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Department of Business and Professional Regulation
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STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

In re: Petition for Declaratory Statement

CALDER RACE COURSE, INC.,
and the FLORIDA HORSEMENS
BENEVOLENT AND PROTECTIVE
ASSOCIATION, INC.

CASE NO: **DS 2013-035**

Petitioners,
_____ /

PETITION FOR DECLARATORY STATEMENT

COMES NOW, CALDER RACE COURSE, INC., (“Calder”), and the
FLORIDA HORSEMENS BENEVOLENT AND PROTECTIVE
ASSOCIATION, INC., (“FHBPA”) and hereby move pursuant to Section 120.565,
Florida Statutes, (2011)¹, and Rule 28-105, Florida Administrative Code (2013),
for 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 its particular set of circumstances.

In support of the Petition, Petitioners state the following:

Executive Summary

Petitioners seek (i) a declaratory statement from the Division regarding the
definition of a “race” meet for the purposes of calculating the interstate

¹ All references herein to “Chapter” or “Section” are to the applicable chapter or section of the official 2013
version of the Florida Statutes

simulcasting host and purse fee to be retained by the racetrack conducting such racing meet, and (ii) that this determination be made following a hearing in which all interested parties have the opportunity to be heard and the Division has the ability to collect all applicable facts.

A “race meet,” for purposes of conducting live racing in Florida, must consist of live racing as required by law (see: Section 550.002(11), Florida Statutes), and must have beginning and end dates that are contiguous to the period of time when a track is actually conducting live racing. This definition has been established by decades long course of dealing, which is supported by all Florida thoroughbred racing date applications that have been granted since 1996. The historic definition of “race meet” makes up a critical element of the economics for tracks conducting live racing in Florida, and horsemen competing at such Florida tracks, because live racing is the basis for the allocation of the Florida intra-state simulcast “host and purse fee” that is retained by a Florida racetrack while it is conducting its live meet.

To change these economics, with no change having been made in Chapter 550, and without providing notice to all of the affected parties (i.e., all Florida thoroughbred racetracks, racehorse owners, trainers, breeders and jockeys) and without affording an opportunity for such parties to be heard on the issue and; at a minimum, affording the opportunity for affected parties to demonstrate the severe

and adverse economic consequences of such change is a gross dereliction of duties by the Division which is charged with governing horse racing for the State of Florida.

Specifically, by issuing new and “amended” licenses for race dates that are outside of the designated live racing dates granted to a racetrack in a previously granted license year, or allowing a race track to race the first and last date of the state fiscal year, and have those dates be deemed to be part of a race meet that only lasts for 40 to 85 days of a 365 day year as described herein, the Division is taking an “ad hoc” and injurious action.

Because of the severe effects that a change in these economics will have on each racetrack conducting a live racing meet, as well as the owners, trainers and jockeys competing at such race meetings, any “new” interpretation should have been and must be made by the rulemaking process, so all of the affected parties have had the opportunity to be heard; and should not be made by ad hoc actions by the Division.

Identification of the Parties

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 551, Florida

Statutes, including the conduct of pari-mutuel wagering and slot machines gaming. See Section 550.0251, Florida Statutes.; see also Section 551.102, Florida Statutes.

2. Calder is a licensed pari-mutuel permitholder authorized by Chapter 550, Florida Statutes, to conduct thoroughbred pari-mutuel performances.

3. Calder was issued Permit Number 325 to operate thoroughbred horseracing in 1970.

4. Calder's permit is located in Miami-Dade County.

5. Calder's permit was issued pursuant to the provisions of Section 550.054, Florida Statutes.

6. The Calder Race Course facility is located at 21001 NW 27th Avenue in Miami-Dade County.

7. For purposes of this Petition, Calder's address is that of its counsel at Brewton Plante, P.A., 225 South Adams Street, Suite 250, Tallahassee, FL 32301.

8. FHBPA, is a Florida corporation, not-for-profit, whose principal office is located in Miami-Dade County, Florida, and whose address is 21001 N.W. 27th Avenue, Miami, Florida 33056.

9. FHBPA's purposes are, among other things, to promote the sport of thoroughbred horse racing in the State of Florida; to foster, promote and otherwise encourage a healthier economic climate and a higher level of public acceptance of the thoroughbred horse industry in the State of Florida; to bring about a closer and

more understanding relationship between Florida horsemen, Florida racing associations, the Division, and its departments and sub-divisions, and the public, to take part and advise with all officials and representatives, racing associations, the Division, and other racing organizations in the establishment and application of laws, rules and conditions that affect, in any manner, pari-mutuel wagering, purses, awards, the interests of horsemen, their employees, and backstretch personnel; to represent the general interests of its members in any matters with any local, state or federal government and any agency thereof, including, but not limited to the Division.

10. The FHBPA represents the interests of in excess of 5,500 thoroughbred race horse owners, trainers and breeders who are licensed by the Division pursuant to the provisions of Ch. 550, Florida Statutes, and is recognized by Calder Race Course, Inc., Tropical Park, Inc. and Gulfstream Park Racing Association, Inc., respectively, as the sole representative of the interests of thoroughbred race horse owners and trainers in Florida.

11. Therefore, the FHBPA is the “horsemen’s association” referred to in Section 550.2614, Florida Statutes, “the horsemen's group” indirectly referred to in Section 550.3551(2)(a) & (3)(a), the “horsemen’s group” referred to in the Interstate Horseracing Act (15 USC Ch. 77, Section 3002 (12), and is the “horsemen’s group” directly referred to in Section 550.3551(6)(a), Florida

Statutes. The FHBPA has historically had agreements with Gulfstream Park Racing Association, Inc., Calder Race Course, Inc. and Tropical Park, Inc., which include application of funds derived from simulcasting, as well as card room wagers and slot machine/racino wagers. The interests of the FHBPA are, therefore, substantially affected by interpretations of Chapter 550, Florida Statutes, as well as the rules and regulations of the Division, and other statutes which apply to pari-mutuel and other wagering conducted in Florida.

12. For purposes of this Petition, FHBPA's address is that of its counsel at Bruce D. Green, P.A., 1313 South Andrews Avenue, Fort Lauderdale, FL 33316.

13. Petitioners seek the Division's interpretation of certain provisions of Chapters 550 and 551, Florida Statutes, as applied to the facts presented herein.

Applicable Facts

14. Calder received a racing license number 325, dated March 15, 2012, for a race meet to be conducted April 6, 2013, through June 30, 2013. Calder is currently conducting its live race meet.

15. Historically, the Florida Thoroughbred Owners' and Breeders' Association Inc. and the Florida Horsemen's Benevolent And Protective Organization, Inc. have each contracted with Gulfstream Park Association, Inc., Calder Race Course, Inc., and Tropical Park, Inc., and the Tampa Bay Downs Horsemen's Benevolent and Protective Association, Inc. has contracted with

Tampa Bay Downs, Inc. for the conduct of a race meet, copies of which are attached as Exhibit A.

16. Tampa Bay's recently requested change in the 2012-2013 racing license was beyond the time frame in which an amendment to a racing date application could be amended, i.e. the final day for amending an annual license to add racing days for 2012 – 2013, pursuant to Section 550.01215(1), Florida Statutes, was February 28, 2012.

17. The Division recently approved the requested "amended" license of Tampa Bay Downs to apparently permit Tampa Bay Downs to conclude its current race meet that was scheduled to end on May 5, 2013, to add one live day, June 30, 2013 was with the apparent purpose of allowing Tampa Bay Downs to take interstate simulcast signals from May 6, 2013, to June 30, 2013 and to rebroadcast those signals throughout Florida. In doing so, the Division ignored Section 550.01215(1), Florida Statutes, which sets a deadline of February 28 requesting for race dates for the 2012-2013 fiscal year. This strained/contorted outcome results in a substantial revenue shift from Calder (which is conducting live racing) to Tampa Bay Downs (which is not conducting live racing) and a reduction in operating income to Calder, and a serious reduction to members of the FHBPA, in horsemen

purses, jockey fees and decreased revenues to the State of Florida.² See Tampa Bay Downs' amended license as Exhibit C attached hereto.

18. The impact of the Division's action, as set forth above, is enormous and negative to not only Calder, but to the payment of purses, the payment of jockey fees, and reductions in revenues to pay the operating cost of the conduct of a live race meet. This enormous and negative impact that the Division has unleashed in the State of Florida, with little or no inquiry of the affected parties such as the breeding industry, the horse owners, the horse trainers, the jockeys, as well as the thoroughbred tracks is unprecedented. Petitioners intend to present evidence to the Division of this impact, most notably of which is a total revenues shift from a race track operating live racing where real horsemen, real jockeys, real trainers, real assistant trainers, and real people are operating a live race, with the attendant expense of operating live races, including stable area costs, to race tracks that are not conducting live racing with the attendant shift not being utilized to pay operating expenses of a thoroughbred meet, nor purses to horsemen who are actually currently conducting live racing.

19. Section 550.2625 (1), Florida Statutes, emphasizes in the importance of purses and breeders awards as follows, "[t]he purse structure and the availability of breeders awards are important factors in attracting the entry of well-bred horses

² Calder has previously challenged the same type application by Gulfstream Park, Case No: 2013009352, pending. See Exhibit B, without previously filed exhibits.

in [live] racing meets in this state which in turn helps produce maximum racing revenues for the state and the counties.”

20. Section 550.6305(9)(a)(b) provides as follows:

“(b) Notwithstanding the provisions of subsection (1) and s. 550.625(1) and (2)(a), the distribution of the net proceeds that are retained by a thoroughbred host track from the takeout on an out-of-state race rebroadcast under this subsection shall be as follows:

1. One-third of the remainder of such proceeds shall be paid to the guest track;
2. One-third of the remainder of such proceeds shall be retained by the host track; and
3. One-third of the remainder of such proceeds shall be paid by the host track as purses at the host track.

The very point that the Division has not taken into consideration for any purpose is the revenue shift as a result of permitting three host tracks while only one track is operating live does not permit the fruits of the efforts of the horsemen conducting live racing to receive the purses, nor the operating host track to receive the host track fee to pay for the operation of a thoroughbred race meet, which is costly. These cost shifts are in the millions, and Petitioners will respectfully request a full hearing on this issue in the prayer for relief.

21. The Division has never, by rule, defined the term “racing meet.” No need for a definition that has ever been required since the enactment of Section 550.3551(3), Florida Statute. The Division practice has been that no thoroughbred track ever operated any racing meet, except as that term is defined in Section

550.002(20), and in the Interstate Horseracing Act, and other relevant sections listed herein.

22. Petitioners assert that the Division does not have the authority to grant a “race meet” of the type requested by Tampa Bay Downs, i.e. to import out-of-state thoroughbred races and rebroadcast to guest tracks in Florida unless Tampa Bay Downs is conducting a live “race meet” consistent with the historical definition.

23. Nonetheless, Petitioners are uncertain, due to the Division’s “ad hoc actions,” as to whether or not thoroughbred permitholders would be entitled to (1) amend its racing dates at any time, after February 28 of each year; (2) whether a thoroughbred permitholder would be legally permitted to operate a “race meet” and meet the definitions of Section 550.3551(3), Florida Statutes, under the following factual scenario:

- (a) Such permitholder requests racing dates only for July 1 of any state fiscal year; and
- (b) Such permitholder also requests racing dates of 3 days per week beginning December 15 through May 3 of the following year; and
- (c) Such permitholder also requests June 30th following the closing on May 3 as set forth in (b) above; and
- (d) Such permitholder, pursuant to the provisions of Section 550.3551(3), Florida Statutes, would then request to be permitted to serve as a host track for purposes of importing interstate thoroughbred horse races from July 1 of the beginning of any state

fiscal year, through June 30 of the end of that fiscal year, while only conducting 6 months of live racing.

Applicable Law

24. Simulcasting has been permitted in Florida since the 1980s, but was formally authorized by the Florida Legislature, pursuant to Chapter 96-364, Laws of Florida, a copy of which is attached, together with the Staff Report as Exhibit D.

25. Consistent with the Division's past interpretations: Section 550.3551, Florida Statutes, and the Interstate Horseracing Act, mandate that the only time that a permitholder is authorized to accept wagers on out-of-state racing is during its live racing meet, which means that the track must be (1) a currently operating track, (2) operating horseracing in the receiving state, and (3) with a full program of races at the in-state track.

26. The provisions of Section 550.3551, Florida Statutes, govern the ability to import thoroughbred racing signals from out-of-state pursuant to the Interstate Horse Racing Act Title 15 U.S.C. Chapter 57 (§3001, et seq.) and to determine which track is to be designated the "host track" for purposes of Section 550.3551, Florida Statutes.

27. Section 550.3551(3), Florida Statutes, provides that a horse race track has the right to receive out-of-state signals during its racing meet. Specifically, this provision states:

(3) Any horse track license under this chapter may receive broadcast of horse races conducted at other horse race tracks located outside of this state at the race track enclosure of the licensee during its racing meet.

28. Section 3002 of Title 15, Chapter 57 of the Interstate Horseracing Act (IHA), subsections (14), (15) and (16) bolster the position of Petitioners' as to what a "race meet" is, as set out in Section 550.3551(3), Florida Statutes. Section 3002 of the IHA provides that:

(14) "currently operating tracks" means racing associations conducting parimutuel horseracing at the same time of day (afternoon against afternoon; nighttime against nighttime) as the racing association conducting the horseracing which is the subject of the interstate off-track wager;

(15) "race meeting" means those scheduled days during the year a racing association is granted permission by the appropriate State racing commission to conduct horseracing;

(16) "racing day" means a full program of races at a specified racing association on a specified day;

29. In addition, Section 550.3551(6)(a), Florida Statutes, provides that:

A thoroughbred permitholder may not conduct fewer than eight live races on any race day without the written approval of the Florida Thoroughbred Breeders' Association and the Florida Horsemen's Benevolent and Protective Association, Inc.

30. As set forth in Florida law, a "performance" means a series of events, races, or games performed consecutively under a single admission charge, and an "event" means a single contest, race, or game within a performance. See Section 550.002(25) and (8), Florida Statutes. Pursuant to Section 550.002(11), a "[f]ull

schedule of live racing” . . . [f]or a thoroughbred permitholder, [is] the conduct of at least 40 live regular wagering performances during the preceding year.” See Section 550.002(11), Florida Statutes. Further, only consecutive live performances (with occasional dark days) qualifies as a race meet for purposes of receiving interstate simulcasting and redistributing to other Florida secondary sites. See Calder’s Petition for Declaratory Statement, Case No. 2003-031 attached hereto as Exhibit D. This has been the Division’s interpretation since at least 1996, so as to protect live racing in the State of Florida. To allow a race track to conduct intermittent live performances where dark days are the rule, not the exception, permits non-live, dark day, race tracks to cannibalize purses from horsemen at a race track that is conducting live racing, which defeats the purpose of the statute: the protection of live racing.

31. Acceptance of out-of-state simulcasting signals and the right to rebroadcast such signals have always been governed by Florida law which permits such activity only during the race meet of a horse track. See Exhibit D, Staff Report Page 3. This ensures that live racing is supported by making funds available to add to purses to enhance the quality of racing and attract the best horses.

32. Additionally, Section 550.6305(1)(b), Florida Statutes, provides:

(1)(b) If thoroughbred intertrack wagering is taken at any guest track, including a thoroughbred guest track, which is located within 25

miles of any thoroughbred permitholder that is not conducting live racing, the host track shall pay to such thoroughbred permitholder an amount equal to 2 percent of the intertrack handle at all such guest tracks, including the guest thoroughbred track, which amount shall be deducted from the purses otherwise required to be paid by the host track. This amount shall be used by the thoroughbred permitholder to pay purses during its next race meet.

33. This provision has required Calder to pay 2% of all wagers placed in the Tampa Bay Downs market area regardless of which guest track accepts the wager, when Tampa Bay Downs is not conducting live racing, and Calder is conducting live racing. Thus, Section 550.6305(1), Florida Statutes, is but another statute that recognizes “not conducting live racing” versus conducting live racing.

34. Section 550.0251(9)(a), provides in pertinent part, as follows:

...the Division shall grant to the lawful permitholder, subject to the conditions of this chapter, a license to conduct pari-mutuel operations under this chapter ... [and] the Division shall fix annually the time, place, and the number of days during which pari-mutuel operations may be conducted by the permitholder at the location fixed in the permit. (Emphasis Added).

35. Section 550.01215, Florida Statutes, consist of six subsections, two of which are pertinent. Specifically, Section 550.01215, Florida Statutes, provides in pertinent part:

(1) Each permitholder shall annually, during the period between December 15 and January 4, file in writing with the Division its application for a license to conduct performances during the next state fiscal year. Each application shall specify the number, dates, and starting times of all performances which the permitholder intends to conduct... **(permitholders shall be entitled to amend their application through February 28.)**

(3) The Division shall issue each license no later than March 15. Each permitholder shall operate all performances at the date and time specified on its license. The Division shall have the authority to approve minor changes in racing dates after a license has been issued. The Division may approve changes in racing dates after a license has been issued when there is no objection from any operating permitholder within 50 miles of the permitholder requesting the changes and operating dates. In the event of an objection, the Division shall approve or disapprove the change in operating dates based upon the impact on operating permitholders located within 50 miles of the permitholder requesting the change in operating dates. In making the determination to change racing dates, the Division shall take into consideration the impact of such changes on state revenues. (Emphasis Added).

36. The purpose of Section 550.01215, Florida Statutes, is to give certainty to racing dates (and race meets) so that all permitholders could appropriately plan for and execute their live race meet without interference from any other race track. Minor changes in racing dates within the starting and ending racing date of a racing meet have routinely been approved by the Division for various reasons, but never has the Division approved a change in thoroughbred racing dates, which would actively interfere with the operation of another permitholder's already scheduled and licensed thoroughbred racing meet, with negative economic consequences to other racing permitholders, owners, trainers, breeders and jockeys, as well as to the State of Florida.

37. Racing date applications are closed as of February 28 of each year. In this specific year (2012 - 2013), the last opportunity to voluntarily change racing dates by Tampa Bay Downs was February 28, 2012. Thereafter, a license was issued by the Division to Tampa Bay Downs to conduct its racing meet for the period December 1, 2012 through May 5, 2013.

38. In the Petition for Declaratory Statement that Calder filed in 2003, Case No.: DS 2003-031, Calder asked a question relating to dark days within a racing meet. The factual circumstances contained in that case are set forth in the Petition in Exhibit E attached hereto. Calder, at that time, operated for 3 to 5 days a week in its racing meet, typically up to and including the last day of its license year, which in 2013 is June 30, 2013. The answer to the question permitted the operation of interstate simulcast and allowed Calder to be the host track within Calder's live race meet.

39. Petitioners do not believe that the 2003 Declaratory Statement is applicable to the instant facts and circumstances because the Division, in the case of Tampa Bay, has or will have granted an single racing date outside the traditional live racing meet. Petitioners do not believe that any statutes exist that permit the Division grant this single isolated race date , nor does the Division have the statutory authority to authorize interstate simulcast racing except, in conjunction

with the operation of a live racing meet consisting of consecutive performances within a specified time frame.³

40. Petitioners believe that if the Division continues to interpret this statute in this manner, as set forth in the examples above, that such interpretation will ultimately lead to racetrack permitholders operating in a similar manner, and the purses and breeders' awards as a result of such activities will deteriorate and seriously damage the entire thoroughbred industry including the thoroughbred owners, thoroughbred breeders, jockeys and ultimately the thoroughbred horse race permitholders.

41. Petitioners acknowledge that Chapter 550, Florida Statutes, is not a "model" of clarity. However, the Division appears to be departing from the provisions of the Interstate Horseracing Act, when read together with Section 550.3551(3), Florida Statutes, establishes a requirement of a "race meet," which means consecutive performances of live racing, and the law has not changed since 1992.

Questions Presented

1. Whether a "race meet" for purposes of Section 550.3551(3) and Section 3002 (14,), (15), and (16) in Florida, must consist of live racing as required by law (see: Section 550.002(11), Florida Statutes), and must have beginning and

³ Only purpose of such single date(s) is to "authorize" interstate horseracing.

end dates that are contiguous to the period of time when a track is actually conducting live racing.

2. Whether thoroughbred permitholders, including Calder, is entitled to:
 - (a) amend its racing dates at any time, after February 28 of each year;
 - (b) operate a “race meet” and meet the definitions of Section 550.3551(3), Florida Statutes, under the following factual scenario:
 - (i) If a thoroughbred permitholder requests racing dates only for July 1 of any state fiscal year; and
 - (ii) Such permitholder also requests racing dates of 3 days per week beginning December 15 through May 3 of the following year; and
 - (iii) Such permitholder also requests June 30th following the closing on May 3 as set forth in (b) above; and
 - (iv) Such permitholder, pursuant to the provisions of Section 550.3551(3), Florida Statutes, would then request to be permitted to serve as a host track for purposes of importing interstate thoroughbred horse races from July 1 of the beginning of any state fiscal year, through June 30 of the end of that fiscal year, while only conducting 6 months of live racing.

3. Whether Subsection (14), (15), and (16) of Section 3002 of the Interstate Horseracing Act requires a thoroughbred race track in this state , in order to receive broadcast of out-of-state races, to be (1) a “currently operating track”, which is (2) conducting a “race meeting”, and (3) contains a “full program” of races on a specified day.

WHEREFORE, Petitioners request that the Division review this Petition, hold an evidentiary hearing where all parties can be heard, and enter an Order,

which concludes that unless a thoroughbred race track in this state is (1) a “currently operating track”, which is (2) conducting a “race meeting”, and (3) contains a “full program” of races on a specified day in accordance with Subsection (14), (15), and (16) of Section 3002 of the Interstate Horseracing Act; which is a “race meet” for purposes of Section 550.3551(3), Florida Statutes, such thoroughbred race track may not receive broadcast of out-of-state races under the scenario contained in Question 2 above, which scenario is in violation of Florida and Federal Law.

Respectfully submitted this 3rd day of May, 2013.



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