



State of Louisiana

Gaming Control Board

M. J. "MIKE" FOSTER, JR.
GOVERNOR

HILLARY J. CRAIN
CHAIRMAN

DECISION OF THE LOUISIANA GAMING CONTROL BOARD

IN RE: FRANK L. DAILEY D/B/A DAILEY'S NO. V3900211490

This is an appeal by licensee, Frank L. Dailey d/b/a Dailey's from the decision of the Hearing Officer ordering revocation of his video gaming license.

The basis for initiation of this administrative proceeding was Dailey's failure to submit the annual fee, the processing fee and state and local tax clearances by July 1, 2001. The "Notice of Recommendation of Suspension or Revocation, Order of Immediate Suspension and Notice of Hearing" for Dailey's was signed on October 15, 2001. The Division attempted personal service of the notice to Mr. Dailey at the physical address of the establishment, 8204 Island Road in Ventress. At that time there were no video gaming devices in the establishment; the building was locked; Dailey's appeared to be out of business; a new business appeared to be operating at the former Dailey's location; and Dailey's business telephone had been disconnected.

On October 24, 2002, the administrative hearing on the immediate suspension was held in Mr. Dailey's absence. A subsequent hearing on the recommended revocation was held on November 27th, also in Mr. Dailey's absence. On November 27, 2001, the Hearing Officer rendered a decision revoking Dailey's license.

On January 2, 2002, Mr. Dailey appealed the Hearing Officer's decision, alleging that the business had closed in January 2001; the video gaming license was surrendered to the Division approximately in July 2001 and Mr. Dailey did not receive prior notice of the recommended revocation or the immediate suspension of his license or notice of hearing. He further stated that the first notice of administrative action against him was the Hearing Officer decision of November 27, 2001, revoking his license. Also attached is a statement from a relative of Mr. Dailey (Mrs. Maya Dailey) stating that due to Mr. Dailey's serious medical condition she delivered Dailey's video gaming license and a notarized "multi-use" form to the Division on his behalf.

The Hearing Officer's decision was signed on November 27th, 2001. This appeal was filed on January 2, 2002, more than thirty days from the rendering of the decision.¹ On its face the appeal is untimely.

The timely filing of a request for appeal in administrative proceedings as in other appeals is jurisdictional. **Baloney v. DHHR, Office of Family Services**, 364 So.2d 203 (La. App. 1st Cir. 1978). Once the delays for appeal have run, an administrative ruling becomes final and the Board is without jurisdiction to entertain the appeal. **Robinson v. City of Baton Rouge**, 90-0277 (La. App. 1 Cir. 6/26/90); 566 So.2d 415. An opponent to a decision of an administrative agency is not entitled to a review of the merits of the action after appeal delays have expired. However, even after the expiration of appeal delays, a decision of an administrative agency may be subject to an action for nullity in district court. La. C.C.P. art. 2002; see **Pace v. Parish of Jefferson**, 01-1083 (La. App. 5 Cir. 1/15/02); __ So. 2d __.

¹ An appeal from the decision of the hearing officer must be lodged within thirty days of the rendering of the decision. La. R.S. 27:25(E).

Although equity would dictate that since Mr. Dailey probably never received the original notice (of October 15, 2001) of the initiation of administrative action, Dailey's should be able to have this matter considered by the Board on appeal and remanded for hearing by the Hearing Officer, the appeal delays have run and we are without jurisdiction to do so. Accordingly, the appeal should be dismissed. A remedy may be available in District Court through an action for nullity pursuant to La. C.C.P. arts. 2001-2006. An action for nullity does not appear to be available in administrative proceedings.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of February 19, 2002:

IT IS ORDERED THAT the appeal of Frank L. Dailey d/b/a Dailey's, No. 3900211490, is **DISMISSED.**

THUS DONE AND SIGNED this 20th day of February, 2002.

LOUISIANA GAMING CONTROL BOARD

BY: 

HILLARY J. CRAIN, CHAIRMAN

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 21st **DAY**
OF February 2002

APPEAL DOCKET CLERK
