

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

IN RE: GULFSTREAM PARK RACING

**ASSOCIATION, INC., REQUEST TO AMEND
2013-2014 PERFORMANCE LICENSE**

DBPR CASE No. 2014009886

ORDER GRANTING GULFSTREAM DATES LICENSE AMENDMENT

On February 27, 2014, Gulfstream Park Racing Association, Inc. (Gulfstream), filed a request to amend its 2013-2014 racing license with the Division of Pari-Mutuel Wagering (Division). Thereby Gulfstream seeks to add 11 racing days to its 2013-2014 racing calendar – the last two Fridays in April 2014, Monday, May 26, 2014 (Memorial Day), every Friday in May 2014 (except Friday, May 23), and every Friday in June 2014. Calder Casino & Race Course (Calder) and Mardi Gras Racetrack & Gaming Center (Mardi Gras), permitholders located within 50 miles of Gulfstream, have objected to the requested amendment. No other permitholder within 50 miles of Gulfstream has objected.

Gulfstream provided responses from Hialeah Park, Dania Jai Alai, Flagler Greyhound Track, Pompano Park, and Palm Beach Kennel Club indicating they had no objection to the requested amendment. Miami Jai Alai filed no response. On March 2, 2014, Calder Race Course, Inc. (Calder), indicated it objected to the requested amendment, and on March 10, 2014, Hartman & Tyner, Inc., and H&T Gaming, Inc., d/b/a Mardi Gras Racing & Gaming (Mardi Gras), verbally indicated to the Division's licensing administrator it likewise objected to the requested amendment.

Based on the requirements of Section 550.01215(3), Florida Statutes (F.S.), the Division initiated a review of the objections. On March 13, 2014, the Division issued an "Order on Proceedings" directing that Calder and Mardi Gras, by close of business Wednesday, March 19, 2014, specifically state their objections and provide supporting data to assist the Division in

making a determination whether to approve or deny Gulfstream's request. The Order further directed Gulfstream to file its reply to Calder's and Mardi Gras' objections by no later than close of business Wednesday, March 26, 2014.

On March 19, 2014, Calder and Mardi Gras each filed a "Response to Order on Proceedings." Calder argued that Gulfstream's request to add 11 additional racing days to its 2013-2014 race meet did not constitute a "minor change" within the meaning of § 550.01215(3), F.S., and that the Division had no legal authority, after February 28, to grant a racing dates amendment like that sought by Gulfstream. Calder also submitted that granting the requested amendment would negatively impact it, causing a significant decrease in Calder's estimated total handle for those 11 days – reducing its projected \$63 million total handle, its estimated \$5.3 million in revenue based thereon, the estimated \$1.0 million state tax on handle based thereon, the estimated \$592 thousand payment of breeders' awards based thereon, and the estimated \$2.6 million payment to Calder horsemen based thereon.¹ However, Calder presented no figures as to the effect on its live (not total) handle nor whether the requested amendment would adversely impact state revenues. Instead, Calder argued the "impact on tax revenues is a consideration that is plainly secondary to the impact on other permit holders in the vicinity" and the "impact on other permit holders – not the state – is the overriding consideration in determining whether to approve or disapprove" a competitor's race dates license amendment.

Mardi Gras similarly argued that the requested amendment was not "minor" within the meaning of the statute and repeated, *verbatim*, Calder's argument that the "impact on state revenues" is plainly secondary to "impact on other operating permit holders" within the same area. However Mardi Gras, just as Calder, presented no evidence that the requested amendment would negatively impact state revenues. Further, Mardi Gras argued that because two of the additional

¹ These are undocumented figures provided in a chart at the top of p. 7 of Calder's "Response." Calder provided no underlying information to support them.

race days sought by Gulfstream would fall on days when Mardi Gras would also be conducting live racing, Mardi Gras would suffer a negative economic impact as a result thereof, but Mardi Gras presented no figures quantifying the possible amount of any such negative economic impact.

On March 21, 2014, Gulfstream filed its reply to “Calder’s & Mardi Gras’ Responses to Order on Proceedings.” In reply to Calder’s and Mardi Gras’ assertion that the amendment request was not “minor,” Gulfstream pointed out that the addition of 11 racing days to its 2013-2014 racing calendar would be “an increase of only seven percent (7%) of its performances”² and was therefore clearly “minor” within the meaning of § 550.01215(3), F.S. Gulfstream also pointed out, as noted above, that Calder and Mardi Gras presented no evidence to establish Gulfstream’s addition of 11 racing days would negatively impact state revenues. In reply to Calder’s and Mardi Gars’ argument that Gulfstream was not permitted to amend its racing dates license after February 28, Gulfstream submitted that such position was “contrary to the clear language of Section 550.0215(3)” and further pointed out that Calder did not object when Hialeah Park and Dania Jai Alai sought to amend their 2013-2014 dates license after February 28. As for Calder’s assertion that granting Gulfstream’s request for 11 additional racing days would significantly impact Calder’s projected \$63 million total handle for those 11 days, Gulfstream states that Calder’s submission “is unsupported by the facts” and that:

Calder has yet to achieve handle on a Friday in excess of \$1.3 million and, as such, \$6 million in handle per-day³ at Calder seems highly unlikely, if not ... impossible.

In addition, Gulfstream attached a chart to its reply showing that, for the 15 Fridays Calder and Gulfstream raced head-to-head from December 6, 2013, through March 14, 2014, Gulf-

² Gulfstream presently has 154 total performances scheduled in 2103-2014 (149 regular, 5 charity). Eleven out of 154 constitutes, precisely, 7.14%.

³ \$63 million divided by 11 days actually works out to \$5.73 million per day, somewhat less than Gulfstream’s submission of \$6 million per day but still substantially more than \$1.3 million per day.

stream's total live handle was \$100,681,174, an average of \$6,712,078 per day, while Calder's total live handle for the same period was \$16,079,374, an average of \$1,071,958 per day – 16% of Gulfstream's live handle. Gulfstream's average taxes and daily license fees for those 15 days was \$8,549 per day which, if projected for the 11 additional days sought by Gulfstream, would be \$94,039 additional revenue to the state, a positive impact. However, Gulfstream provided no figures as to whether its addition of 11 race days would reduce Calder's live handle for those same 11 days which then would result in a loss of revenue to the state.

The Division's figures are different. It determined that the average of the live/ITW taxes and daily license fees Calder paid for the 8 Fridays from July 13 through August 31, 2012, was approximately \$3,500 per day when Calder was running by itself and not head-to-head with Gulfstream. It then determined that the average of the live/ITW taxes and daily license fees Calder paid for the 9 Fridays from January 3 through February 28, 2014, was approximately \$2,240 per day when Calder was running head-to-head with Gulfstream. The difference, minus \$1,260 per day, when multiplied by the 11 race days Gulfstream seeks to add where it and Calder would then be racing head-to-head, projects roughly to a loss of state revenue (taxes and daily license fees) from Calder of approximately \$14,000 total for those 11 days. On the other hand, examining Gulfstream's live handle for the 13 Fridays from December 6, 2013, through February 28, 2014, when it and Calder were running head-to-head, establishes a per day average of approximately \$8,000 in taxes and daily license fees paid by Gulfstream which, when multiplied by the 11 race days it seeks to add, projects roughly to an increase in state revenue (taxes and daily license fees) from Gulfstream of approximately \$88,000 total for the same 11 days. Considering the projected 11-day loss in state revenue from Calder against the projected 11-day increase in state revenue from Gulfstream means the state could possibly realize an increase in revenue of about \$70,000 were it to grant Gulfstream's request.

As for Mardi Gras, the Division could not discern any negative effect on state revenue from Mardi Gras were it to grant Gulfstream's request. Even though two of the days Gulfstream seeks to add would be on days Mardi Gras conducts live racing, Mardi Gras is a greyhound, not thoroughbred, permitholder. In addition, Mardi Gras already goes head-to-head with Calder on Fridays.

Finally, the Florida Thoroughbred Breeders & Owners Association (FTBOA) and the Florida Horsemen Benevolent & Protective Association (FHBPA) both support Gulfstream's request. On February 27, 2014, Larry Powell, Chief Executive Officer of FTBOA, wrote:

We find Gulfstream's request [to add 11 additional live racing dates] to be appropriate and in the best interest of Florida Thoroughbred breeding and racing.

Similarly, the same date Kent Stirling, Executive Director of FHBPA, wrote:


The [FHBPTA], which represents the six thousand owners and trainers who race their horses in Florida, is in complete support of Gulfstream Park adding eleven (11) more live racing days. This will enable our members to have more racing opportunities, race for more purse money, and will at the same time generate more tax revenue for the State of Florida.

In conclusion, the best evidence is that the requested amendment would have a positive effect on state revenues, with a projected increase in state revenue from taxes and daily license fees of possibly \$70,000 or so. *Cf. In re: Request to Amend Racing Dates license, Gulfstream Park Racing Ass'n, Inc.*, "Order Granting Gulfstream Dates License Amendment" at p. 3, DBPR No. 2009012405 (March 17, 2009); *accord, In re: Gulfstream Park Racing Ass'n, Inc., Request to Amend 2013-2014 Performance License*, "Order Granting Gulfstream Dates License Amendment" at pp. 2-4, DBPR No. 2013047466 (November 26, 2013) Moreover, the horsemen's expression of support for Gulfstream's requested amendment undercuts Calder's implied chart argument that they would be negatively impacted. Further, § 550.01215(3), F.S., on its face clearly contemplates applications to amend racing dates licenses may be made after February 28, *See In re: Gulfstream Park Racing Ass'n, Inc., Request to Amend 2012-2013 Racing License*,

“Order Granting Amendment” at pp. 2-3, DBPR No. 2013009352 (May 7, 2013), and the Division is satisfied the requested amendment is, indeed, a “minor change” within the meaning of the statute, *Id.* at pp. 3-5.

Accordingly, it is therefore ORDERED that Gulfstream’s request to amend its annual 2013-2014 operating dates license, #0000321, by adding eleven (11) live racing performances – the last two Fridays in April 2014, Monday, May 26, 2014 (Memorial Day), every Friday in May 2014 (except Friday, May 23), and every Friday in June 2014 – shall be and is hereby GRANTED.

DONE AND ORDERED this 2nd day of April, 2014, in Tallahassee, Florida.


LEON M. BIEGALSKI, DIRECTOR
Division of Pari-Mutuel Wagering
Department of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1035

NOTICE OF ADMINISTRATIVE RIGHTS

This order constitutes final agency action. Any person whose substantial interests are affected by this order may challenge this decision, within 21 days by filing a petition in accordance with Rule 28-106.201, Florida Administrative Code, with The Department of Business and Professional Regulation, Agency Clerk’s Office; 1940 North Monroe Street, Tallahassee, Florida 32399 <OGCAgencyClerk@myfloridalicense.com>.