

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

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	<b>9/16/2016</b>
File #	<b>2016-07131</b>

WEST FLAGLER ASSOCIATES, LTD.,

Petitioner,

v.

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

DBPR Case Nos. 2015-030305

2015-030307

DOAH Case Nos. 15-6773

15-6774

Respondent.

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FINAL ORDER

Pursuant to section 120.60(1), Florida Statutes (2015) and Rule 28-106.103 of the Florida Administrative Code, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("the Division") files the following Final Order. This cause came before the Division for the purpose of considering the Recommended Order issued by Administrative Law Judge E. Gary Early ("ALJ Early") on July 20, 2016, in DOAH case numbers 15-6773 and 15-6774, a copy of which is attached as Exhibit "A". The Department of Business and Professional Regulation ("Respondent") filed exceptions to the Recommended Order, to which West Flagler Associates, Ltd., ("Petitioner") filed a response and those exceptions and response are attached as composite Exhibit "B". Petitioner also filed exceptions to the Recommended Order to which Respondent filed a response and those exceptions and response are attached as composite Exhibit "C".

Background

On July 10, 2015, the Department issued two Permit Denial Letters, one in DBPR case number 2015030305, and one in DBPR case number 2015030307, denying both of West Flagler

Associates, Ltd.'s ("West Flagler") applications ("June Application" and "July Application") for Summer Jai Alai Permits in accordance with the provisions of Chapter 550, Florida Statutes. West Flagler petitioned the Respondent for a formal hearing regarding the July 10, 2015 letters of permit denial. ALJ Early convened a formal administrative hearing on May 2, 2016, and issued a Recommended Order on June 20, 2016, recommending the Division enter a final order denying West Flagler Associates, Ltd.'s. June 30, 2015 and July 1, 2016, applications for new summer jai alai permits.

The Respondent and Petitioner filed exceptions to ALJ Early's Recommended Order. After a complete review of the record in this matter, the Division rules as follows:

AGENCY STANDARD FOR REVIEW

Pursuant to Section 120.57(1)(l), Fla. Stat., the Division may not reject or modify findings of fact unless it first determines, from a review of the entire record, and states with particularity, that the findings of fact were not based on competent substantial evidence.

"Competent substantial evidence is such evidence that is 'sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.'"

Comprehensive Medical Access, Inc. v. Office of Ins. Regulation, 983 So. 2d 45, 46 (Fla. 1<sup>st</sup> DCA 2008)(quoting DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957)).

Pursuant to Section 120.57(1)(l), Fla. Stat., when rejecting or modifying conclusions of law or interpretations of administrative rules, the Division must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rules and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

## RULINGS ON PETITIONER'S EXCEPTIONS

### Exception #1

1. Petitioner takes exception to the finding of fact in Paragraph #20 of pages 9 through 10.

2. The Division rejects Petitioner's Exception #1.

### Exception #2

3. Petitioner takes exception to the finding of fact in Paragraph #30 of page 12.

4. The Division rejects Petitioner's Exception #2.

### Exception #3

5. Petitioner takes exception to the finding of fact in Paragraph #32 of page 12.

6. The Division rejects Petitioner's Exception #3.

### Exception #4

7. Petitioner takes exception to the finding of fact in Paragraph #34 of page.

8. The Division rejects Petitioner's Exception #4.

### Exception #5

9. Petitioner takes exception to the conclusion of law in Paragraph #51 of page 17.

10. The Division rejects Petitioner's Exception #5.

### Exception #6

11. Petitioner takes exception to the conclusion of law in Paragraph #51 of page 17.

12. The Division rejects Petitioner's Exception #6.

### Exception #7

13. Petitioner takes exception to the conclusion of law in Paragraph #57 of pages 20 through 21.

14. The Division rejects Petitioner's Exception #7.

Exception #8

15. Petitioner takes exception to the conclusion of law in Paragraph #58 of page 21.

16. The Division rejects Petitioner's Exception #8.

Exception #9

17. Petitioner takes exception to the conclusion of law in Paragraph #59 of page 21 in which ALJ Early found:

18. The Division rejects Petitioner's Exception #9.

Exception #10

19. Petitioner takes exception to the conclusion of law in Paragraph #60 of pages 21 through 22.

20. The Division rejects Petitioner's Exception #10.

Exception #11

21. Petitioner takes exception to the conclusion of law in Paragraph #61 of page.

22. The Division rejects Petitioner's Exception #11.

Exception #12

23. Petitioner takes exception to the conclusion of law in Paragraph #63 of page 22.

24. The Division rejects Petitioner's Exception #12.

Exception #13

25. Petitioner takes exception to the conclusion of law in Paragraph #66 of page.

26. The Division rejects Petitioner's Exception #13.

Exception #14

- 27. Petitioner takes exception to the conclusion of law in Paragraph #73 of page 26.
- 28. The Division rejects Petitioner's Exception #14.

Exception #15

- 29. Petitioner takes exception to the conclusion of law in Paragraph #74 of page 26.
- 30. The Division rejects Petitioner's Exception #15.

Exception #16

- 31. Petitioner takes exception to the recommendation on page 27.
- 32. The Division rejects Petitioner's Exception #16.

RULINGS ON RESPONDENT'S EXCPETIONS

Exception #1

- 33. Respondent takes exception to the conclusions of law set forth in Paragraph #68 of pages 24 through 25.
- 34. The Division rejects Respondent's Exception #1.

Exception #2

- 35. Respondent takes exception to the conclusions of law set forth in Paragraph #70 of page 25.
- 36. The Division rejects Respondent's Exception #2.

Exception #3

- 37. Respondent takes exception to the conclusions of law set forth in Paragraph #71 of page 25.
- 38. The Division rejects Respondent's Exception #3.

Exception #4

39. Respondent takes exception to the conclusions of law set forth in Paragraph #72 of page 26.

40. The Division rejects Respondent's Exception #4.

#### Exception #5

41. Respondent takes exception to the conclusion of law set forth in Paragraph #75 of page 27.

42. The Division rejects Respondent's Exception #5.

#### FINDINGS OF FACT

43. ALJ Early's Findings of Fact, as set forth in Exhibit "A" are approved, adopted and incorporated herein by reference. Those findings are supported by competent and substantial evidence.

#### CONCLUSIONS OF LAW

44. The Division rejects the Conclusion of Law in Paragraphs 67-72 and 75 because the conclusions have no bearing on the ultimate disposition of this case. ALJ Early found that the Petitioner's July Application should be denied because Summer Jai Alai Partnership was not eligible to convert a new summer jai alai permit, and therefore no new summer jai alai permit was created. *See* Recommended Order at ¶¶ 66 and 74. Furthermore, ALJ Early stated the Recommended Order should not be construed as determining whether any necessary condition precedent to the creation of a new summer jai alai permit on the part of Summer Jai Alai Partnership was performed. *See* Recommended Order at ¶¶ 63, footnote. 6. Accordingly, the Division reasonably rejects the advisory Paragraphs 67-72 and 75 of the Recommended Order.

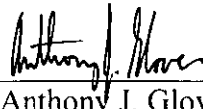
45. Paragraphs 38-66, 73, and 74 of ALJ Early's Conclusions of Law, as set forth in Exhibit "A" are approved, adopted, and incorporated herein by reference.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. The Petitioner's applications for new summer jai alai permits are DENIED.
2. This order shall become effective on the date of the filing with the Department's Agency Clerk.

DONE and ORDERED this 15<sup>th</sup> day of September, 2016 in Tallahassee, Leon County, Florida.

KEN LAWSON, Secretary  
Department of Business and  
Professional Regulation



Anthony J. Glover, Director  
Division of Pari-Mutuel Wagering  
Department of Business and  
Professional Regulation  
2601 Blair Stone Road  
Tallahassee, Florida 32399-1035

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to: (1) West Flagler Associates, Ltd., c/o Thomas J. Morton, Esquire, The Lockwood Law Firm, 106 East College Avenue, Suite 810, Tallahassee, Florida 32301; and (2) William D. Hall, Esquire, Department of Business and Professional Regulation, 2601 Blair Stone Road, Tallahassee, Florida 32399-2202 on this the 16<sup>th</sup> day of September, 2016.

RONDA L. BRYAN, Agency Clerk



Brandon Nichols, Deputy Agency Clerk  
Department of Business & Professional Regulation

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this Final Order may seek judicial review by filing an original Notice of Appeal with the Agency Clerk of the Department of Business and Professional Regulation at 2601 Blair Stone Road, Tallahassee, Florida 32399-2202 (agc.filing@myfloridalicense.com), 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 (30) days of rendition of this order, in accordance with Rule 9.110, Fla. R. App. P., and section 120.68, Florida Statutes.