

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

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

Petitioner,

vs.

Case No. 19-2390

DACHIELL RIOS,

Respondent.

_____ /

RECOMMENDED ORDER

A final hearing was held in this matter before Robert S. Cohen, an Administrative Law Judge with the Division of Administrative Hearings, on August 5, 2019, by video teleconference at sites in Miami and Tallahassee, Florida.

APPEARANCES

For Petitioner: Jason Walter Holman, Esquire
Division of Pari-Mutuel Wagering
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399

For Respondent: Dachiell Rios, pro se
250 Northwest 55th Court
Miami, Florida 33126

STATEMENT OF THE ISSUE

Whether Respondent was ejected and permanently excluded from a facility as stated in the Administrative Complaint, and, if so, what sanction should be imposed.

PRELIMINARY STATEMENT

On April 3, 2019, the Division of Pari-Mutuel Wagering ("Division" or "Petitioner") filed an Administrative Complaint against Respondent. The Administrative Complaint alleged that Respondent was permanently excluded from PPI, Inc., the facility known as Isle Casino Racing Pompano Park ("Isle Casino") on March 12, 2019, and that Respondent was subject to permanent exclusion from all licensed pari-mutuel facilities in the State of Florida, based on his permanent exclusion from Isle Casino on March 12, 2019.

The Division received Respondent's Election of Rights form on or about April 25, 2019, wherein Respondent requested a formal hearing pursuant to sections 120.57(1) and 120.569(2)(a), Florida Statutes. In his Election of Rights, Mr. Rios disputed that he was ejected or permanently excluded by Isle Casino.

At the hearing, Petitioner presented the testimony of John Joseph Keenan and William Smith; and offered six exhibits, all of which were admitted into evidence. Respondent testified on his own behalf and offered no exhibits.

The one-volume Transcript of the final hearing was filed on August 23, 2019. The parties agreed upon September 13, 2019, as the date for filing proposed recommended orders.

Petitioner timely submitted its Proposed Recommended Order on the agreed-upon date. Respondent did not file a proposed recommended order or any post-hearing submittal.

References to statutes are to Florida Statutes (2018), unless otherwise noted.

FINDINGS OF FACT

1. Petitioner is the state agency charged with regulating pari-mutuel wagering, slot machines, and cardroom operations pursuant to chapters 550, 551, and section 849.086, Florida Statutes.

2. At all times material to this case, Respondent was a patron of Isle Casino.

3. At all times material to this case, Isle Casino was a facility operated by a permit holder authorized to conduct pari-mutuel wagering and to operate slot machines and a cardroom in the State of Florida.

4. Respondent offered no tangible evidence suggesting that he was not excluded from Isle Casino.

5. Respondent's date of birth is February 3, 1983.

6. John Joseph Keenan is the director of compliance and safety for Isle Casino. He has been with Isle Casino for more

than ten years. He began as a compliance officer, became compliance manager in 2012, and then director of compliance and safety in 2014.

7. On March 9, 2019, several people at a poker table noticed "something was going on" with Mr. Rios and reported it to the poker supervisor. At this time, poker management and security reviewed surveillance video to determine if the allegations were true.

8. The allegations against Mr. Rios were that he was doing something suspicious with the cards used at the table. During inspection of the deck that was used, Isle Casino noticed markings on the cards. Review of the surveillance video showed Mr. Rios shielding the cards with his hands and performing an action with his thumb.

9. A close inspection of the cards in play at the single deck poker game shows that slits were made for the high cards in the deck, i.e., aces, kings, queens, jacks and tens. The marks were made with Mr. Rios's thumbnail. He etched a line in high cards in the poker deck and spaced the lines so the progression from ace to ten was visible by the placing of the slits downward along the edge of the cards so marked. This was done so he was able to determine who had the high cards at the poker table to get an advantage in the game.

10. The markings, which were made on the cards, gave Mr. Rios a competitive advantage because he would know who had the high cards at the table. He could essentially see in the hands of the other card players whether his likelihood of winning the hand was increased.

11. Mr. Rios sat directly to the left of the poker dealer, in what is known as "Seat 1." He would be able to see all the cards going out to the players, and was the first player to receive his cards.

12. Mr. Keenan testified that Jason Cluck was the director of surveillance at the time of the complaint against Mr. Rios.

13. In an email on March 11, 2019, Mr. Cluck sent Isle Casino's investigative report to Petitioner's investigator, William Smith. Mr. Keenan testified that he was copied on the email.

14. Mr. Keenan also testified that photographs were attached to the email from Mr. Cluck to Mr. Smith on March 11, 2019. The ten photographs, admitted into evidence in this matter as Exhibit 3, show as follows:

- a. Photograph 1 shows a full deck of cards;
- b. Photograph 2 shows where the cards were marked, with arrows pointed down at the cards;
- c. Photograph 3 shows a marking on the ace of diamonds;

d. Photograph 4 shows cards in the upright position where markings were made at the top right corner;

e. Photograph 5 shows another single card with markings on the side;

f. Photograph 6 shows high cards, a king and a queen, with markings;

g. Photograph 7 shows a marking on the bottom left corner of a card;

h. Photograph 8 shows marking on two cards, on the top left corner; and

i. Photographs 9 and 10 are surveillance stills showing Mr. Rios at the poker table.

15. Mr. Keenan testified that the photographs and video stills are true and correct representations of what occurred on March 9, 2019.

16. Based on the incident reports, video, and photographs with the marks, Isle Casino concluded that Mr. Rios was attempting to manipulate the game. Accordingly, Isle Casino gave Mr. Rios an ejection from the casino.

17. Mr. Keenan testified that Mr. Rios had a "Players Club" card with Isle Casino, which is how he was identified as the individual making markings on the cards. The "Players Club" card is swiped whenever an individual plays at a table and, in this instance, has information that identified Mr. Rios by name.

18. On March 12, 2019, Mr. Rios was permanently excluded from Isle Casino. Mr. Keenan testified that he is familiar with the Notice of Exclusion issued to Mr. Rios in this matter.

19. An individual who has been issued a permanent exclusion from Isle Casino is not permitted future entry into the facility. If caught in the facility, he could be deemed a trespasser. Once a player has been excluded, the individual's "Players Club" account would be inactivated and would provide Isle Casino with an alert if the individual attempted to use the account.

20. Mr. Rios left the casino before the exclusion form could be presented to him. The subject of the exclusion does not have to be present when the exclusion is handed down.

21. On cross-examination by Respondent, Mr. Keenan testified that the cards had been inspected and contained no impermissible markings prior to Mr. Rios playing. Mr. Rios sat down, made gestures with his hands, and made indents on the cards. Players at the table notified Isle Casino personnel to investigate, and they determined that Mr. Rios made the indentations on the card, which resulted in the conclusion to eject him and permanently exclude him from the casino.

22. Mr. Smith testified that he has worked at the Division for seven years as an investigator. He was the author of the document that was entered into evidence as the "Office of Investigation, Investigative Report," dated March 12, 2019.

23. The report concluded that Mr. Rios has been excluded from Isle Casino, which made him a candidate for exclusion from all pari-mutuel facilities in the State of Florida. When Mr. Smith was made aware of Mr. Rios's actions, he immediately went to the Isle Casino to investigate. He personally inspected the indented cards and viewed the video surveillance of the incident.

24. When viewing the DVD of Mr. Rios's actions, Mr. Smith observed Mr. Rios marking the upper left part of the cards, turning the cards around in order to also mark the bottom right part of the cards.

25. Mr. Smith testified that the marks he personally saw on the card matched the actions that he saw Mr. Rios commit on the video.

26. Based upon his personal observation of the video surveillance, his review of the still photographs from the video surveillance, the observations described to him by additional personnel at Isle Casino, and his personal inspection of the marked playing cards, Mr. Smith agreed that Respondent engaged in cheating, which led to his being banned from Isle Casino. He expressed the Division's interest in ensuring that individuals banned from one pari-mutuel facility for cheating not be permitted to take his or her craft to other pari-mutuel facilities in Florida.

27. His conclusion that Mr. Rios should be banned from all Florida pari-mutuel facilities was based on his validation of the action taken by Isle Casino following their investigation of the allegations brought to their attention by Respondent's fellow players.

28. Mr. Rios first testified that he thought he was playing cards at the Hard Rock Casino on the date of the incident at Isle Casino. When confronted with the photographs of him standing before the Isle Casino cashier, however, he admitted to playing cards there on the date in question. He said the photos of the cards in a player's hand showing the indentations along the upper left and lower right corners were not of his making, although the surveillance video proves otherwise.

29. Mr. Rios denied cheating in any way and testified he did not see any cards that had been marked as described by Mr. Keenan and Mr. Smith. He stated that he believed the cards had not been inspected prior to the game and that any marks on the cards were probably there when the cards were put into play at his game. He brought no witnesses or evidence to support his contention.

30. Mr. Rios testified that he was not familiar with the procedure involved in excluding patrons from a pari-mutuel facility.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto under sections 120.569 and 120.57(1).

32. The Division has the burden to prove by clear and convincing evidence that Respondent was excluded from Isle Casino.

33. The applicable disciplinary statutes in this proceeding are penal, and so they "must be construed strictly in favor of the one against whom the penalty would be imposed." Munch v. Dep't of Prof'l Reg., Div. of Real Estate, 592 So. 2d 1136, 1143 (Fla. 1st DCA 1992); Camejo v. Dep't of Bus. & Prof'l Reg., 812 So. 2d 583, 584 (Fla. 3d DCA 2002).

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

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 with approval from Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983) (further citations omitted)).

35. At all times material to this incident, Isle Casino was a facility operated by a permit holder authorized to conduct pari-mutuel wagering in the State of Florida.

36. Section 550.0251(6) provides, 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. (emphasis added).

37. Based upon the above-quoted statute and his permanent exclusion from Isle Casino on March 12, 2019, Respondent is subject to permanent exclusion from all licensed pari-mutuel facilities in the State of Florida.

38. In order to exclude an individual, the Division must prove that the individual has been ejected from a pari-mutuel facility in this state or that the individual exhibited conduct that would constitute, if the individual were a licensee, a violation of chapter 550 or the rules of the Division.

39. Clear and convincing evidence supports that Isle Casino appropriately ejected Mr. Rios and permanently banned him from

the facility on March 12, 2019. Moreover, the Division's independent investigation of the facts and circumstances surrounding Mr. Rios's ban from Isle Casino validate the facility's action taken on that date.

40. Further, in addition to the Division having authority to exclude Mr. Rios from all pari-mutuel facilities as a result of being ejected from one facility, Mr. Rios's conduct also constitutes conduct that, if Mr. Rios were a licensee, would be a violation of chapter 550 or the rules that govern the chapter.

41. Florida Administrative Code Rule 61D-11.005(4) states the following:

- (4) No person shall, either directly or indirectly:
 - (a) Employ or attempt to employ any device, scheme, or artifice to defraud any participant in a game or the cardroom operator.
 - (b) Engage in any act, practice, or course of operation that would constitute a fraud or deceit upon any participant in a game or the cardroom operator.
 - (c) Engage in any act, practice, or course of operation with the intent of cheating any participant or the cardroom operator.

42. By marking cards, Mr. Rios's conduct violated rule 61D-11.005(4)(a)-(c), regardless of whether he is a licensee. As a result, Mr. Rios is subject to exclusion from all pari-mutuel facilities in the State of Florida. The action proposed to be taken by the Division is appropriate under the facts presented here.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Division of Pari-Mutuel Wagering issue a final order permanently excluding Dachiell Rios from all pari-mutuel facilities in the State of Florida.

DONE AND ENTERED this 18th day of September, 2019, in Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
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Filed with the Clerk of the
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this 18th day of September, 2019.

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.