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File #	2018-08616

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

IN RE: CALDER RACE COURSE INC.,
PETITION FOR DECLARATORY
STATEMENT,

DBPR Case No.: 2018-043502
DS 2018-062

Petitioner.

DS 2018-062

FINAL ORDER GRANTING DECLARATORY STATEMENT

COMES NOW, the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ("Division"), hereby enters this Final Order Granting Declaratory Statement in response to Petitioner's, Calder Race Course, Inc. ("Petitioner"), Petition for Declaratory Statement ("Petition") filed on August 16, 2018.

1. Petitioner is, for the purposes of this Declaratory Statement, the holder of two pari-mutuel permits located in Miami-Dade County, Florida. The first permit, number 285, is a summer jai alai permit, recently issued to Petitioner. Petitioner also holds a permit, number 325, authorizing its holder to offer thoroughbred horse racing that Petitioner has held and conducted live races under since 1971. Additionally, Petitioner is licensed to offer slot machine gaming under license number 325 at its pari-mutuel facility located at 21001 NW 27th Avenue, Miami Gardens, Florida 33056.

2. On August 16, 2018, Petitioner filed a Petition for Declaratory Statement with the Division. The Petition, attached as Exhibit "A," seeks an answer related to the prerequisite amount of live jai alai performances necessary for Petitioner to conduct to remain eligible to continue to operate slot machine gaming at its facility.

3. On August 20, 2018, the Division filed the Petition and a Notice of Filing Petition for Declaratory Statement with the Florida Administrative Register. To date, no motions to intervene were filed in this matter.

DECLARATORY STATEMENT

4. The Division is authorized to issue this Declaratory Statement in accordance with section 120.565, Florida Statutes (2018), and rule chapter 28-105, Florida Administrative Code.

5. Petitioner presents one question for the Division's consideration:

Question 1

Whether, pursuant to sections 551.104(4)(c) and 550.002(11), Florida Statutes, Calder may conduct 88 jai alai performances in satisfaction of the requirement to conduct a full schedule of live games to maintain its eligibility for slot machine licensure?

6. The Division accepts and answers Question 1 in the affirmative.

ANALYSIS

7. "The purpose of a declaratory statement is to resolve a controversy or answer questions concerning the applicability of statutes, rules, or orders which an administrative agency enforces, adopts or enters." Soc'y for Clinical & Med. Hair Removal, Inc. v. Dep't of Health, 183 So. 3d 1138, 1142 (Fla. 1st DCA 2015) (citing Citizens v. Fla. PSC, 164 So. 3d 58, 59 (Fla. 1st DCA 2015) (further citations omitted)). However, "an administrative agency may not use a declaratory statement as a vehicle for the adoption of a broad agency policy or to provide statutory or rule interpretations that apply to an entire class of persons." Regal Kitchens v. Fla. Dep't of Rev., 641 So. 2d 158, 162 (Fla. 1st DCA 1994) (citing Fla. Optometric Ass'n v. Dep't of Prof'l Reg., Bd. of Opticianry, 567 So. 2d 928, 937 (Fla. 1st DCA 1990)).

8. Petitioner is obligated, as a facility currently authorized to conduct slot machine gaming in accordance with, inter alia, chapter 551, Florida Statutes, to:

Conduct no fewer than a full schedule of live racing or games as defined in s. 550.002(11). A permitholder's responsibility to conduct such number of live races or games shall be reduced by the number of races or games that could not be conducted due to the direct result of fire, war, hurricane, or other disaster or event beyond the control of the permitholder.

§ 551.104(4)(c), Fla. Stat.; (emphasis supplied).

9. Likewise, section 550.002(11), Florida Statutes, provides the definition of a "full schedule of live racing or games," stating:

'Full schedule of live racing or games' means, for a greyhound or jai alai permitholder, the conduct of a combination of at least 100 live evening or matinee performances during the preceding year; for a permitholder who has a converted permit or filed an application on or before June 1, 1990, for a converted permit, the conduct of a combination of at least 100 live evening and matinee wagering performances during either of the 2 preceding years; for a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 live performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its pari-mutuel facility has been less than \$4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of a combination of at least 40 live evening or matinee performances during the preceding year; for a jai alai permitholder who operates slot machines in its pari-mutuel facility, the conduct of a combination of at least 150 performances during the preceding year; for a harness permitholder, the conduct of at least 100 live regular wagering performances during the preceding year;... For a permitholder which is restricted by statute to certain operating periods within the year when other members of its same class of permit are authorized to operate throughout the year, the specified number of live performances which constitute a full schedule of live racing or games shall be adjusted pro rata in accordance with the relationship between its authorized operating period and the full calendar year and the resulting specified number of live performances shall constitute the full schedule of live games for such permitholder and all other permitholders of the same class within 100 air miles of such permitholder.

(Emphasis supplied).

10. As stated supra, section 550.002(11), Florida Statutes, provides that jai alai permitholders operating slot machines in their facilities are required to perform at least 150 live performances during the preceding year to conduct a “full schedule of live racing or games.” Id. Additionally, Petitioner is a permitholder that is statutorily restricted to conducting its live jai alai performances during specific operating periods, where other permitholders of the same class may operate throughout the entire year. Thus, a plain and in pari materia reading of the statute provides that Petitioner’s allowable number of performances must be prorated according to its authorized operating period and the full calendar year. Id.; see generally Mann v. Goodyear Tire & Rubber Co., 300 So. 2d 666, 668 (Fla. 1974) (“It is an accepted maxim of statutory construction that a law should be construed together with and in harmony with any other statute relating to the same subject matter or having the same purpose...”).

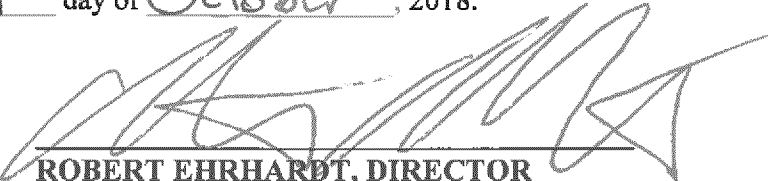
11. To ascertain the allowable number of prorated live performances, as provided by section 550.002(11), Florida Statutes, the following calculation must be employed: Petitioner is restricted to conducting its jai alai performances to 7 of 12 months per year. Thus, $7/12 = 0.583\bar{3}$. $0.583\bar{3} \times 150$ performances, as provided by section 550.002(11), Florida Statutes, equals 87.5, which, after being rounded to the nearest whole number, provides that the number of jai alai performances required of Petitioner is 88. Id.

12. Therefore, notwithstanding any other provision of law regulating the licensure and operation of jai alai and slot machine gaming, Petitioner is required to conduct at least 88 live jai alai performances to satisfy the “[f]ull schedule of live racing or games” requirement provided by section 550.002(11), Florida Statutes, and doing so would therefore not disqualify Petitioner’s facility from being an “eligible facility” under section 551.104(4)(c), Florida Statutes.

Therefore it is ORDERED that:

Question 1 of the Petition for Declaratory Statement is ANSWERED in the affirmative as explained supra.

DONE AND ORDERED this 24 day of October, 2018.



ROBERT EHRHARDT, DIRECTOR
Division of Pari-Mutuel Wagering
Department of Business and
Professional Regulation
2601 Blair Stone Road
Tallahassee, Florida 32399-2202

NOTICE OF RIGHT TO APPEAL

Unless expressly waived, any party substantially affected by this Final Order may seek 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 (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 days rendition of this Order, in accordance with Fla. App. P. 9.110 and section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Final Order Granting Declaratory Statement" has been sent by electronic mail on this 24th day of October, 2018 to:

Calder Race Course, Inc.
c/o Maureen Adams, President and General Manager
21001 Northwest 27th Avenue
Miami Gardens, Florida 33056
Maureen.Adams@caldercasino.com


AGENCY CLERK'S OFFICE
Department of Business and Professional Regulation

Cc:

James A. Lewis, Assistant General Counsel

August 15, 2018

Via Electronic Mail (Robert.Ehrhardt@myfloridalicense.com)

Robert Ehrhardt
Director
Division of Pari-Mutuel Wagering
2601 Blair Stone Road
Tallahassee, FL 32399

DS 2018-062

Re: Petition for Declaratory Statement Before the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering

Dear Director Ehrhardt:

Calder Race Course, Inc. is seeking a declaratory statement from the Division of Pari-Mutuel Wagering regarding the number of live pari-mutuel performances a summer jai alai permit holder must conduct in order to satisfy the full schedule requirement imposed by sections 551.104(c) and 550.002(11), Florida Statutes.

Contact Information for the Petitioner

Calder Race Course, Inc.
21001 Northwest 27th Avenue
Miami Gardens, Florida 33056
Maureen.adams@caldercasino.com
305-474-5704

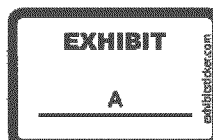
Statutory Provisions on which the Declaratory Statement is Sought

Sections 551.104(c) and 550.002(11), Florida Statutes.

Description of how the Statutes Substantially Affect Calder

Calder holds two permits with the Division – a thoroughbred racing permit (permit number 325) and a summer jai alai permit (permit number 285). Calder also owns, through its wholly owned subsidiary Tropical Park, LLC, an additional thoroughbred racing permit that is currently operated at Gulfstream Park. Calder also holds a slot machine license issued by the Division that is operated at 21001 Northwest 27th Avenue, Miami Gardens, Florida 33056.

On November 2, 2004, the Florida Constitution was amended to incorporate section 23 of Article X. This amendment allowed certain pari-mutuel facilities in Miami-Dade and Broward



Counties to operate slot machines under the following circumstances: 1) the facility must have existed and been licensed prior to the referendum adopting the amendment; and 2) the facility must have conducted live racing or games during the past two calendar years before the effective date of the amendment.

In 2005, the Florida Legislature created chapter 551, titled Slot Machines, which implemented the section 23 of Article X.

On January 29, 2008, the voters of Miami-Dade County approved a referendum, pursuant to section 23 of Article X, authorizing slot machines in the county.

Calder obtained its slot machine license as an "eligible facility" under section 551.102(4) because it is located in Miami-Dade County, existed at the time of adoption of section 23 of Article X of the Florida Constitution, and conducted live thoroughbred racing in 2002 and 2003. Calder has conducted a full schedule of live thoroughbred racing each year since obtaining its slot machine license and has annually obtained a renewal of its slot machine license.

Calder desires to discontinue live thoroughbred racing and to obtain a license to operate a full schedule of live jai alai games under its summer jai alai permit. Calder intends on conducting live jai alai games at the same physical location or piece of property where it currently conducts thoroughbred racing. Calder will only make this change if the Division authorizes Calder to continue slot machine gaming while conducting a full schedule of live jai alai games under its summer jai alai permit.

Calder is seeking a declaration from the Division regarding the number of live pari-mutuel performances a summer jai alai permit holder must conduct in order to satisfy the full schedule requirement imposed by sections 551.104(c) and 550.002(11). Calder believes it must conduct a minimum of 88 performances to satisfy the full schedule requirement.

Sections 551.104(c) and 550.002(11) provide that, in order to maintain continued eligibility for slot machine licensure, the licensee must conduct a full schedule of live games. For a jai alai permit holder who operates slot machines, this means conducting at least 150 performances during the preceding year. Additionally, a permit holder, such as a summer jai alai permit holder, that is restricted by statute to certain operating periods within the year may adjust the number of performances that constitutes a full schedule on a pro rata basis in accordance with the relationship between its authorized operating period and the full calendar year.

Calder's summer jai alai permit is authorized to operate seven months out of the year and is statutorily restricted from operating during the remaining five months according to section 550.0745(1), Florida Statutes. Under this pro rata analysis, Calder believes that a full schedule equals 7/12 times 150 performances, or 87.5 performances.

Based on the above facts and circumstances, Calder seeks a declaratory statement from the Division on the following question:

1. Whether, pursuant to sections 551.104(c) and 550.002(11), Florida Statutes, Calder may conduct 88 jai alai performances in satisfaction of the requirement to conduct a full schedule of live games to maintain its eligibility for slot machine licensure?

Thank you for your consideration and please feel free to contact me should you have any questions or need any additional information.

Sincerely,



Maureen Adams
President and General Manager

cc: Justin Paul, Vice President, Associate General Counsel
Laurel Durham, Vice President, Associate General Counsel