

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2010

DAYTONA BEACH KENNEL CLUB, INC.,

Appellant,

v.

Case No. 5D08-4246

DEPARTMENT OF BUSINESS, ETC.,
ET AL.,

Appellees.

NOT FINAL. THIS NOTICE EXPIRES
TO FILE A PETITION FOR REVISION, AND,
IF FILED, DISCLOSED UP

Opinion filed April 23, 2010

Administrative Appeal from the
Department of Business and
Professional Regulation, Division
of Pari-Mutuel Wagering.

Mark A. Emanuele, of Panza, Maurer & Maynard,
P.A., Ft. Lauderdale, for Appellant.

Garnett W. Chisenhall, Tallahassee, for Appellee,
Department of Business & Professional Regulation,
Division of Pari-Mutuel Wagering.

Cynthia S. Tunncliff, of Pennington, Moore, Wilkinson,
Bell & Dunbar, P.A., Tallahassee, and David S. Romanik,
of David S. Romanik, P.A., Oxford, for Appellee, Debary
Real Estate Holdings, LLC.

PER CURIAM.

Appellant, Daytona Beach Kennel Club, Inc. ["DB Kennel Club"], challenges a final order of the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering ["the Division"], dismissing with prejudice its petition for formal administrative hearing based on a determination that DB Kennel Club lacked standing.

DB Kennel Club's petition sought to challenge the issuance of a permit to DeBary Real Estate Holdings, Inc. ["DeBary"] to conduct quarter-horse races in southwest Volusia County.

On appeal, DB Kennel Club asserts that it has standing because it is substantially affected by the issuance of the permit to DeBary. DB Kennel Club further contends the Division lacked the authority to dismiss its petition without conducting a hearing. On the issue of standing, we conclude the Division properly applied *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981), and correctly concluded that DB Kennel Club lacked standing to challenge the issuance of a pari-mutuel wagering permit to DeBary. See *Gadsden Jai Alai, Inc. v. State of Florida, Dep't of Bus. & Prof. Reg., Div. of Pari-Mutuel Wagering*, 26 So. 3d 68 (Fla. 1st DCA 2010). We further find no error in the failure to refer the petition to the Division of Administrative Hearings to conduct a hearing. The issue of standing is normally a question of law, as it was in this case. Dismissal is appropriate where undisputed facts demonstrate that a party lacks standing. See *Fla. Society of Ophthalmology v. State Bd. of Optometry*, 532 So. 2d 1279 (Fla. 1st DCA 1988); *Peace River/Manasota Reg'l Water Supply Auth. v. IMC Phosphates Co.*, 18 So. 3d 1079, 1082-83 (Fla. 2d DCA 2009).

AFFIRMED.

GRIFFIN, PALMER and JACOBUS, JJ., concur.