

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



IN RE: GULFSTREAM PARK RACING
ASSOCIATION, INC., REQUEST
TO AMEND 2012-2013 RACING
LICENSE

DBPR CASE NO. 2013009352

ORDER GRANTING AMENDMENT

Procedural History

On April 9, 2013, this matter was remanded from the Division of Administrative Hearing (“DOAH”) to allow the division to consider subsequent amendment requests filed by Gulfstream Park Racing Association (“Gulfstream”) after a previous amendment request had been referred to DOAH for resolution of disputed issues of material fact. The previous Order of Limited Referral to DOAH found that there were disputed issues of material fact related to responses to the first Order on Proceedings filed by Mardi Gras Racing (“Mardi Gras”), Gaming Center and Calder Race Course (“Calder”), and Gulfstream.

In its motion to relinquish jurisdiction the division noted that there were two potential amendment requests that had been filed by Gulfstream. One amendment request was filed with DOAH requesting an additional racing day on June 30, 2013. Another amendment request had also been filed with the division requesting a racing day on June 25, 2013. Therefore, the division requested to be allowed to process the applications due to the significant changes from the original amendment request which asked for a total of 25 new racing days.

On April 9, 2013, Gulfstream notified the division through its counsel in this matter that it was withdrawing its request for an additional racing date on June 30, 2013, and wished to only proceed with its request for an additional racing date on June 25, 2013.

On April 10, 2013, the division issued a Second Order on Proceedings which gave Mardi Gras and Calder an opportunity to provide the division with a response by April 22, 2013, to specify whether they still objected to the granting of the Gulfstream's requested amendment to add an additional race day on June 25, 2013. The Second Order on Proceedings also gave Gulfstream an opportunity to file any response to the objections no later than April 29, 2013.

Calder filed its Response to Second Order on Proceedings on April 22, 2013. Mardi Gras did not file a response.

Gulfstream's Response to the Division's Second Order on Proceedings was filed on April 23, 2013.

Ruling on Objections

Calder raises two primary objections to the granting of Gulfstream's requested amendment to add an additional day of racing on June 25, 2013. The first objection is that Calder believes that once that license has been issued on March 15 as required by §550.01215(3), Fla. Stat., the division lacks the authority to make changes to dates outside of the dates range that a permitholder begins and ends racing or games on its annual racing license. Calder's next objection is that the requested amendment is not a minor change because Gulfstream could potentially receive of interstate simulcast of thoroughbred horse races should the requested amendment been granted.

§550.01215(3), Fla. Stat., reads as follows:

(3) Except as provided in s. 550.5251 for thoroughbred racing, 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 located within 50 miles of the permitholder requesting the changes in 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.]

Calder's first position that beginning and ending dates of a race meet are set at the time the division issues each permitholder its annual license on March 15 and that no amendments can be made to an annual racing license after a license has been issued are clearly without merit. The plain language of §550.01215(3), Fla. Stat., clearly provides the division with the authority to amend annual racing dates licenses "after a license has been issued." Further, the section says nothing limiting a potential amendment to dates within any period as reflected on the originally issued license, nor does it limit or give priority to arguments regarding competition from permitholders of the same class of pari-mutuel permit. If the division was not authorized to amend licenses after their issuance on March 15, there would have been no reason for the legislature to enact the remaining provisions of §550.01215(3), Fla. Stat., after setting the deadline to issue licenses on March 15.

§550.01215(1), Fla. Stat., authorizes two situations in which the division may approve changes in racing dates after the license has been issued. The section first states that the division may approve "minor" changes in racing dates after the license has been issued. In the next sentence, the section also provides that the division may approve

changes in racing dates after the license has been issued “when there is no objection from any operating permitholder located within 50 miles of the permitholder requesting the changes in operating dates.” The second provision does not use the term “minor” to describe the requested changes that the division might approve when there is no objection from other operating permitholders. Therefore, the division must determine whether Gulfstream’s requested change is minor, and if not, whether it should be granted over Calder’s objection.

For example, Gulfstream’s original request to amend racing dates requested a total of 25 racing days; 24 of those days were on dates which Calder was not conducting racing. Based on the number of days alone, addition of 25 days would not seem to be a minor change in racing dates in most cases. Further, there were also potentially material impacts as Calder noted in its objections due to the impact of its operations based on the availability of horses to conduct its currently licensed races.

Calder takes the position that although Gulfstream’s currently requested amendment only adds one day to its calendar that it is not minor change because there would be significant impacts to Calder’s operations based on Gulfstream’s potential receipt of simulcast wagering pursuant to §550.3551(3), Fla. Stat. As a permitholder within 50 miles of Gulfstream, Calder takes the position that the negative impacts of Gulfstream receiving simulcasts should be taken into consideration by the division in evaluating the request. However, as referenced above, §550.01215(3), Fla. Stat., does not contain any parameters limiting a potential change of racing dates to a specific number or timing of dates requested. While there may be some debate as to how many or few days

would actually constitute a minor change, a permitholder could not ask to add less than one day. Thus, an addition of only one day could only be a minor change.

Further, §550.01215(3), Fla. Stat., limits the ability to object to “operating permitholders located within 50 miles of the permitholder requesting the change in operating dates.” Calder is a permitholder located within 50 miles. However, the limitation of the ability to object to “operating permitholders located within 50 miles” clearly focuses on the ongoing operation of live racing or games within the geographic area. Operating permitholders are not authorized to object to amendments requested by permitholders outside of 50 miles by §550.01215(1), Fla. Stat., or by any other provision of Ch. 550, regardless of the potential impact of the ability of the amending permitholder to receive simulcast signals.

The protections provided by the legislature for live racing regarding intertrack and simulcast wagering focus on the impact of the receipt of a like kind signal from outside the market, not whether a signal can be received within any geographic area. The live product of an operating permitholder is protected from intertrack redistribution of a like kind simulcast signal by §550.615(4), Fla. Stat. That section of the intertrack statutes prohibits an intertrack wager from being taken “on the same class of live races or games of any permitholder without the written consent of such operating permitholders conducting the same class of live races or games if the guest track is within the market area of such operating permitholder.”

For example, Calder has included in its response objections to the legality of the issuance of a similar recent amendment to Tampa Bay Downs, which it claims will be able to receive and redistribute the simulcast signals of out of state thoroughbred races.

However, while Tampa Bay Down's ability to potentially conduct simulcast wagering under its amendment would be no different than Gulfstream's ability to receive and redistribute the signal, Calder clearly lacks standing under §550.01215(3), Fla. Stat., to object to Tampa Bay Downs amendment because it is not within 50 miles. Therefore, the potential ability of a permit holder to receive simulcast signals when requesting additional racing days under §550.01215, Fla. Stat., is not a material consideration for the division in determining whether an amendment should be granted.

IT IS THEREFORE ORDERED:

The amendment requested by Gulfstream Park Racing Association, Inc., to add an additional racing day on June 25, 2013, is hereby GRANTED.

DONE AND ORDERED this 7th day of May, 2013, 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 HEARING RIGHTS

This Order Granting Amendment constitutes the agency action of the Division of Pari-mutuel Wagering regarding the requested amendment from Gulfstream. If you wish to challenge this decision, within 21 days you must file a petition in accordance with Rule 28-106.201, Florida Administrative Code, with Agency Clerk, Department of Business and Professional Regulation; 1940 North Monroe Street, Tallahassee, Florida, 32399.

CERTIFICATE OF SERVICE

I hereby certify this 7 day of May, 2013, that true copies of the foregoing

“Order Granting Amendment” have been served by both U.S. mail and email upon:

MARC W. DUNBAR, ESQ.
DANIEL R. RUSSELL, ESQ.
Jones, Walker, Waechter, Poitevent,
Carrere & Denegre, LLP
PO Box 351
Tallahassee, Florida 32301

GARY R. RUTLEDGE
J. STEPHEN MENTON, ESQ.
MICHAEL J. BARRY, ESQ.
Rutledge, Ecenia & Purnell, P.A.
Post Office Box 551
Tallahassee, Florida 32302-0551

WILBUR E. BREWTON, ESQ.
KELLY BREWTON PLANTE, ESQ.
Brewton Plante, P.A.
225 South Adams Street – Suite 250
Tallahassee, Florida 32301


AGENCY CLERK'S OFFICE

Copies Furnished by Email to:

Marc Dunbar <mdunbar@joneswalker.com>
Daniel Russell <drussell@joneswalker.com>
Wilbur Brewton <wbrewton@bplawfirm.net>
Kelly Brewton ,kbplante@bplawfirm.net>
Gary Rutledge <gary@reuphlaw.com>
Steve Menton smenton@reuphlaw.com
Mike Barry <mbarry@reuphlaw.com>