

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

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/8/2012
File #	

In re: Petition for Declaratory Statement Case No.

SUMMER JAI ALAI PARTNERS,

Petitioners.

**DS 2012-043**

PETITION FOR DECLARATORY STATEMENT

COMES NOW, Summer Jai Alai Partners (the "SUMMER PARTNERS"), and hereby move pursuant to Section 120.565, Florida Statutes (2011),<sup>1</sup> and Rule 28-105, Florida Administrative Code (2011), and request the issuance of a declaratory statement by the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Division") regarding the application of certain statutes to their particular set of circumstances.

In support of the Petition, the SUMMER PARTNERS state the following:

Introduction

1. The affected agency is the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Division"), located at Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399. The Division is the state agency authorized to administer Chapter 550 and Sections 849.086, Florida Statutes, including the conduct of pari-mutuel and cardroom gaming operations. See § 550.0251, Fla. Stat. (2011); see also § 849.086(4), Fla. Stat. (2011).

<sup>1</sup> All references herein to "Chapter" or "Section" are to the applicable chapter or section of the official 2011 version of the Florida Statutes.

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2. The SUMMER PARTNERS are formally known as the Summer Jai Alai Partners, and their corporate offices are located in Miami-Dade County. For purposes of this Petition, the SUMMER PARTNERS' address is that of its undersigned counsel.

3. The SUMMER PARTNERS are a licensed pari-mutuel permitholder authorized by Chapter 550, Florida Statutes, to conduct summer jai alai pari-mutuel wagering performances at the Miami Jai Alai facility located at 3500 Northwest 37th Avenue, Miami, Florida 33142. There are two pari-mutuel permits, including the SUMMER PARTNERS' permit, which currently operate at the Miami Jai Alai facility.

4. The SUMMER PARTNERS seek the Division's interpretation of certain provisions of Chapter 550 and Section 849.086, Florida Statutes, as applied to the facts presented herein.

#### Applicable Facts and Law

5. The SUMMER PARTNERS own pari-mutuel permit number 280 (the "Permit"). The Permit was originally a greyhound permit but was converted to a summer jai alai permit in 1980 immediately after passage of House Bill 595 (1980). The Permit has annually operated at Miami Jai Alai since the Permit was converted in 1980 under a lease authorized by Section 550.475, Florida Statutes.

6. The SUMMER PARTNERS operate the Permit at Miami Jai Alai in conformance with Section 550.0745, Florida Statutes. The Permit is authorized to receive an annual license to conduct jai alai games during the summer season (May 1 through November 30). *See* § 550.0745(1), Fla. Stat. (2011). The Permit is prohibited from operation during the winter season. *See* § 550.0745(3), Fla. Stat. (2011).

7. Florida law requires the SUMMER PARTNERS to conduct live performances under the Permit in order to retain eligibility to conduct intertrack wagering and cardroom operations. As set forth below, the SUMMER PARTNERS are in doubt as to the specific number of live performances required to satisfy the full schedule requirement.

8. Chapter 550, Florida Statutes, establishes intertrack wagering eligibility as follows:

Any track or fronton licensed under this chapter which in the preceding year conducted a full schedule of live racing is qualified to, at any time, receive broadcasts of any class of pari-mutuel race or game and accept wagers on such races or games conducted by any class of permitholders licensed under this chapter.

§ 550.615(2), Fla. Stat. (2011). In essence, the Permit is required to conduct a full schedule of live performances in the preceding year in order to retain its intertrack wagering authorization.

*See id.*

9. Section 849.086(5)(b), Florida Statutes, states that in order for a cardroom license to be renewed, the applicant must have requested to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which the license was issued or the state fiscal year immediately prior thereto. *See* § 849.086(5)(b), Fla. Stat. (2011). The statute also provides that if “more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.” *Id.*

10. A full schedule is defined as follows:

“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.

§ 550.002(11), Fla. Stat. (2011) (emphasis applied).

11. Section 550.002(11), Florida Statutes, subject to certain exceptions, requires a jai alai permitholder to conduct at least 100 live performances to constitute a full schedule. As it relates to the Permit, there are two provisions of Section 550.002(11), Florida Statutes, that may be applicable:

[F]or 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 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.

§ 550.002(11), Fla. Stat. (2011).

12. The Division has previously opined that Sections 550.002(11), 550.0745(1), and 849.086(5)(b), Florida Statutes, are applicable to the Permit and together prorate the minimum annual number of performances to 42 live performances because multiple permits operate at Miami Jai Alai. *See* Attachment A.

13. The Permit is authorized to operate seven (7) months out of the year and is statutorily restricted from operating during the remaining five (5) months. *See* § 550.0745(1), Fla. Stat. (2011). The SUMMER PARTNERS are unsure if 42 performances equal a full schedule under the pro rata analysis because  $7/12$  of 100 performances equals 58.33 performances.

14. The Permit conducted at least 100 live performances each year for 10 years after December 31, 1992. In addition, the Permit's live handle has been less than \$4,000,000 for two consecutive fiscal years after June 30, 1992.

15. The SUMMER PARTNERS are in doubt as to whether the Permit qualifies to conduct 40 live performances per year, as a full schedule, due to the Permit's live handle being less than \$4,000,000 for the previous two fiscal years. *See* § 550.002(11), Fla. Stat. (2011).

16. The SUMMER PARTNERS are in doubt as to the precise number of live performances required to satisfy their live performance requirement based upon the various possibilities set forth above. This Petition is filed to clarify the apparent ambiguity concerning certain provisions of Chapter 550 and Section 849.086, Florida Statutes, as applied to the facts presented herein.

Questions Presented

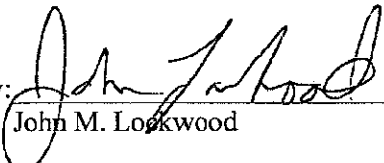
Question 1: Assuming that a summer jai alai permit is operated by lease at a facility where another pari-mutuel permit is located, do Sections 550.615(2) and 849.086(5)(b), Florida Statutes, apply to summer jai alai permits and require a full schedule of live pari-mutuel wagering performances for cardroom and intertrack wagering authorization?

Question 2: Assuming that a summer jai alai permit is operated at a facility by lease where another pari-mutuel permit is located, how many live pari-mutuel performances must the summer jai alai permit conduct in order to satisfy the full schedule requirement imposed by Sections 550.615(2) and 849.086(5)(b), Florida Statutes?

WHEREFORE, the SUMMER PARTNERS request that the Division issue a Declaratory Statement answering the above-stated questions.

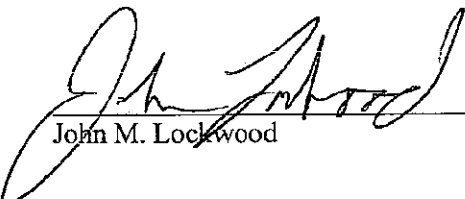
Respectfully submitted this 8<sup>th</sup> day of May 2012.

JOHN M. LOCKWOOD, P.A.  
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By:   
John M. Lockwood  
*Counsel for Petitioner*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing document was filed via hand delivery with the Agency Clerk of the Department of Business and Professional Regulation at 1940 North Monroe Street, Tallahassee, Florida 32399-1035 on this 8<sup>th</sup> day of May 2012.

  
John M. Lockwood  
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**Division of Pari-Mutuel Wagering  
Cardroom Facility 90% Rule Requirement**

Greyhound Facilities	Initial Year Licensed	# Perf year prior to	# Perf First Year	Minimum Number Performances Required - 90% of Full Schedule
Bayard Raceways *2	03/04	94	95	100
Bel Miami (H & T Gaming) *2	96/97	0	161	100
Daytona Beach Kennel Club *2	96/97	456	454	100
Jacksonville Kennel Club *2	08/09	115	114	100
Jefferson County Kennel Club	03/04	281	241	217
Mardi Gras *2	96/97	167	151	100
Melbourne Greyhound Park	04/05	103	156	93
Naples-Ft Myers Greyhound	97/98	442	437	394
Orange Park Kennel Club *2	07/08	201	112	100
Palm Beach Kennel Club *2	96/97	440	455	100
Palm Beach Racing *2	10/11	0	117	100
Pensacola Greyhound	09/10	196	177	160
Sarasota Kennel Club	06/07	208	292	188
St Petersburg Kennel Club *2	96/97	222	221	100
Tampa Greyhound *2	96/97	222	224	100
Washington Co. Kennel Club	96/97	185	242	167
West Flagler	96/97	256	181	163
West Volusia *2	10/11	0	110	100

Jai-Alai Facilities	Initial Year Licensed	# Perf year prior to	# Perf First Year	Minimum Number Performances Required - 90% of Full Schedule
Dania Jai Alai *2	96/97	282	269	100
Ft Pierce Jai Alai	07/08	40	44	38
Hamilton Jai-Alai	05/06	0	249	225
Miami Jai Alai *2	96/97	183	397	100
Ocala Jai Alai	07/08	51	40	36
Summer Jai Alai *3	96/97	259	50	42
Summersport Jai Alai *3	96/97	104	117	42

Horse Facilities	Initial Year Licensed	# Perf year prior to	# Perf First Year	Minimum Number Performances Required - 90% of Full Schedule
Calder Race Course *2	09/10	109	100	40
Gulfstream Park	05/06	85	87	77
Pompano Park *1	96/97	176	187	140
Tampa Bay Downs	03/04	92	90	81
Tropical Park @ Calder *2	09/10	51	47	40
Creek Entertainment Gretna	11/12	0	42	38

\*1 - Harness permit holders are statutorily required to conduct 140 live performances to operate a cardroom (Sec 849 086(5)(b), F S )

\*2 - Several permit holders operate dual permits at a facility and therefore are only required to operate a full schedule of live racing for each permit rather than the 90% (Sec 849 086(5)(b), F S )

\*3 - The application of Sections 550 002(11), 550 0745(1), and 849 086(5)(b), F S , jointly allow these two permit holders "full schedule" to be prorated