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Government Law Center  
Albany Law School UNION UNIVERSITY

80 New Scotland Avenue  
Albany, NY 12208

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# **THE CRIMES OF STEWART ELLIOTT**

**Bennett Liebman, Esq.  
Coordinator/Staff Attorney  
Racing and Gaming Law Program**

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## The Crimes of Stewart Elliott

Jockey Stewart Elliott's criminal record as revealed last week by the Associate Press shows a conviction for aggravated assault committed in Burlington County in New Jersey in 2000. Per the published reports, Mr. "Elliott pleaded guilty in June 2001 to aggravated assault stemming from a fight with a friend inside the man's Burlington County, N.J., home in 2000. Elliott was sentenced to one year of probation and ordered to pay \$13,900 to cover the victim's medical bills, according to court records." <sup>1</sup>

Mr. Elliott apparently "beat Alexander Kovakik with a beer bottle, pool cue and wooden stool, according to the grand jury indictment charging the jockey with aggravated assault, possession of a weapon and unlawful possession."<sup>2</sup> The Kentucky Horse Racing Authority has yet to make a decision on whether to punish Mr. Elliott.<sup>3</sup> Mr. Elliott in his column written for the New York Post on Monday May 10, admitted an error on his Kentucky license application. "It was a mistake on my part. With everybody grabbing me, asking for autographs, looking for interviews, this and that, I rushed through the application."<sup>4</sup> Yet, this wasn't the only mistake that Mr. Elliott made. He also failed to disclose the conviction on his Maryland application as well. Nonetheless. The authorities in Maryland have allowed Elliott to refile his application, and he will not incur any penalty. The Maryland stewards "concluded that Elliott's infraction was not serious enough to warrant further action."<sup>5</sup> They "noted that Elliott's arrest did not occur at the track or have anything to do with racing."<sup>6</sup> They stated that had this been a major offense they would have handled the manner in a much more serious fashion.<sup>7</sup>

The suggestion here is not to rush to judgment on whether to penalize or let Mr. Elliott loose. The facts are not all in. We know that Mr. Elliott failed to disclose a crime on his applications. Assuming that had he disclosed the crime, no actions would have been taken against him, this is not an overwhelmingly serious matter in horse racing. This is a situation that comes up frequently in racing. Normally, racing commissions and/or stewards fine an applicant for a license somewhere between \$50 and \$250 for an insignificant omission or misrepresentation in filing the license application. If however, the false statement on the application are material, (Posit that a jockey failed to disclose a conviction for race fixing.) the license will be normally be denied.

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<sup>1</sup> Richard Rosenblatt, "Winning Jockey Failed to Disclose Record", Associated Press, May 8, 2004.

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Stewart Elliott, "It's Hard to Stay Focused Amid Hubbub," New York Post, May 10, 2004.

<sup>5</sup> Tom Keyser, "Jockey Elliott Gets Green Light to Ride 'Smarty' in Preakness," Baltimore Sun May 9, 2004.

<sup>6</sup> Id.

<sup>7</sup> Id. Nonetheless, it hardly seems to make a difference where the incident took place. Had Mr. Elliott assaulted an individual at the racetrack, would that have made the incident more serious?

The main problem here is that the public record is unclear as to how serious the assault conviction is. Was it a Class 3 crime or a class 4 crime (the lowest level of a felony in New Jersey)?<sup>8</sup> Was it a crime of moral turpitude? In some jurisdictions, conviction of a crime of moral turpitude is grounds for denying a racing license.<sup>9</sup> While simple assault cases do not generally implicate moral turpitude issues,<sup>10</sup> in some states aggravated assault is considered a crime of moral turpitude.<sup>11</sup> In other words. If Mr. Elliott was convicted of a major crime of aggravated assault, it is conceivable that his conviction could affect his licensure.

In other jurisdictions, the criteria for denying a license can even be broader. In Kentucky, the Horse Racing Authority can deny a license based on conviction of any crime or violation<sup>12</sup> or “falsification, misrepresentation, or omission of required information in a license application to the commission.”<sup>13</sup> Perhaps more significantly in Kentucky, under reciprocity Kentucky may deny a license to an applicant who has been denied a license in another state until such time as that person is relicensed in the original state.<sup>14</sup> According to the original AP article, New Jersey racing officials would not renew Mr. Elliott’s license.<sup>15</sup>

Moreover, the public record shows additional questionable acts of Mr. Elliott. The Asbury Park Press of February 28, 2001 finds an arrest in Passaic County New Jersey of “**Stewart Elliott**, 35, Washington Crossing, Pa.[who] was charged Jan. 22 with making terroristic threats by Patrolman Chad Clark.”<sup>16</sup> We do not know the resolution of this case.

Additionally, in 2003, Mr. Elliott plead guilty to “driving over the divider” in Bucks County, Pennsylvania. While this appears to be a minor incident, was Mr. Elliott required to disclose this offense on his various applications for licensure?

So we don’t know: (a) how serious the crime of aggravated assault was, (b) Mr. Elliott’s exact license status in New Jersey, (c) whether Mr. Elliott also failed to disclose other crimes and arrests in his applications, (d) the status of his 2001 arrest for terroristic threats in New Jersey, and (e) whether Mr. Elliott was required to disclose on his application his license status in New Jersey.

With this lack of knowledge, it would seem that the Kentucky approach of reviewing the facts is far more sensible than Maryland’s simply letting Mr. Elliott in and allowing him

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<sup>8</sup> Assuming a need for imprisonment, the presumptive sentence for a Class 3 offense is four years. For a Class 4 offense, the presumptive sentence is nine months. NJSA 2C:44-1.f.

<sup>9</sup> See 58 Pa. Code § 163.57 (1)(i) (2004) on licensing of racetrack licensees.

<sup>10</sup> *Benitez v. Dunevant*, 198 Ariz. 90 (Ariz. , 2000); *In re Mostman*, 47 Cal. 3d 725 (Cal. , 1989); *Polk v State*, 415 S.E. 2d 506 (Ga. App. 1992). For example it appears that the assault conviction of New York-based jockey Norberto Arroyo in 2003 under §120.05 of the New York Penal Law would not be a crime of moral turpitude. See Jennie Rees, “Jockey Seeking to Go from Jail to Holy Grail,” *Louisville Courier-Journal*, April 12, 2003 Pg. 1E. Mr. Arroyo, like Mr. Elliott, used a cue stick as part of his assault.

<sup>11</sup> See *Johnson v. State*, 629 So. 2d 708 (Alabama Crim. App., 1993) finding aggravated assault to be a crime involving moral turpitude.

<sup>12</sup> 810 KAR 1:025.3.(2)

<sup>13</sup> 810 KAR 1:025.3.(3)

<sup>14</sup> 810KAR1:025.3(1). Similar reciprocal provisions exist in other states. See 9NYCRR §4042.4(a).

<sup>15</sup> See footnote 1.

<sup>16</sup> “Police Blotter,” *Asbury Park Press*, February 28, 2001 SECTION: G; Pg. 5G.

to file a do-over application. The facts are not all in on Mr. Elliott, and it would make sense to not issue any decision in haste.

Let's just hope that racing does the right thing in this case. If Mr. Elliott failed to disclose only non-material items on his application, he should receive a minor fine. He shouldn't get off with a Mulligan as in Maryland.<sup>17</sup> Nor should he get socked with an enormous fine. This should be treated like any other non-material error on the application with a fine between \$50 and \$250. Stewart Elliott should neither be above the law nor be made a scapegoat on account of his newly achieved notoriety.

On the other hand, if Mr. Elliott's misdeeds are far greater than have previously been disclosed, all bets are off. That is especially true if the racing commission in New Jersey has actually refused to relicense Mr. Elliott.

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<sup>17</sup> WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1485 (1976) states that a mulligan is a free shot sometimes awarded a golfer when the preceding shot was poorly played. Next time, you make an error on your income tax return, just ask the IRS for the Stewart Elliott mulligan and see how you are treated.