. Courts have recognized the state's power to use its discretion in issuance of licenses. Astral Liquors, Inc. v. Department of Business Regulation, 463 So. 2d 1130 (Fla. 1985). Courts have additionally recognized that the state may exercise greater control and its police power over the pari-mutuel industry. Hialeah Race Course, Inc. v. Gulfstream Park Racing Ass'n, Inc., 37 So. 2d 692, 694. (Fla. 1948).

18. While Petitioner has demonstrated that he has stayed out of trouble since his release from parole, which happened only five years ago, Petitioner did not present sufficient evidence of rehabilitation or sufficiently demonstrate good moral character to grant him the waiver and, therefore the license, which he seeks. The undersigned is not aware of any prohibition to Petitioner from reapplying for a PMW license at a

later time, after more time has passed since his conviction and period of sentence, and presentation of more evidence of rehabilitation and of good moral character.

RECOMMENDATION

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

RECOMMENDED:

That a final order be entered denying Petitioner's application for a pari-mutuel license at this time.

DONE AND ENTERED this 22nd day of April, 2010, in Tallahassee, Leon County, Florida.



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 22nd day of April, 2010.

ENDNOTE

1/ At hearing, the Division acknowledged that the denial letter incorrectly referenced Petitioner's conviction date as May 19, 1997. The correct conviction date is August 27, 1996. Further, the denial letter referenced a second felony conviction of Willful Obstruction of Law Enforcement Officer by Use of Threat

or Violence. However, the Division acknowledged that Petitioner pled to a lesser offense of Obstruction of an Officer, a misdemeanor.

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.