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Horse Racing Case Law for 2003

2003 was not a good year in court for individuals in horse racing who were challenging drug-related suspensions. It was not a good year for Fair Grounds. It was, however, a good year for racetracks faced with negligence suits, and there were a wide variety of interesting cases decided throughout America on all aspects of horse racing.

I – United States Supreme Court –

Fitzgerald v. Racing Ass'n, 123 S. Ct. 2156 (U.S. , 2003) – Iowa taxed revenues from slot machines at racetracks at a higher tax rate than the State taxed slot machine revenues at riverboat casinos. While the Iowa Supreme Court had found that this tax differential violated the Equal Protection Clause, the United States Supreme Court quickly and unanimously ruled that there was no Equal Protection Clause violation. As long as there was a rational basis for the tax differential, the tax was constitutional. A plausible policy reason existed for the disparate treatment in that the Iowa legislature may have wished to provide benefits to the riverboat casino industry and/or to those communities hosting riverboat casinos.

II – Equine Drug Cases –

Baffert v. Cal. Horse Racing Bd., 332 F.3d 613 (U.S. App. , 2003), cert denied 157 L. Ed. 2d 746(2003). In what was probably the most-reported case of the year, trainer Bob Baffert's federal court challenge to a 60 day suspension for a morphine positive imposed by the California Horse Racing Board was dismissed. While the lower court had found that Baffert's due process rights had been violated, the 9th Circuit reversed the finding. The 9th Circuit found that the federal district court should have abstained from hearing Baffert's case while the case was proceeding in the California state court system, California had a substantial state interest in protecting the integrity of horse racing, and Baffert's constitutional claims could be fairly handled by California' courts.

Zito v. N.Y. State Racing & Wagering Bd., 100 N.Y.2d 502 (N.Y. , 2003) The Court of Appeals in New York denied trainer Zito's motion for leave to appeal. This upheld the validity of Zito's 10 day suspension and \$2,000 fine for a lidocaine positive. See Zito v. N.Y. State Racing & Wagering Bd., 300 A.D.2d 805 (4th Dept., App. Div. , 2002)

Belcher v. Ohio State Racing Comm'n, 2003 Ohio 2187 (Ohio App. , 2003) – Trainer was suspended for 30 days and received a \$1,000 fine for a lasix positive. The positive was caused by a negligent administration of lasix by the trainer's veterinarian. The penalty was upheld under Ohio's absolute insurer rule. Third party negligence did not absolve the trainer, and the sanctions were authorized by law.

Patistas v. N.Y. State Racing & Wagering Bd., Div. of Harness Racing, 2003 N.Y. App. Div. LEXIS 12286 (4th Dept. App. Div. , 2003) – Revocation of an owner/driver’s license was upheld based on a finding that there was substantial evidence that Patistas possessed drugs, unlabeled vials, syringes, and needles and intended to administer drugs to his horses on days they were scheduled to participate in racing.

Sachs v. New York State Racing & Wagering Bd., 767 N.Y.S.2d 144 (N.Y. App. Div. , 2003) A veterinarian’s license for administering naloxone to horses was upheld. The hearing officer was not disqualified. The Racing and Wagering Board still retained jurisdiction over the veterinarian even though the term of his license had expired, and the hearing officer acted properly in allowing the Racing and Wagering Board to amend its complaint to conform to the proof submitted.

Keeton v. Tex. Racing Comm'n, 2003 Tex. App. LEXIS 6925 (Tex. App. , 2003) – Trainer was suspended a for 45 days and fined \$1,250 for a clenbuterol positive. In addition, the horse was disqualified, and the purse was redistributed. While in the past, horses testing positive for clenbuterol were not disqualified, the disqualification was consistent with the rules of the racing commission. While the initial confirmatory split sample of the urine taken on the horse was returned by the testing laboratory, the racing commission did not violate its rules in the manner in which the split sample was ultimately reshipped to the testing laboratory. Finally, the court dismissed the contention that the presumption created by the trainer responsibility rule (making the trainer prima facie responsible for a drug positive) was unconstitutional.

Hochstetler v. Del. Harness Racing Comm'n, 2003 Del. Super. LEXIS 68 (Del. Super. , 2003) In this case involving the top trotter Kadabra, the penalties against Kadabra were upheld. Kadabra had won an elimination race for the Matron Stakes, but subsequent tests revealed the presence of phenylbutazone. The rules in Delaware could not be read to allow a two-year-old to race on phenylbutazone, and the horse was properly disqualified from an elimination race. Since the horse was properly disqualified from the elimination race, he similarly was not eligible to race in the Matron Stakes.

III – Other Racing Commission Cases –

Cathey v. La. State Racing Comm'n, 855 So. 2d 414, 415 (La. App. , 2003) Appellate court found that a preponderance of the evidence showed that the trainer had violated the rules of the racing commission. The trainer had employed an unlicensed person and had failed to register his personnel. Additionally, trainer Cathey supplied funds to a third party to facilitate the claiming of a horse that Mr. Cathey trained. The lower court decision reversing the violations found by the racing commission was overturned.

Capone v. N.J. Racing Comm'n, 358 N.J. Super. 339 (N.J. Super. , 2003) The racing commission's final decisions in two quasi-judicial cases were overturned, and the decisions of the administrative law judges were reinstated. The court found that the commission's delays in issuing final decisions were excessive, and, because of these long and inexcusable delays, the court deemed that the decisions of the administrative law judges had been approved.

Mongeon v. Hoblock, 756 N.Y.S.2d 42 (1st Dept., App. Div. , 2003) The court affirmed a disqualification of a horse who was off-stride for the last 300 feet of the race. The horse's connections challenged the disqualification based on their belief that the judges could only disqualify a breaking horse by "finding that the violation affected a competing horse or gave petitioner's horse an advantage." The court found that "the judges' consideration of the advantage the horse gained as a result of not being brought back to proper gait is implicit in their ruling."

Perez v. Hoblock, 248 F. Supp. 2d 189 (S.D.N.Y. , 2003) Owner-licensee was fined \$3,000 for abusive and profane conduct aimed at the stewards. He brought a broad constitutional challenge against the fine. The court upheld the fine finding that the owner's conduct was not protected by the First Amendment, the rule authorizing the Racing Board to fine the owner was not unconstitutionally vague, and the Board had the statutory power to fine the owner.

Collins v. Ohio State Racing Comm'n, 2003 Ohio 6444 (Ohio App. , 2003) The Ohio Racing Commission suspended a jockey who had not given her best effort to win a race. On appeal, the suspension was overturned. The problem with the administrative decision was that the hearing office had found that both the jockey and the stewards were credible in their testimony. Since there was an equal balance in the evidence between the commission and the licensee, the decision to suspend the rider was not supported by a preponderance of the evidence.

Galvin v. Hoblock, 2003 U.S. Dist. LEXIS 16704 (S.D.N.Y. , 2003) As part of a civil rights proceeding against the New York Racing and Wagering Board, the plaintiff sought disclosure of documents and imposition of sanctions against the Racing Board. The Racing Board, in turn, sought a protective order for the documents. The court found that most, but not all, of the documents sought by the plaintiff were not subject to disclosure. The court additionally found no basis for imposing sanctions on the Racing and Wagering Board.

MEC Pa. Racing, Inc. v. Pa. State Horse Racing Comm'n, 827 A.2d 580 (Pa. Commw. , 2003) Existing Pennsylvania racetracks contested a grant of a license by the racing commission to a new racetrack in Erie, Pennsylvania. The court found that the racetracks had standing to contest the grant of the license in court, and they also had the right to a formal hearing at the commission to contest the grant of a license.

Pa. Nat'l Turf Club, Inc. v. State Horse Racing Comm'n, 821 A.2d 676 (Pa. Commw. , 2003) Based on a reading of the applicable Pennsylvania law, the court upheld the decision of the racing commission which denied Penn National the right to simulcast Arabian or quarter horse races. Pennsylvania law refers only to wagering on thoroughbred or harness racing.

Doyle v. Mass. State Racing Comm'n, 2003 Mass. Super. LEXIS 285 (Mass. Super. , 2003), The racing commission lacked the power to license a harness meeting at a licensed thoroughbred track. A separate public, licensing, hearing would be required in order to license a thoroughbred racetrack as a harness track..

Balmoral Racing Club, Inc. v. Gonzales, 338 Ill. App. 3d 478 (Ill. App. , 2003), Illinois racetracks stated a cause of action that they were entitled under a 1999 amendment to the Illinois Horse Racing Act of 1975 to reimbursement of certain taxes paid to the Illinois Racing Board.

IV – Negligence

Marckel v. Raceway Park, 2003 Ohio 3989 (Ohio App. , 2003) discretionary appeal not allowed by 100 Ohio St. 3d 1508(Ohio 2003) In a tort claim, the grant of summary judgment to the Raceway Park was affirmed in a case where the injured party was trampled by a runaway horse.

Kimmel v. Gulfstream Park Racing Ass'n, 842 So. 2d 845 . (Fla., 2003) The Florida Supreme Court refused to hear the appeal of this case thereby letting the appellate court decision stand. The plaintiff horse-owner had sued Gulfstream Park for an injury to his horse. The horse was injured and eventually died after racing on the turf course at Gulfstream Park Gulfstream, in turn, sued the trainer of the horse for a potential contribution. While the trial court granted summary judgment for the trainer, this decision was reversed on appeal. The appellate court found that there were genuine issues of fact involved in determining whether the trainer breached his duty of care by failing to scratch the horse. Similarly, since there were factual questions about the trainer's negligence,

there was a factual issue as to whether the trainer might be liable based on the indemnification agreement he signed when he received stalls at Gulfstream. See Gulfstream Park Racing Ass'n v. Gold Spur Stable, Inc., 820 So. 2d 957 (Fla. Ap. 2002)

Charles v. Los Angeles Turf Club, 2003 Cal. App. Unpub. LEXIS 9313 (Cal. App. Unpub. , 2003), Plaintiff sued the racetrack for an injury sustained by his horse during a workout. A trial court decision for the plaintiff was reversed by the appellate court. The court found that there was no evidence upon which a jury could find that the horse was injured by a jagged edge on the rail of the track. Additionally, the racing board's rule – which allegedly was violated by the racetrack – was not designed to prevent the type of accident that actually occurred.

Twin City Fire Ins. v. Del. Racing Ass'n, 2003 Del. LEXIS 646 (Del. , 2003) After an accident at Delaware Park, the racetrack was allowed coverage for riders injured during a workout. The contract between Delaware Park and its insurer was ambiguous. The ambiguity concerned whether during the workout, the horses and riders were “practicing,” and the ambiguity would be read against the insurance company.

V – Other Cases of Interest

Video Projects Co. v. N.Y. Racing Ass'n, 301 A.D.2d 648 (2nd Dept.. App. Div. , 2003) Award of summary judgment to defendants against the plaintiff, who was former video and simulcast provider to NYRA, was upheld. The court found that there were no triable issues on the many issues raised by the plaintiff including tortious interference with contracts, breach of restrictive covenants, civil rights violations, and violations of the Racing Law.

Bangor Historic Track, Inc. v. Dep't of Agric., 2003 ME 140 (Me. , 2003), An attempt by a racetrack to block government agencies – subject to the freedom of access act - from releasing its license application failed. In the absence of any showing of irreparable injury to the racetrack, a temporary restraining order barring disclosure would not be issued.

ODS Techs., L.P. v. Marshall, 832 A.2d 1254 (Del. Ch. , 2003) TVG successfully enjoined Youbet.com from holding its annual meeting. The court found that Youbet's proxy statement was materially misleading, and Youbet breached its fiduciary duty to the stockholders by its misleading statement.

Gulfstream Park Racing Ass'n v. Tampa Bay Downs, 2003 U.S. Dist. LEXIS 20225, 17 Fla. L. Weekly Fed. D 125 (M.D. Fla. Nov. 7, 2003) Gulfstream sued Tampa Bay to try to enforce its exclusive dissemination agreements. Florida's Division of Pari-Mutuel Wagering had ruled that exclusive dissemination agreements were illegal under Florida

law. The court found that federal law did not preempt Florida law and legalize these agreements. Accordingly, Gulfstream could not enforce these agreements. Tampa Bay's counterclaim against Gulfstream for antitrust violations also failed due to Tampa Bay's inability to establish a relevant product market to determine a violation.

Gill v. Del. Park, L.L.C., 2003 U.S. Dist. LEXIS 22434 (U.S. Dist. , 2003) – This is owner Michael Gill's lawsuit against Delaware Park, certain officials at Delaware Park, and two competing trainers at Delaware Park. The lawsuit commenced after Gill's horses were barred from participating at Delaware Park. Gill alleged an antitrust violation, a civil rights violation, tortious interferences with business relationships, and defamation. In large measure, Gill's lawsuit survived summary judgment motions by the defendants. There were issues of material fact which precluded granting the defendants summary judgment on the antitrust claim. While the judge believed that Gill was unlikely to succeed on the civil rights claim, she did not believe that the matter could be resolved as a matter of law. She, therefore denied summary judgment on the civil rights claim.

On the tortious interference claims, the court granted summary judgment to Delaware Park on the issue of whether it interfered with a contract with Gill. There was no allegation of any contract. On the claim of tortious interference with business relationships, there were factual issues present that precluded a grant of summary judgment except that summary judgment was granted to Delaware Park which could not legally interfere with a business relationship between itself and Mr. Gill.

Gill also alleged that the racing secretary at Delaware Park had defamed him by calling him a "liar." The court granted summary judgment to the defense on this issue finding that the term "liar" was a statement of opinion that was not actionable.

La. Horsemen's Benevolent & Protective Ass'n 1993, Inc. v. Fair Grounds Corp., 845 So. 2d 1039 (La. , 2003) rehearing denied by 2003 La. LEXIS 1817 (La. , 2003). In a case interpreting the applicable Louisiana statutes, the court found that the racetracks had miscalculated the amounts due horsemen from video poker machines. The court found that he horsemen were due close to 50% of the net revenues from video poker, while the tracks had been paying the horsemen as low as five percent of the net revenues.

VI – Other Cases Presenting Racing Issues

Agnew v. California State Bd. of Equalization, 2003 Cal. App. Unpub. LEXIS 6095 (Cal. App. Unpub. , 2003) – assessment of taxes involving the syndication of the horse Desert Wine.

Hutchins V. Patoine, 2003 Me. Super. LEXIS 144 (Me. Super. , 2003), determination

of ownership interests in race horses based on oral agreements between all the owners.

Local 27, UFCW v. Del. Park, LLC, 269 F. Supp. 2d 481 (U.S. Dist. , 2003) – whether back pay awarded by an arbitrator to a cashier should include tips.