STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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

Petitioner,

vs.

CHRISTOS GATIS,

Respondent.
_____/

Case No. 17-6850PL

*AMENDED AS TO
TYPOGRAPHICAL ERROR ON
PAGES 7 AND 8

*AMENDED RECOMMENDED ORDER

A hearing was conducted in this case pursuant to sections 120.569 and 120.57(1), Florida Statutes (2017), before Cathy M. Sellers, an Administrative Law Judge ("ALJ") of the Division of Administrative Hearings ("DOAH"), on February 12, 2018, by video teleconference at sites in West Palm Beach and Tallahassee, Florida.

APPEARANCES

For Petitioner: James A. Lewis, Esquire
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399

For Respondent: Christos Gatis, pro se
3602 Southwest Sunset Trace Circle
Palm City, Florida 34990

STATEMENT OF THE ISSUES

Whether Respondent violated sections 550.105(4) and (7), Florida Statutes (2016),[1/] and Florida Administrative Code Rule 61D-2.005, as applicable, by engaging in the following conduct, as alleged in the First Amended Administrative Complaint: (1) assisting an unlicensed person in working in a restricted area at a licensed pari-mutuel wagering facility, in violation of section 550.105(4) and rule 61D-2.005; and (2) accumulating unpaid obligations directly related to the sport of pari-mutuel racing, in violation of section 550.105(7); and, if so, the penalty that should be imposed.

PRELIMINARY STATEMENT

On March 29, 2017, Petitioner, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, served its First Amended Administrative Complaint ("Administrative Complaint") on Respondent, Christos Gatis, charging him with two counts of violating statutes and rules governing pari-mutuel racing.

Respondent disputed the material facts alleged in the Administrative Complaint and timely filed election of rights forms requesting an administrative hearing. The case was forwarded to DOAH for assignment of an ALJ to conduct a hearing pursuant to sections 120.569 and 120.57(1). The final hearing was held on February 12, 2018.

Petitioner presented the testimony of Jennifer Ganey, Julio Minaya, and Doreen DeFonzo. Petitioner's Exhibits 1, 2, 5, and 6 were admitted into evidence without objection, and official recognition was taken of the Default and Final Judgment by Default entered in Case No. COCE-16-019754DIV 54, recorded in the County Court for The Seventeenth Judicial Circuit in and for Broward County, Florida, on December 14, 2016. Respondent testified on his own behalf. He did not tender any exhibits for admission into evidence.

The one-volume Transcript of the final hearing was filed at DOAH on April 6, 2018, and the parties were given ten days in which to file proposed recommended orders. Petitioner's Proposed Recommended Order, which was timely filed on April 16, 2018, was duly considered in preparing this Recommended Order. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

I. The Parties and Licensure Status

1. Petitioner is the state agency charged with regulating pari-mutuel wagering in the state of Florida pursuant to chapter 550.

2. At all times relevant to this proceeding, Respondent was the holder of Pari-Mutuel Wagering Individual Occupational License No. 2005775-1021, which authorizes him to own and train racing horses in this state pursuant to chapter 550.

3. At all times relevant to this proceeding, Respondent trained and raced horses at Gulfstream Park ("Gulfstream"), a facility operated by a permitholder authorized to conduct pari-mutuel wagering in this state pursuant to chapter 550.

II. The Administrative Complaint

4. At all times relevant to this proceeding, Respondent was subject to chapter 550 and applicable rules codified in Florida Administrative Code Chapter 61D-2.

5. On or about March 29, 2017, Petitioner served its Administrative Complaint on Respondent, charging him with two counts of violating statutes and rules governing pari-mutuel racing.

6. Count I of the Administrative Complaint charges Respondent with "conspiring with, soliciting, aiding, abetting, counseling, hiring, or procuring" Salvador Domingo Ramos to work in a restricted area of Gulfstream on or about July 25, 2016. If proved, this conduct would violate section 550.105(4), which makes it unlawful to take part in any way at any pari-mutuel facility without first having secured an occupational license and paid the occupational license fee; and also would violate rule 61D-2.005, which, among other things, prohibits a licensee from conspiring with, aiding, abetting, counseling, hiring, or procuring any other person or persons to engage in a violation of chapter 550.

7. Count II of the Administrative Complaint charges Respondent with "accumulating unpaid obligations that directly relate to the sport of racing at a pari-mutuel facility in Florida." If proved, this conduct would violate section 550.105(7), which, among other things, makes a sanctionable offense the accumulation of unpaid obligations that directly relate to the sport of racing being conducted at a pari-mutuel facility in this state.

III. The Evidence Adduced at Hearing

Count I

8. On July 25, 2016, Julio Minaya, an investigative supervisor employed by Petitioner, engaged in an inspection of the "backside" of Gulfstream. Specifically, Minaya and the investigative team he supervised inspected barn nos. 21, 22, and 23 at Gulfstream.

9. The "backside" is a secured area at a pari-mutuel facility that contains the barns and stables, where the racing horses are housed, and the race tracks.

10. Only persons who hold occupational licenses or who are otherwise authorized are allowed to enter and engage in activities in the backside, and security officers are hired to guard the backside and ensure that unauthorized persons do not enter this area.

11. As part of the inspection on July 25, 2016, Minaya requested each person encountered in barn nos. 21, 22, and 23 to provide his or her occupational license for inspection, in order to ensure that the person was licensed and that the license was valid.

12. During the July 25, 2016, inspection of the backside at Gulfstream, a member of the Minaya's investigative team encountered a person in a storage room within barn no. 23. The man, who ultimately identified himself as Salvadore Domingo Ramos, told Minaya that he did not have his license with him. At that point, Minaya informed Ramos that he would have to leave the backside. As Minaya escorted him out of the backside, Ramos told Minaya that he worked for Respondent, that he did not have "any papers," and that he was just trying to work. Minaya interpreted Ramos's comments to mean that he (Ramos) was an undocumented immigrant, so would not have a valid occupational license.

13. Minaya then contacted Respondent, who told him that Ramos had been working for him, exercising his horses, for approximately a month and a half. Respondent told Minaya that he did not know that Ramos was unlicensed, but that had seen Ramos exercising other trainers' horses, so assumed Ramos was licensed.

14. At the final hearing, Respondent testified that Ramos had worked for him, for compensation, as an exerciser for the horses Respondent trained. Respondent further testified that he

knew that unlicensed persons could not be hired to work in any capacity in the backside, and he acknowledged that he did not ask Ramos for his license before he hired him to exercise his horses. However, he noted that persons who go into the backside must pass through a security check at which they must show their license to gain entry. Because Respondent had seen Ramos on numerous occasions in the backside exercising other trainers' horses, he assumed that Ramos was licensed.

15. The evidence, consisting of testimony by Petitioner's licensing administrator and supporting documentation from Petitioner's licensing computer database, confirmed that Ramos did not hold an occupational license on July 25, 2016, and had never held such a license.

Count II

16. Finish Line Feed, Inc. ("Finish Line"), is a business that sells animal food products. Ninety percent of its business is selling equestrian hand grain in Florida to race track facilities and to individuals who train and race horses at race tracks in Florida that hold pari-mutuel events.

17. Doreen DeFonzo, office manager at Finish Line, is responsible for keeping records of all sales transactions for Finish Line.

18. DeFonzo testified, and provided copies of customer account statements showing, that Respondent was a customer of

Finish Line and that he purchased equestrian food products from Finish Line over a period of time. DeFonzo testified, credibly, that the food Respondent purchased was delivered to him at a pari-mutuel facility in Florida.

19. The evidence shows that Respondent often was arrears in paying his account balance with Finish Line, but that he periodically would pay part of the outstanding balance.

20. The customer account statements show on November 30, 2015, Respondent paid $500.00 toward his outstanding account balance. After this payment, Respondent's outstanding balance was $12,915.91. Thereafter, Respondent did not make any further payments toward his customer account balance. Finance charges on the outstanding balance accrued monthly, so that by July 31, 2016, Respondent's outstanding account balance was $13,986.06.

21. Thereafter, Finish Line filed suit against Respondent to recover the amount Respondent owed. The court entered a Default and Final Judgment by Default ("Default Judgment") against Respondent in Case No. COCE-16-019754DIV 54, ordering Respondent to pay a total of $15,458.14 to Finish Line for the outstanding principal balance of $13,986.06, plus filing, process service, and attorney fees. The Default Judgment was recorded in the Broward County public records on December 14, 2016.

22. DeFonzo credibly testified that to date, Respondent still owes Finish Line the amount of the Default Judgment, plus

accrued interest, and that Finish Line and Respondent have not discussed or entered into any repayment agreements regarding the amount Respondent owes Finish Line.

23. Respondent does not dispute that he did not fully pay off his balance with Finish Line or that a Default Judgment was entered against him.

24. He testified that he had been a customer of Finish Line from 2004 to 2015. His credible testimony, supported by the customer account statements, showed that he made periodic payments in an effort to reduce his outstanding balance. He testified, credibly, that he fell on bad financial times, and that a number of unfortunate events and circumstances——including having an accident, breaking his hip, losing his driver's license, becoming unemployed, and being unable to pay workers' compensation insurance for any employees he may hire——rendered him unable to revive his horse training and racing business, so that he was, and remains, unable to pay the amount he owes Finish Line.

25. Respondent currently is unemployed and does not train or race horses at Gulfstream or any other pari-mutuel facility.

Findings Regarding Alleged Violations

26. Based on the foregoing, Petitioner has shown, by clear and convincing evidence, that Respondent hired an unlicensed person to work for him in a restricted area of Gulfstream on or

about July 25, 2016. This conduct violates section 550.105(4), which makes it unlawful to take part in any way at any pari-mutuel facility without first having secured an occupational license and paid the occupational license fee. This conduct also violates rule 61D-2.005, which, among other things, prohibits a licensee from hiring any other person to engage in a violation of chapter 550.

27. Based on the foregoing, Petitioner has shown, by clear and convincing evidence, that Respondent accumulated unpaid obligations that directly relate to the sport of racing at a pari-mutuel facility in Florida. This conduct violates section 550.105(7), which, among other things, makes a sanctionable offense the accumulation of unpaid obligations that directly relate to the sport of racing being conducted at a pari-mutuel facility in this state.

Aggravating or Mitigating Circumstances

28. There was no evidence presented showing that Respondent previously violated any laws or rules regarding pari-mutuel wagering or pari-mutuel wagering facilities in Florida.

29. Additionally, the evidence shows that Respondent did not knowingly or willfully hire an unlicensed person. As Respondent persuasively testified, he had seen Ramos on the premises in the backside of Gulfstream working for other

trainers, so assumed that he was licensed. Respondent did not know Ramos was unlicensed when he hired him.

30. The evidence further shows that due, at least in part, to a series of significant, unfortunate events and setbacks, Respondent is unemployed, so is not in a financial position to purchase the insurance necessary for him to be able to restart his horse training business. These hardships have rendered Respondent unable to pay Finish Line the balance owed pursuant to the Default Judgment.

31. The evidence does not show that Respondent is, or has been, financially able to pay Finish Line the balance he owes but has simply chosen not to do so.[2/]

32. The evidence also does not show that Respondent bought products from Finish Line, intending not to pay for them or knowing that he was not going to pay for them.

CONCLUSIONS OF LAW

33. DOAH has jurisdiction over the parties to, and the subject matter of, this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

34. A proceeding to suspend, revoke, or impose other discipline upon a license is penal. State ex rel. Vining v. Fla. Real Estate Comm'n, 281 So. 2d 487, 491 (Fla. 1973). Therefore, Petitioner must 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)). The Supreme Court of Florida has described this standard of proof as follows:

> 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)).

35. Section 550.105(4) states: "[i]t is unlawful to take part in or officiate in any way at any pari-mutuel facility without first having secured a license and paid the occupational license fee."

36. Section 550.105(7) states in pertinent part: "[t]he division may deny, revoke, or suspend any occupational license if the applicant therefor or holder thereof accumulates unpaid obligations or defaults in obligations . . . if such unpaid obligations [or] defaults . . . directly relate to the sport of jai alai or racing being conducted at a pari-mutuel facility within this state."

37. Rule 61D-2.005 states: "[n]o person shall conspire with, solicit, aid, abet, counsel, hire, or procure any other

person or persons to engage in a violation of [c]hapter 550, Florida Statutes, or the rules promulgated thereunder, nor shall he/she commit any such act on his/her own."

38. For the reasons addressed above, it is concluded that Petitioner has proved, by clear and convincing evidence, that Respondent violated sections 550.105(4) and 550.105(7) and rule 61D-2.005.

Penalty

39. Section 550.0251(10) authorizes Petitioner to impose an administrative fine for a violation of chapter 550 of not more than $1,000.00 for each separate count or offense, and to suspend or revoke an occupational license for a violation of chapter 550.

40. Petitioner has adopted rule 61D-2.021, which enumerates circumstances that may be considered for the purposes of mitigation or aggravation of any penalty. The rule states:

> 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.

41. Here, Petitioner did not present evidence establishing that, as a result of Respondent's violation of section 550.105(4) and rule 61D-2.005, the integrity of the pari-mutuel industry was impacted; the public or racing animals were in danger; Respondent committed repeated offenses of each violation; Respondent previously had been disciplined as the result of complaints having been filed against him; or that Respondent willfully or knowingly violated section 550.105(4) and rule 61D-2.005. As previously found, although Respondent did not request to see Ramos' occupational license when he hired him, he nonetheless had a colorable reason for believing that Ramos was licensed—— specifically, that he had seen Ramos in the backside of Gulfstream on numerous occasions working with other trainers' horses. Collectively, these factors militate against imposing a substantial fine on Respondent for violating section 550.105(4) and rule 61D-2.005.

Fine

42. Petitioner seeks to impose a $200.00 fine on Respondent to be paid in full over a six-month period.

43. Considering Respondent's minor culpability in violating section 550.105(4) and rule 61D-2.005, and given his current financial hardship and consequent inability to pay a significant fine, the undersigned recommends imposing a fine of $100.00 for these violations, to be paid in full over a six-month period. This recommendation takes into consideration Respondent's current extreme financial hardship, which he is suffering due to no demonstrated fault of his own. The undersigned is concerned that imposing a fine that Respondent cannot pay may subject him to further disciplinary sanctions in the future——not for engaging in additional conduct that violates chapter 550, but, instead, for being unable to pay a fine imposed for a relatively minor violation. Given that Respondent has no prior disciplinary history and had only minor culpability when he unknowingly hired an unlicensed person, the undersigned is of the view that a fine of $100.00 is reasonable. While this amount may seem so minimal that it would not constitute a deterrent to future violations, it is, in fact, a significant amount of money to a person who is unemployed and is suffering extreme financial hardship.[3/] Further, imposing a fine that Respondent may be better able to

pay increases the likelihood that Petitioner will secure payment of that fine from Respondent.

License Suspension

44. Petitioner also seeks to suspend Respondent's occupational license pursuant to section 550.105(7).

45. The plain language of section 550.105(7) makes the accumulation by a licensee of unpaid obligations or defaults in obligations a violation for purposes of imposing discipline. The failure to pay an obligation in violation of section 550.105(7) is a continuing offense that is not completed until the obligation is paid. See Haupt v. State, 499 So. 2d 16, 17 (Fla. 2d DCA 1986)(distinguishing separate offenses from a continuing offense for purposes of imposition of a penalty). In Department of Business and Professional Regulation v. Johnson, Case No. 01-0603 (Fla. DOAH May 1, 2001; Fla. DBPR May 30, 2001), the ALJ noted that "[s]ection 550.105(7), Florida Statutes, imposes no limit on the length of suspensions that may be imposed upon licensees who do not satisfy their pari-mutual racing-related "obligations." Accordingly, the license of such a licensee may be suspended indefinitely until such time as the licensee's obligation is satisfied."

46. Here, Petitioner seeks a one-year suspension of Respondent's license, with an "'option' enabling [Petitioner][4/] to reinstate his license if he satisfies the default judgment

entered against him or enters into an arrangement with Finish Line Feed providing for the remittance of his unpaid obligations and remains in compliance with same."

47. The undersigned interprets this language, which is in paragraph 36 of Petitioner's Proposed Recommended Order, to mean that Petitioner is requesting that Respondent's license be suspended for a period of one year, but that if, within this one-year suspension period, Respondent either repays Finish Line in full or enters into an arrangement with Finish Line to pay off the debt and remains compliant with that arrangement, that Petitioner has the "option"——that is, Petitioner may, but is not required——to lift the suspension during this one-year period. Thus, even if Respondent were to pay off his obligation in full or enter into an arrangement to do so and remain compliant with that arrangement, Petitioner still could, at its discretion, suspend his license for up to one year.

48. In support of its proposed suspension, Petitioner cites several administrative cases brought under section 550.105(7), or its precursor, section 550.105(6). Most of those cases are factually distinguishable from this case and imposed penalties that, under the circumstances of those cases, were substantially less stringent than the penalty Petitioner seeks to impose in this case.

49. In Department of Business and Professional Regulation v. Sacco, Case No. 96-5522 (Fla. DOAH June 11, 1997; Fla. DBPR Aug. 3, 1997), Sacco, the holder of an occupational license, purchased a thoroughbred race horse but did not pay Slavin, the owner, for the horse. He also borrowed another horse from Slavin, sold that horse without obtaining Slavin's permission, and did not pay Slavin for the horse. Effectively, Sacco converted——i.e., stole——the horses from Slavin. Slavin ultimately obtained a court judgment against Sacco for the value of the horses. Thereafter, the Department of Business and Professional Regulation ("DBPR") took disciplinary action against Sacco for violating section 550.105(6). While the disciplinary action was pending, Respondent's occupational license expired and was not renewed. In determining that Respondent should be disciplined for violating section 550.105(6), the ALJ recommended, and DBPR imposed, "indefinite ineligibility for licensure" until the outstanding debt to the owner was paid.

50. In Sacco, not only did the then-licensee engage in dishonest conduct by effectively stealing two horses from Slavin, but he also made no apparent effort to pay the debt, took no responsibility at the final hearing for his conduct, and advanced tortured arguments at the hearing in an effort to avoid discipline. Although Sacco remained ineligible for occupational licensure for as long as he owed an unpaid debt (of an amount

unspecified in the Recommended Order), he apparently was eligible for re-licensure as soon as he repaid the debt.

51. By contrast, here, Respondent's behavior is substantially less culpable. Respondent did make effort to pay off his debt to Finish Line before events and circumstances rendered him unemployed and, thus, incapable of paying the debt. Respondent remains unemployed at this time, so has not entered into an agreement or made any arrangements with Finish Line to repay the debt. At the final hearing, Respondent acknowledged the debt, did not attempt to avoid responsibility, and offered a credible and sympathetic explanation as to why he had not paid off the debt.

52. In Department of Business and Professional Regulation v. Inserra, Case No. 07-5686 (Fla. DOAH Apr. 9, 2008; Fla. DBPR May 19, 2008), Inserra, an occupational license holder, entered into an oral contract with Posco, under which Inserra agreed to sell four thoroughbred horses to Posco to be used in pari-mutuel racing for $36,750.00. Posco paid the money to Inserra for the horses. However, Inserra produced only one of the horses——and then without its registration papers——so Posco had to pay $3,436.00 to register the horse, which was never able to race. Subsequently, Inserra and Posco entered into a written agreement under which Inserra would repay Posco a total sum of $40,186.00 for the three horses not produced, the horse unable to

race, and the cost of the registration papers for the horse unable to race. Inserra failed to pay Posco the amount owed under the written agreement, so Posco filed suit and obtained a judgment against Inserra in the amount of $42,075.78. Thereafter, DBPR took disciplinary action against Inserra for violating section 550.105(7). The ALJ recommended, and DBPR imposed, a suspension of Inserra's license "for a period of not less than ten days and continuing until Mr. Inserra provides satisfactory proof that he satisfied his financial obligation to Kenneth Posco as ordered in the Judgment." Although the length of the suspension was "indefinite" in the sense that it continued for as long as Inserra failed to pay Posco, it could have been as short as only ten days if Inserra paid Posco and provided satisfactory proof of payment within that ten-day period.

53. Like Sacco, Inserra involved repeated, egregious culpable behavior on the part of the licensee, who apparently had made no effort to repay the amount he owed Posco. By contrast, in this case, Respondent was making some effort to pay down his obligation to Finish Line until he became unable to do so through a series of events and circumstances that have rendered him unemployed, and, thus, incapable of repaying Finish Line. Putting aside——for now——the point that imposing a suspension of any length once a licensee has paid its obligations or defaults in obligation is contrary to the plain language of

section 550.105(7), which authorizes suspension for unpaid obligations or defaults in obligations, Inserra's license could have been suspended for as little as 10 days, notwithstanding that he engaged in substantially more culpable conduct than that in which Respondent engaged in this proceeding.

54. Department of Business and Professional Regulation v. Garey, Case No. 98-4566 (Fla. DOAH Mar. 9, 1999; Fla. DBPR Apr. 29, 1999), also involved culpable behavior on the part of the licensee. In that case, Garey, a holder of a pari-mutuel wagering license, cashed several checks at Calder Race Course ("Calder") over an approximately two-month period of time, knowing the checks to be worthless because they were drawn on a bank account that had previously been closed. Garey eventually did repay Calder the amount he owed. Nonetheless, DBPR took disciplinary action against Garey, requesting that his license be suspended for 30 days. The ALJ determined that "[s]uch penalty is within the range of permissible penalties, and consequently, is accepted." DBPR imposed the 30-day penalty in its Final Order.

55. Again putting aside the point that imposing a suspension of any length once a licensee has paid its obligations is contrary to the plain language of section 550.105(7), Garey's license was suspended for only 30 days, notwithstanding that he willfully and repeatedly engaged in conduct far more culpable

than that in which Respondent engaged in this proceeding. The evidence showed that Garey knew, each time he presented checks to Calder for payment, that the checks would not be honored. Thus, Garey's conduct was willful, dishonest, and tantamount to theft.

56. By contrast, here, the evidence does not show that Respondent purchased products from Finish Line knowing that he was not going to pay for them. Further, the evidence shows that Respondent made ongoing efforts to pay down that debt, until he was no longer able to do so. Although the amount of Garey's debt was substantially less than the amount of Respondent's debt in this proceeding, Garey's conduct in incurring that debt was far more blameworthy than was Respondent's.

57. Based on the foregoing, the undersigned concludes that it is reasonable to impose a penalty that is less stringent than the penalties imposed in Sacco, Inserra, and Garey.

58. Accordingly, the undersigned recommends that Respondent's license be suspended until such time as either: (1) Respondent has repaid his debt to Finish Line in full, or (2) Respondent has entered into an agreement with Finish Line to repay his debt and has been in compliance with that agreement for a period of six months.

59. Under the first alternative, the suspension of Respondent's license would be lifted and his license reinstated by Petitioner at such time as he demonstrates to Petitioner that

his debt to Finish Line has been paid in full. Under this alternative, Petitioner would be required to reinstate Respondent's license at the time Respondent demonstrates that he has paid his debt in full. In other words, Petitioner would not have the discretion to continue the suspension of Respondent's license once he has shown that he has paid his debt in full. This alternative comports with the plain language of section 550.105(7), which authorizes suspension of an occupational license only for unpaid obligations or defaults in obligations.

60. Under the second alternative, the suspension of Respondent's license would be lifted and his license reinstated by Petitioner at such time as he demonstrates to Petitioner that he has entered into an agreement with Finish Line to repay his debt and has been in compliance with that agreement for six months. Under this alternative, Petitioner would be required to reinstate Respondent's license at the time Respondent demonstrates that he entered into an agreement with Finish Line to repay his debt and has been in compliance with that agreement for six months. Petitioner would not have the discretion to continue the suspension of Respondent's license once he has shown that he has entered into an agreement with Finish Line to repay his debt and has been in compliance with that agreement for six months. This alternative is consistent with section 550.105(7),

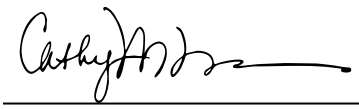
which provides that Petitioner "may" suspend an occupational license if the holder accumulates unpaid obligations or defaults in obligations. The statute's use of the word "may" appears to afford Petitioner the discretion to reinstate Respondent's license, even when he has not fully paid his debt.

61. Finally, imposing a shorter suspension period based on the conditions set forth above takes into consideration the financial hardship that Respondent has experienced and currently is experiencing, and may help him become reemployed in the pari-mutuel industry more quickly.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, enter a final order finding and concluding that Respondent violated sections 550.105(4) and 550.105(7), Florida Statutes, and Florida Administrative Code Rule 61D-2.005; imposing a fine of $100.00 to be paid over a period of six months of the date of the final order; and suspending Respondent's occupational license until such time as either: (1) Respondent has repaid his debt to Finish Line in full, or (2) Respondent has entered into an agreement with Finish Line to repay his debt and he has been in compliance with that agreement for a period of six months.

DONE AND ENTERED this 8th day of May, 2018, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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this 8th day of May, 2018.

ENDNOTES

[1/] All references to chapter 550 or provisions within that statute are to the 2016 version, which was in effect at the time of the alleged violations at issue in this proceeding.

[2/] To this point, Respondent credibly testified that he had purchased products from Finish line from 2004 to 2015. The evidence, consisting of Respondent's persuasive testimony, as well as customer account statements from Finish Line, establish that Respondent's difficulty in paying Finish Line began in late 2014.

[3/] To that point, if Respondent were to commit additional violations in the future, Petitioner could surmise that imposing a modest fine of $100.00 was not a deterrent, and could take that into account in imposing more stringent fines in the future.

[4/] The undersigned assumes that the word "Petitioner," rather than "Respondent" was intended to be used in this sentence because Respondent does not possess the power to "reinstate" his own license; the power to "reinstate" a suspended license rests with Petitioner, not with a licensee. See § 550.105, Fla. Stat.

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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.