STATE OF NEW YORK: LIQUOR AUTHORITY

Randomized Horse Racing

DECLARATORY RULING
2014-02965

Preliminary Statement

Section 98.1 of the Rules of the State Liquor Authority, (9 NYCRR subtitle B) provides that any person may request the Authority to issue a declaratory ruling on the application of the Alcoholic Beverage Control Law (ABCL), or the Rules of the Authority, on any person, property or state of facts.

By letter dated September 22, 2014, a request was submitted by Warren Pesetsky Esq. on behalf of his client, a future on-premises license applicant. Mr. Pesetsky requests a declaratory ruling as to whether the "randomized horse racing" game his client intends to install and run at his future licensed location constitutes gambling.

Statement of Facts

Mr. Pesetsky's client intends to open a themed bar with what he calls "randomized horse racing." Horses will race on a wall mounted board with randomized results. Mr. Pesetsky's client intends to sell horses to patrons. A horse will cost fourteen dollars or patrons may pay thirty dollars for a stable of three horses. When patrons enter the premises, they will receive a ticket, at no charge and not dependent upon a purchase, which permits them to bet on the winning horse. Patrons who correctly select the winner may choose an item from the "Winner's Menu" that includes, appetizers, deserts and beer.

Every horse receives points based upon their placing in each race. Horse owners may use the points to buy personalized decorative items for their horses such as hats or tail colors. At the end of a year, the horse owner with the most points wins a prize. Prizes vary from array of choices ranging from a plaque to a private party at the premises.

Questions presented

1. Is a patron, who uses their ticket to guess a winning horse and receives an item from the "Winner's Menu" engaged in gambling?
2. Is a horse owner, who may win a prize at the end of the year, engaged in gambling?

Statutes Involved

Section 106(6) of the ABCL prohibits on-premises licensees from suffering or permitting gambling on the licensed premises.

Penal Law Section 225.00(2) defines gambling as: A person engages in gambling when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome.

Penal Law Section 225.00(1) defines a contest of chance as: any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestant may also be a factor therein.

Ruling

The Members of the Authority have traditionally relied upon the Penal Law definition of gambling when determining if someone has engaged in gambling on the licensed premises. Penal Law Section 225.00(2) defines an activity as gambling, if it meets the following criteria:

a. A person stakes or risks something of value;
b. on a game of chance not under his or her control;
c. under the understanding they will receive something of value upon a certain outcome.

Under this standard the Members first address the patron who receives a ticket and correctly guesses the winner of the race. This non horse owner patron receives a free ticket, accordingly they have not risked anything of value in order

to obtain an opportunity to win an item from the "Winner's Menu." Therefore, having not complied with the first definitional prong of PL Section 225.00(2), the Members find their activity may not be deemed as gambling.

As for horse owners, they do stake or risk something of value in "randomized horse racing." Horse owners purchase their horse with money. Mr. Pesetsky concedes that the horse race is a complete game of chance. There is nothing a horse owner may do to increase or decrease their chance at a winning. Lastly, the horse owner with the most points then receives a prize which, as described by Mr. Pesetsky may have significant monetary value, such as a private party at the premises. Accordingly, the Members find that this method of operation satisfies all three prongs of PL Section 225.00(2) and is hence prohibited in a licensed premise pursuant to ABCL Section 106(6).

Mr. Pesetsky and his client appeared before the Members regarding this petition on December 2, 2014 and discussed various methods of operation under which the "randomized horse racing" may operate that vary from the facts stated in their petition. Pursuant to this oral presentation, the Members held that if horse ownership was free then horse owners could not be deemed to have risked or staked anything for their opportunity to win a prize of value. Accordingly, the Members ruled that if the method of operation as described in Mr. Pesetsky's letter, was altered to state that horse ownership was free and not dependent upon any purchase, just as tickets are, then the game would not constitute gambling and is not a violation of ABCL Section 106(6).

The foregoing Declaratory Ruling was formally approved by the Members of the Authority at a Full Board meeting held on December 2, 2014.

Jacqueline Held
Secretary to the Authority