

Former poker dealers sue Bonita Springs dog track

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Three former poker dealers at Naples-Fort Myers Greyhound Track are suing the track's owner, alleging it skimmed their tips to pay card room floor managers.

Kevin Bellington and Lisa Williams, both of Fort Myers, and Bonita Springs resident Steven Gedday filed their lawsuit in U.S. District Court in Orlando against Southwest Florida Enterprises Inc., which does business as Naples-Fort Myers Greyhound Racing & Poker. The lawsuit, filed May 7, alleges the Bonita Springs poker room violated the federal Fair Labor Standards Act.

A track employee said General Manager Larry Baldwin declined comment and referred calls to its corporate office, Flagler Greyhound Track in Miami. Officials there were not immediately available Wednesday.

The lawsuit was filed by Christopher Whitelock and Chad Levy, Fort Lauderdale attorneys who have gained a reputation after filing 10 similar lawsuits at dog tracks and jai alai entertainment centers across the state, including three against Palm Beach Kennel Club.

In March 2009, a federal jury found the Palm Beach club had not proven it operated a tip pool legally under the Fair Labor Standards Act. However, the jury found the 18 dealers hadn't proven the club operated an illegal tip pool knowingly or with reckless disregard for the law.

In August 2003, poker stakes increased to \$2 under state poker rules, rising again in July 2007 to \$5 for licensed pari-mutuel facilities. As a result, dealers often made more than managers. Instead of increasing managers' wages, Levy said, the dealers' surplus tips were used to pay managers, even though dealers did all the work. Players usually tip dealers with a \$1 or \$5 chip at the end of each hand.

Levy said the Palm Beach lawsuit was filed after his first lawsuit in 2006 against the Hollywood greyhound track, which was quickly settled. The Palm Beach track refused.

'They took the position that we're going to try this all the way,' Levy said today, adding that it could have been settled cheaply because it initially involved only two dealers seeking \$5,000 to \$6,000 yearly for three years, but it grew to 26 plaintiffs and ended with 18.

'They kind of shot themselves in the foot a little bit,' Levy said of the Palm Beach track. 'Every other one we had was resolved. Palm Beach was essentially the sacrificial lamb.'

The lawsuit, which involved wages from 2004 to 2007, stemmed from a part of the federal act that allows tracks, restaurants and other businesses to pay employees less than minimum wage if employees 'customarily and regularly receive tips.'

Because dealers get tips from card players, the club claimed a 'tip credit' and set their base pay at roughly \$3 less than minimum wage. Dealers were required to place 5 percent of their tips into a 'tip pool,' which was doled out to cashiers, hosts and floor supervisors.

Unlike waiters and waitresses pooling tips to pay a busboy or bartender, poker room managers don't have direct service contact with card players, so they aren't entitled to the tips under the act. Levy said the extra \$3 hourly would have boosted their salaries by roughly \$5,000 to \$6,000 yearly.

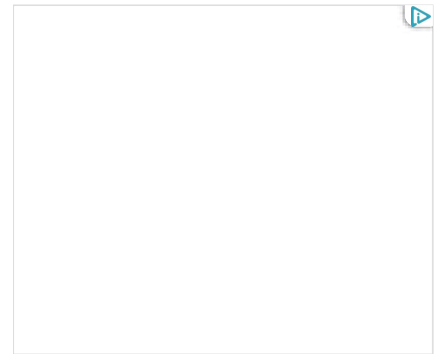
With tips, poker dealers, who usually work a 30-hour week, make about \$20 hourly, Levy said, but could make up to \$30 hourly if they received all their tips.

Whitelock told the Palm Beach Post the verdict would affect kennel clubs statewide, where tips are regularly taken from dealers, ending in floor supervisors earning \$40,000 to \$70,000 with the dealers' tips.

The labor act allows plaintiffs to seek three years' worth of wages if they prove an employer acted with intent and willful disregard, which they didn't. But because the track wasn't able to defend why it illegally took the tips, the judge ruled the dealers were entitled to double the \$66,603.13 in damages for two years of wages.

In November, the track's owner, Investment Corp. of Palm Beach, paid the 18 dealers \$133,206.26 to satisfy the judgment, according to court records, which show Whitelock and Levy also were paid \$153,333.90 for their attorneys' fees and costs of going to trial, and the four-day trial.

Although pooling tips was common in the industry, Seminole Casino in Hollywood prohibits floor supervisors from getting any of the tips, Levy said, calling that an exception. 'Certain



facilities almost thought that by making the change, it was almost an admission of guilt and they would be sued,' he added.

Due to the heavy publicity about the Palm Beach verdict and how word quickly spreads in the poker community, Levy believes they'll be able to prove intent more easily in the Bonita Springs case.

The Bonita Springs lawsuit says the three plaintiffs were hired as non-exempt employees, poker dealers at the casino, and received tips under the Fair Labor Standards Act. The track illegally claimed a 'tip credit' for the employees, the lawsuit says, but paid the plaintiffs and other dealers below the statutorily required minimum wage.

For the track to receive a tip credit, employees must be informed of provisions of the tip credit and all tips received by dealers, which must be kept by dealers or pooled among all dealers, the lawsuit says. Because the track illegally claimed a tip credit, the lawsuit contends it must compensate the plaintiffs and other similar employees with at least minimum wage.

The lawsuit didn't specify how much the dealers are owed, contending that information is contained in records held by the track.



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