

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

EBRO GREYHOUND PARK,

Petitioner,

Case No.

vs.

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

Respondent.

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**PETITION CONTESTING  
FINAL AGENCY ACTION**

Ebro Greyhound Park (the "Petitioner") hereby petitions the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering's (the "Division") for an evidentiary hearing in accordance with Sections 120.569 and 120.57(1), Florida Statutes, and Rule 28-106.201, Florida Administrative Code, in response to the Division's April 25, 2011, letter to Petitioner declaring the Double Hand Poker game to be in violation of Section 849.086(12)(a), Florida Statutes, and in support thereof states as follows:

**Parties**

1. The affected state agency is the State of Florida, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, 1940 North Monroe Street, Tallahassee, Florida 32399. The Division is the state agency authorized to administer section 849.086 and regulate the operation of cardrooms under the section in the manner provided by law. See § 849.086(4), Fla. Stat. (2010).

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2. The Petitioner is a Florida corporation authorized to conduct business in Florida. The Petitioner owns and operates Ebro Greyhound Park which is located at 6558 Dog Track Road, Ebro, Florida 32437 (“Facility”). For purposes of this proceeding, the Petitioner’s address is that of its undersigned counsel.

3. The Petitioner is represented by Gary Rutledge and Mike Barry, of Rutledge, Ecenia & Purnell, P.A., located at 119 South Monroe Street, Suite 202, Tallahassee, Florida 32301. Counsel’s telephone number is (850) 681-6788 and facsimile number is (850) 681-6515.

### **Statement of Facts**

4. The Petitioner is the holder of a valid pari-mutuel permit issued by the Division pursuant to chapter 550 for the conduct of greyhound racing (“Permit”). The Permit authorizes the Petitioner to conduct pari-mutuel wagering pursuant to chapter 550 at its Facility. Petitioner conducts greyhound racing at the Facility pursuant to the Permit.

5. Pursuant to the Permit, the Petitioner is the holder of a cardroom operator’s license issued by the Division pursuant to Section 849.086(5) (“License”). The License authorizes the Petitioner to operate a cardroom and conduct authorized games therein pursuant to chapter 849 at its Facility. The games are pari-mutuel in nature, in which the players wager and compete against fellow players (i.e., poker) – as opposed to casino games, in which players wager and compete against the house (i.e., blackjack).

6. The Division maintains a list and descriptions of all authorized games, which is posted at <http://www.myfloridalicense.com/dbpr/pmw/PMW--AuthorizedCardGames.html>. A cardroom may conduct any game found on this list without obtaining separate approval by the Division. If a cardroom wishes to conduct a game not found on this list, it must request approval and authorization from the Division. When the Division grants approval, it is effectively

granting a license to conduct the requested game. The game is then added to the list of authorized games, and is available for play at all cardrooms in Florida.

7. Petitioner requested authorization from the Division to conduct a game called “Double Hand Poker” at its Facility pursuant to Section 849.086, Florida Statutes. The game possesses the basic characteristics of poker. It involves the dealing and playing of two hands of cards, rounds of wagering and a rotating designated player.

8. The Division approved the request to conduct Double Hand Poker (“Approved Game”). This approval is evidenced by the following: (1) e-mail communications to that effect from Melynda Childree, a Cardroom Coordinator at the Division, to Dennis Hone, Manager of Petitioner’s Cardroom, (2) the addition of Double Hand Poker to the Division’s master list of authorized games, and (3) the addition of a description of Double Hand Poker to the Division’s website.

9. Shortly after approval, the Petitioner began offering the Approved Game for play at its Facility.

10. Subsequently, the Petitioner and the Division exchanged communications regarding certain minor changes to the parameters of the Approved Game, including with regards to jackpots and the number of turns by the designated player. As a result of these communications, the description of the Approved Game was revised accordingly. The Division re-posted the updated description on its website, where it remains to date.

11. On April 8, 2011, in response to various inquiries and requests from the Division, the Petitioner conducted a demonstration of certain games, including Double Hand poker, for Division staff at the Division’s headquarters in Tallahassee.

12. On April 25, 2011, without any prior notice, the Division sent a letter to the Petitioner indicating the Division “has determined that the playing or dealing of this game would violate Section 849.086(12)(a), Florida Statutes.” In its letter, the Division concluded that the demonstrated game constitutes a banking game as defined by Section 849.086(2)(b). The Division further indicated that the letter “constitutes final agency action,” and provided a notice of administrative rights, including the deadline to file a petition within 21 days in accordance with Rule 28-106.201, Florida Administrative Code. This Petition is filed accordingly.

13. While the actual or intended legal effect of the Division’s letter is not entirely clear to the Petitioner, the Petitioner is compelled to regard the Division’s action as a rescinding of its approval of the Approved Game months after it was approved and, more importantly, a summary revocation of the license to conduct the Approved Game without notice or a hearing.

14. At present, the disputed facts include: whether the Petitioner’s demonstration and the Division’s consideration of such demonstration was confined to the Approved Game; whether alternative versions were taken into account by the Division; whether the game demonstrated to the Division is identical to the game approved by the Division and/or the game as it is played at the Facility; and whether the game as approved by the Division is identical to the game as it is played at the Facility.

### **Standing**

15. Section 120.569, Florida Statutes, provides that a party whose substantial interests are affected by an agency action is entitled to an administrative hearing. The Petitioner’s substantial interests are affected by the Division’s action on April 25, 2011, because it purports to summarily revoke a license granted by the Division. The Petitioner has been prematurely and improperly denied its rights to the use of the license granted to it by the Division in accordance

with Section 849.086. As a result, the Petitioner has standing to challenge the Division's action in this proceeding.

### Statement of the Law

16. Procedurally, the Division has failed to comply with the applicable requirements in taking action in this matter. The Petitioner is entitled to notice and the opportunity for an administrative hearing before any action by the Division becomes final or takes effect.

17. Section 120.60(5), Florida Statutes, provides as follows:

No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57.

18. The Division's action constitutes a revocation of the license granted to the Petitioner for the conduct of the Approved Game. Here, the Division simply informed the Petitioner of its final decision, without having provided the required notice and opportunity for a hearing. By failing to provide to the Petitioner with reasonable notice and an adequate opportunity to request a hearing before taking final agency action, the Division's action is in violation of Section 120.60(5), Florida Statutes, and is therefore invalid.

19. Substantively, the Division's action constitutes an improper application of Florida law with regard to the Approved Game.

20. Section 849.086(2), Florida Statutes, defines the following terms:

- (a) "Authorized game" means a game or series of games of poker or dominoes which are played in a nonbanking manner.

- (b) “Banking game” means a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers or in which the cardroom establishes a bank against which participants play.

21. The Approved Game, like all other versions of poker on the Division’s list of authorized games, is by definition a non-banking card game played in the conventional manner of pari-mutuel wagering – where players compete against one another and not the house. The mere use of a designated player (which is commonplace in poker rooms throughout Florida and the United States) does not transform a pari-mutuel game into a banking game.

22. The Division wrongly concluded that under the rules of the Approved Game, the Petitioner “establishes a bank against which participants play.” As the description makes clear, it is the players that determine the wagering – not the cardroom. The rules of the Approved Game provide “bets are paid to the extent the designated player’s money is in action.” This is fundamentally different than a banking game, in which payouts are set by the house and are not contingent upon the wagering behavior of another player.

23. Even if assuming, *arguendo*, that the playing and wagering against a designated player constitutes a bank, this feature of the Approved Game is permissible under chapter 849 because it is the players of the game that create the bank – not the cardroom. The statutory definition of “banking game” only includes games “in which the cardroom establishes a bank against which participants play.” The statute plainly prohibits a cardroom from establishing a bank, but it plainly does not prohibit a player from doing so.


WHEREFORE, the Petitioners request the following relief:

A. That the Division refer this petition to the Division of Administrative Hearings for the purpose of conducting an evidentiary hearing for resolution of disputed issues of material fact and law pursuant to Section 120.57(1), Florida Statutes; and

B. That a final order be issued determining that the Division's final agency action on April 25, 2011, constitutes an improper revocation of the Petitioner's license to conduct the Approved Game; and

C. Any further relief as may be deemed appropriate.

RESPECTFULLY SUBMITTED this 16th day of May, 2011.



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