

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF BUSINESS AND)
PROFESSIONAL REGULATION,)
DIVISION OF PARI-MUTUEL)
WAGERING,)
)
Petitioner,)
)
vs.) Case No. 11-2779PL
)
NEIL E. WAIGAND, JR.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference in Tallahassee, Florida, on October 5, 2011. The parties, attorneys for the parties, witnesses, and court reporter participated by videoconference in Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: David N. Perry
Assistant General Counsel
Division of Pari-Mutuel Wagering
1940 North Monroe Street, Suite 40
Tallahassee, Florida 32399-2202

For Respondent: Neil E. Waigand, Jr., pro se
906 North Riverside Drive, Apartment 8
Pompano Beach, Florida 33062-4623

STATEMENT OF THE ISSUE

The issue is whether Respondent accessed two slot machines without logging the purposes for opening the machines, in violation of Florida Administrative Code rule 61D-14.023(2), as in effect in March and April 2010.

PRELIMINARY STATEMENT

By Administrative Complaint dated August 12, 2010, Petitioner alleged that, at all material times, Respondent has held a slot machine professional individual occupational license, bearing license number 7463121-1051. The Administrative Complaint alleges that, at all material times, the Isle of Capri in Pompano Beach employed Respondent as a slot machine technician.

Count I of the Administrative Complaint alleges that, on March 28, 2010, Respondent accessed the "logic compartment" of a certain Isle of Capri slot machine and failed to log the reason he was in the machine in the machine entry authorization log (MEAL) book. Count I alleges that, on April 2, 2010, Respondent accessed the "logic compartment" of a second Isle of Capri slot machine and failed to log the reason he was in the machine in the MEAL book.

Count I alleges that Petitioner has issued two warning letters to Respondent for failures to log in the MEAL book the times he was in two different slot machines on October 26, 2009,

and January 22, 2010. Count I alleges that the fine in this case should reflect these prior violations.

Count I cites rule 61D-14.023(2), which, as in effect at the time of the alleged violations, provided: "A log of compartment door openings and closings shall be maintained inside the locked compartment of the slot machine. The log shall include the time and reason for the opening." Citing section 551.107(11), Florida Statutes, which authorizes a fine of up to \$5000 for each violation of chapter 551, the Administrative Complaint requests a fine of \$500 for the violations described in Count I.

Count II alleges that, on May 5, 2010, Respondent left open the doors of four Isle of Capri slot machines while he walked to another section of the casino. Count II cites rule 61D-14.023(1), which provides that all slot "machine doors shall be locked and monitored by door access sensors, which shall have the ability to detect when a door is opened or moved from its fully closed and locked position" Citing section 551.107(11), the Administrative Complaint requests a fine of \$100 for this violation.

At the start of the hearing, the Administrative Law Judge struck Count II on the ground that the cited rule did not prohibit the alleged acts and omissions of Respondent. Early in the hearing, it became apparent that the evidence to be offered

would pertain to the opening of the main door, rather than the logic compartment of each slot machine. The Administrative Law Judge granted Petitioner's oral motion to amend Count I to substitute "main door" for "logic compartment."

At the hearing, Petitioner called two witnesses and offered into evidence seven exhibits: Petitioner Exhibits 1-4, 6, 9, and 11. Respondent called one witness and offered into evidence two exhibits: Respondent Exhibits 9 and 10. All exhibits were admitted except Petitioner Exhibit 11, which was proffered.

The court reporter filed the transcript on October 20, 2011. Neither party filed a proposed recommended order.

FINDINGS OF FACT

1. At all material times, Respondent has been employed as a licensed slot machine technician with Isle of Capri. A slot machine technician maintains and repairs slot machines. Respondent holds a slot machine professional individual occupational license, bearing license number 7463121-1051.

2. As relevant to this case, a locked main door provides access to the main compartment of the slot machine. Inside the main compartment of the slot machine is the MEAL book for logging all openings of the main compartment. Within the main compartment also is a locked logic compartment, which contains the computer chip that controls the operations of the slot

machine. The logic compartment is also secured by a special tape that is broken whenever someone accesses the logic compartment.

3. Within the main compartment also are a coin hopper, which holds coins that are available for payouts, as well as a locked drop box or billbox, which holds coins and bills that are collected periodically by the drop team. Although it is not entirely clear, a belly door apparently permits access to the drop box or billbox without going through the main compartment. Several times weekly, a drop team enters each slot machine, through the belly door, to empty the drop box or billbox.

4. On March 28, 2010, and April 2, 2010, Respondent entered the main compartments of two slot machines in connection with his employment. The MEAL book for each machine was available inside the machine to log the activity. On these occasions, Respondent did not enter the logic compartments of these two slot machines.

5. On each of these occasions, Respondent logged the times in and out of each slot machine, but failed to log the purpose for his entering each machine. For the March 28 activity, 24 other entries are shown on the same page of the MEAL book, and all 24 report the times in and out and the reasons why the persons entered the machines. For the April 2 activity, five other entries are shown on the same page of the MEAL book, and

all five report the times in and out and the reasons why the persons entered the machines.

6. Isle of Capri determined that Respondent's failure to log reasons for entering the slot machines on March 28 and April 2 violated Isle of Capri policies. The resulting "performance document" notes that Isle of Capri had previously counseled Respondent for similar failures to make the required entries in MEAL books. The "performance document" states that Isle of Capri will retrain Respondent, but a repeat of this conduct may result in termination. As required by the performance document, to reflect understanding of the issues discussed in the document, Respondent signed the document, but did so "under protest."

7. On November 6, 2009, Petitioner sent Respondent a "warning letter." The letter explains that, on October 20, 2009, Respondent failed to complete the MEAL book with the time in and out of a specific slot machine. The letter states that this conduct violates rule 61D-14.024, which requires a log of logic compartment door openings and closings so as to include the time and reason for the opening. The letter warns that any future violations of slot machine laws or rules could result in an administrative fine or suspension or revocation of Respondent's slot machine occupational license.

8. On February 5, 2010, Petitioner sent Respondent a "warning letter." The letter explains that, on November 26, 2009, Respondent failed to complete the MEAL book with the time in and out of a specific slot machine. The letter states that this conduct violates rule 61D-14.023(2). The letter warns that any future violations of slot machine laws or rules could result in an administrative fine or suspension or revocation of Respondent's slot machine occupational license.

9. Respondent offered multiple defenses, including entrapment (never explained) and unfairness (the drop team is not required to log their openings of the belly door). The lone relevant defense was that Respondent had entered the main compartment, not the logic compartment, as Count I charged. It was apparent to the Administrative Law Judge, however, that Respondent recognized this to have been a pleading error by Petitioner, and Respondent was not prejudiced by the Administrative Law Judge's allowing Petitioner to amend the Administrative Complaint to substitute "main compartment" for "logic compartment."

10. Two important mitigating factors apply. As testified by the Isle of Capri general manager, electronic monitoring of all entries into the slot machine has rendered the rule obsolete. Likely for this reason, the current version of rule

61D-14.023 no longer contains the requirement set forth in former rule 61D-14.023(2).

11. On the other hand, nothing in the record suggests that Respondent relied on the proposed changes to rule 61D-14.012 when he failed to record the reasons for entering the main compartment on two occasions in the spring of 2010. After observing Respondent testify, the Administrative Law Judge finds that Respondent tends to view himself as the final arbiter of the rules that govern licensed slot machine technicians. Respondent's obstinacy, recent past problems in documenting the servicing of secured areas of slot machines, and commission of two violations (although in a single count) militate in favor of a fine that will refocus Respondent's attention on the critical, well-defined role that he plays within a sensitive, carefully regulated industry.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat.

13. Florida Administrative Code Rule 61D-14.023(2) provides:

A log of compartment door openings and closings shall be maintained inside the locked compartment of the slot machine. The log shall include the time and reason for the opening.

14. Petitioner must prove the material allegations by clear and convincing evidence. Dep't of Banking and Fin v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

15. Petitioner has proved that Respondent violated rule 61D-14-023(2), as alleged in Count I, by failing twice to log in openings of the compartment doors of two slot machines in the spring of 2010.

16. Section 551.107(11), Florida Statutes, provides: "The division may impose a civil fine of up to \$5,000 for each violation of this chapter or the rules of the division in addition to or in lieu of any other penalty provided for in this section."

RECOMMENDATION

It is

RECOMMENDED that the Division of Pari-Mutuel Wagering enter a final order dismissing Count II of the Administrative Complaint, finding Respondent guilty of Count I of the Administrative Complaint, and imposing an administrative fine of \$1000.

DONE AND ENTERED this 9th day of November, 2011, in
Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of November, 2011.

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.