

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

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

Petitioner,

vs.

Case No. 15-7001PL

PATRICK M. HAVEY,

Respondent.

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RECOMMENDED ORDER

Administrative Law Judge F. Scott Boyd conducted the final hearing by video teleconference on April 14, 2016, with sites in Lauderdale Lakes and Tallahassee, Florida.

APPEARANCES

For Petitioner: Louis Trombetta, Esquire  
Thomas J. Izzo, Esquire  
Department of Business and  
Professional Regulation  
Division of Pari-Mutuel Wagering  
1940 North Monroe Street, Suite 40  
Tallahassee, Florida 32399

For Respondent: Patrick M. Havey, pro se  
Apartment 9  
1639 Madison Street  
Hollywood, Florida 33020

STATEMENT OF THE ISSUES

The issues are whether Respondent issued a voucher ticket without obtaining cash or cash equivalent in exchange, in

violation of Florida Administrative Code Rule 61D-7.020(5)(b); had adjudication withheld on felony charges involving larceny, in violation of section 849.086(6)(g), Florida Statutes (2014); or was ejected from Gulfstream Park, in violation of section 550.0251(6), Florida Statutes, as alleged in the Second Amended Administrative Complaint; and if so, what is the appropriate sanction.<sup>1/</sup>

PRELIMINARY STATEMENT

On October 26, 2015, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (Petitioner or Division), filed a Second Amended Administrative Complaint against Mr. Patrick M. Havey (Respondent or Mr. Havey). The complaint charged violations of rules of the Division and Florida Statutes related to an incident on April 27, 2014, when it was alleged that Respondent issued a \$5,000.00 voucher ticket without obtaining payment for it.

Respondent disputed material facts in the complaint and requested an administrative hearing. The case was referred to the Division of Administrative Hearings and, after continuance, the final hearing was held on April 14, 2016.

Petitioner presented the testimony of two witnesses: Mr. Jorge Aparicio, security director of Gulfstream Park; and Respondent. Petitioner offered three exhibits, P-9, P-10, and P-12, which were admitted into evidence. Respondent testified

on his own behalf and offered no other witnesses or exhibits. Official recognition was given to records of the Seventeenth Judicial Circuit Court, in and for Broward County, Florida, as well as applicable statutes and rules of the Division.

No transcript of the hearing was ordered. Pursuant to Petitioner's request at hearing, April 29, 2016, was set as the deadline to submit proposed recommended orders. Both parties timely submitted post-hearing submissions, which were considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. The Division is the state agency charged with regulating pari-mutuel wagering and cardrooms in the state of Florida, pursuant to chapter 550 and section 849.086.

2. On April 27, 2014, Mr. Havey was licensed by the Division and was working at Silks mutuels window number 607 at Gulfstream Park, a facility authorized to conduct pari-mutuel wagering and cardroom operations.

3. At the end of the day on April 27, 2014, Mr. Havey's cash drawer did not balance. After a review of surveillance tapes and other information, Mr. Jorge Aparicio, a security director with Gulfstream Park, decided to investigate further.

4. On May 2, 2014, when Mr. Havey returned to work, he was interviewed by Mr. Aparicio about the missing money. Mr. Havey initially stated that he accidentally printed out a voucher for

\$5,000.00 for his friend Darren, when he had intended to punch the voucher for only \$500.00. He said that Darren was supposed to give him the money at the end of the day. Later, Mr. Havey stated he really printed out the voucher for \$5,000.00, placed it in his right shirt pocket, and gave the voucher to his friend Eddy inside the men's restroom for his friend to cash.

5. Later that day, Mr. Havey prepared a written statement regarding the money missing from his cash drawer. He wrote:

My friend Eddy needed 500. loan because I ~~told~~ he was being thriten. I offer to help Eddy by giving him 500 vocher. Eddy told me he would pay me back in a week. Eddy didn't want to come to my window #607. Eddy asked me to meet in the bathroom. I punched a \$500 vocher I thought but it ended being a \$5000. vocher. I gave him the vocher & never saw Eddy again. I planded on browing the five hundred from my friend to put \$500. back in my money so I would balance, ~~but~~[.]

6. Mr. Aparicio testified that Mr. Havey could not give a last name or address for his friend and noted that the name of the friend given by Mr. Havey changed during the course of the interview. After the interview, Mr. Aparicio called the president of Gulfstream Park and described what had taken place. He was directed to call the police and to exclude Mr. Havey from the property indefinitely. As reflected in the Security Report, Mr. Havey was "excluded indefinitely" from Gulfstream Park on May 2, 2014. This action did not necessarily bar Mr. Havey from the park permanently, for the president could allow him to

return, but he was excluded unless and until the president took further action. This "indefinite" exclusion constituted an ejection from Gulfstream Park.

7. When Mr. Havey left the investigation room, the Hallandale Beach Police were there. Mr. Havey testified that they did not ask him a single question, but immediately placed him under arrest and handcuffed him.

8. On August 21, 2014, Mr. Havey entered a plea of nolo contendere to a charge of grand theft in the third degree in the Seventeenth Judicial Circuit Court, in and for Broward County, Florida. Adjudication was withheld. He was placed on 24 months' probation, with the condition that he pay Gulfstream Park \$4,500.00 in restitution within 18 months.

9. At hearing, Mr. Havey admitted he issued a voucher ticket without receiving cash or cash equivalent in return. He also testified that he pled no contest with the understanding that if he paid \$4,500.00 restitution to Gulfstream Park, the charges would be "disposed of," and his record would be clear.

10. Clear and convincing evidence shows that on April 27, 2014, Mr. Havey issued a voucher ticket without receiving cash or cash equivalent in return; that he was ejected from Gulfstream Park on May 2, 2014; and that he pled nolo contendere to grand theft in the third degree on August 21, 2014, with adjudication withheld.

11. Mr. Havey testified that he has been involved in pari-mutuel wagering in various parks, in dog racing, and Jai Alai for 40 years. He stated that the incident was "out of his character," that it was drug and alcohol related, and that he was not thinking clearly. He testified that he could barely remember what had happened on that "dark day" in his life. He said that he sought treatment and is now on the way to full recovery. Mr. Havey expressed remorse for his actions.

12. Mr. Havey testified that he is now working part time at Mardi Gras Casino in Hallandale. He has performed well and has not been in any trouble there. He noted, however, that he is only making \$10.00 per hour, rather than the \$25.00 per hour he was making at Gulfstream Park. He lamented that it is extremely difficult to "keep a roof over your head" on only \$250.00 a week and that he needed to work for a few more years. He stated that his wife should shortly be receiving money for a disability claim and that when she did so, he would pay Gulfstream Park full restitution. He testified that he hoped that the president of Gulfstream would then let him return. No evidence of prior discipline was introduced.

#### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this

proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015).

14. A proceeding to suspend, revoke, or impose other discipline upon a license is penal in nature. State ex rel. Vining v. Fla. Real Estate Comm'n, 281 So. 2d 487, 491 (Fla. 1973). Petitioner must therefore prove the charges against Respondent by clear and convincing evidence. Fox v. Dep't of Health, 994 So. 2d 416, 418 (Fla. 1st DCA 2008) (citing Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996)).

15. The clear and convincing standard of proof has been described by the Florida Supreme Court:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

16. Whether Respondent committed the charged offenses is a question of ultimate fact to be decided by the trier of fact in the context of each alleged violation. McKinney v. Castor, 667

So. 2d 387, 389 (Fla. 1st DCA 1995); Langston v. Jamerson, 653 So. 2d 489, 491 (Fla. 1st DCA 1995).

COUNT 1

17. Section 550.0251(3) required Petitioner to adopt reasonable rules for the control, supervision, and direction of all applicants, permittees, and licensees, and for the holding, conducting, and operating of all racetracks, race meets, and races held in this state.

18. Petitioner adopted rule 61D-7.020 on January 10, 2008. Rule 61D-7.020(5) provided:

(5) (a) No pari-mutuel tickets shall be sold except through properly designated totalisator terminals or via the following authorized methods:

1. Advanced and future bets;
2. Account betting;
3. Betting utilizing credit vouchers; and
4. Betting utilizing portable terminals.

(b) All ticket sales shall be for cash or cash equivalent.

19. As Respondent admitted at hearing, on April 27, 2014, he issued a voucher ticket without receiving cash or cash equivalent in exchange.

20. Petitioner proved by clear and convincing evidence that Respondent violated rule 61D-7.020(5) (b) on April 27, 2014,



by issuing a ticket voucher without receiving cash or cash equivalent in exchange.

COUNT 2

21. Section 849.086(6)(g) provided:

The division may deny, declare ineligible, or revoke any cardroom occupational license if the applicant or holder thereof has been found guilty or had adjudication withheld in this state or any other state, or under the laws of the United States of a felony or misdemeanor involving forgery, larceny, extortion, conspiracy to defraud, or filing false reports to a government agency, racing or gaming commission or authority.

22. Respondent proved by clear and convincing evidence that Respondent had adjudication withheld in Florida for the third degree felony of grand theft, a felony involving larceny, on August 21, 2014.

COUNT 3

23. Section 550.0251(6) provided, in relevant part:

In addition to the power to exclude certain persons from any pari-mutuel facility in this state, the division may exclude any person from any and all pari-mutuel facilities in this state for conduct that would constitute, if the person were a licensee, a violation of this chapter or the rules of the division. The division may exclude from any pari-mutuel facility within this state any person who has been ejected from a pari-mutuel facility in this state or who has been excluded from any pari-mutuel facility in another state by the governmental department, agency, commission, or authority exercising regulatory

jurisdiction over pari-mutuel facilities in such other state.

24. Respondent was "excluded indefinitely" from Gulfstream Park on May 2, 2014. This constitutes an ejection within the meaning of section 550.0251(6).

25. Petitioner proved by clear and convincing evidence that Respondent was ejected from a pari-mutuel facility in this state on May 2, 2014.

Penalty

26. Section 550.105(5)(b) provided, in part, that Petitioner may deny, suspend, revoke, or declare ineligible any occupational license if the applicant for or holder thereof has violated the provisions of this chapter or the rules of the Division governing the conduct of persons connected with racetracks and frontons.

27. Section 550.105(5)(e) provided, in part, that Petitioner may impose a civil fine of up to \$1,000.00 for each violation of the rules of the Division in addition to or in lieu of any other penalty provided for in that section.

28. Section 849.086(14)(a) provided:

The division may deny a license or the renewal thereof, or may suspend or revoke any license, when the applicant has: violated or failed to comply with the provisions of this section or any rules adopted pursuant thereto; knowingly caused, aided, abetted, or conspired with another to cause any person to violate this section or

any rules adopted pursuant thereto; or obtained a license or permit by fraud, misrepresentation, or concealment; or if the holder of such license or permit is no longer eligible under this section.

29. Section 849.086(6)(g) also provided Petitioner authority to revoke Respondent's cardroom occupational license.

30. Rule 61D-2.021, entitled Aggravating and Mitigating Circumstances, provided:

Circumstances which may be considered for the purposes of mitigation or aggravation of any penalty shall include, but are not limited to, the following:

- (1) The impact of the offense to the integrity of the pari-mutuel industry.
- (2) The danger to the public and/or racing animals.
- (3) The number of repetitions of offenses.
- (4) The number of complaints filed against the licensee or permitholder, which have resulted in prior discipline.
- (5) The length of time the licensee or permitholder has practiced.
- (6) The deterrent effect of the penalty imposed.
- (7) Any efforts at rehabilitation.
- (8) Any other mitigating or aggravating circumstances.

31. In this case, Respondent's actions directly affected the integrity of the pari-mutuel industry. However, there was

no evidence of prior violations, no danger to racing animals, and Respondent has been licensed for over 40 years.

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: (1) finding that Mr. Patrick M. Havey was in violation of Florida Administrative Code Rule 61D-7.020(5)(b), was ejected from a pari-mutuel facility, and had adjudication withheld on a felony involving larceny; and (2) revoking his pari-mutuel occupational license.

DONE AND ENTERED this 17th day of May, 2016, in Tallahassee, Leon County, Florida.



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F. SCOTT BOYD  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of May, 2016.

ENDNOTE

<sup>1/</sup> References to statutes and rules in this Recommended Order are to versions in effect at the time of the alleged violations, except as otherwise indicated.

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.