

Anthony Garramone, Peter Marino and Carolyn Johansen against New York Racing and Wagering Board

10 Misc. 3d 1069A

January 9, 2006

Plaintiffs worked for NYRA as betting clerks licensed by defendant. By rule, the clerks must reimburse any shortages of money from their paychecks. NYRWB accused plaintiffs of violations of duty by fraudulent reporting of large cash drawer shortages, and understated taxable income. Petitioners claim they reimbursed NYRWB for cash shortages. In addition, petitioners answer the claims by asserting that 1) the statute of limitations passed on the claims; 2) NYRWB lacks jurisdiction to handle the tax fraud charge; and 3) NYRWB never passed the enforcement policy upon which the charges rest.

1) The court can not respond to the statute of limitations argument until NYRWB holds a hearing on the charges. The Plaintiffs should introduce the SOL argument at hearing.

2) The court finds that NYRWB can not concern itself with the individuals' tax fraud until the proper agency determines that the individual committed tax fraud. However, NYRWB can initiate a hearing to determine a conspiracy to commit tax fraud on behalf of NYRA.

3) Finally, NYRWB presented evidence indicating that frequent or excessive shortages give rise to enumerated penalties. In addition, the court finds authority to pass the aforementioned rule per the existing regulatory scheme.

BRIAN GREEN, JERRY VAUGHAN, TAD LEGGETT, and RODGER SMITH vs. RACING ASSOCIATION OF CENTRAL IOWA, d/b/a PRAIRIE MEADOWS RACETRACK & CASINO

3 N.W.2d 234; 2006 Iowa Sup. LEXIS 65

May 5, 2006

Plaintiff jockeys were accused of racially harassing a racetrack employee. As a result, the track banned them from the premises pending a Steward's hearing. The Stewards did not find sufficient evidence to act, but Prairie Meadows and RACI conducted a separate investigation. Based on those findings, RACI dropped all charges against Vaughan, required Leggett to apologize to the employee, required Smith to take a diversity class and banned Green completely. The jockeys filed a claim asserting that RACI interfered with their contractual obligations and violated their due process rights. The court granted RACI's motion for summary judgment. The jockeys now appeal, claiming a due process violation.

However, the court did not find sufficient nexus between the state and the racing association based on either the lease, or the sole fact that the county appoints racing board members. Those appointments combined with mutual benefits between the county and the racing association still did not make RACI a state actor. To treat the due process violation as state action requires significant encouragement by the state, such that the state can be considered responsible for the violation. Here, the Racetrack's human resources banned the jockeys and the county did not benefit from banning the jockeys. Therefore, since the act did not occur as a state action, RACI did not violate the jockeys' due process rights. Furthermore, on the second claim of contractual interference, the court found that RACI did not improperly interfere with the contract because RACI acted legally to protect its own financial interests- here the responsibility as an employer to forbid racially motivated harassment - not to foil the jockeys' contracts.

DR. CLAUDE L. STEPHENSON VERSUS THE LOUISIANA STATE RACING COMMISSION

907 So. 2d 925; 2005 La. App. LEXIS 1884

July 6, 2005

Geisse phoned Dr. Stephenson complaining that Delightster, a horse scheduled to race that evening within four hours, was acting colicky. Two witnesses observed Dr. Stephenson with an empty syringe held at the horse's neck. When aware that two others were watching, Dr. Stephenson attempted to hide the syringe, place it in his pocket, and replace it (in his hand) with a full syringe. The witnesses asked what was in the empty syringe and Dr. Stephenson indicated that it contained AMP and vitamin B1. Witnesses phoned officials which led to more questioning and a hearing in front of the Racing Commission. The Commission found against Dr. Stephenson based on circumstantial evidence as no one saw Dr. S inject the horse, and toxicology reports came back negative on the horse and the syringe. However, on appeal the trial court reversed the decision after hearing the same evidence reviewed de novo.

On a second appeal, the Commission argues that the trial court could not reverse the Commission's finding based on the evidence. This court agrees, urging that courts could only overturn obviously arbitrary or capricious Commission decisions. In addition, the Commission bases its decision on greater experience in the field. Furthermore, the drug administered does not show up in toxicology reports and is a known stimulant, and the vet was penalized for violating the no drugs rule before.

HAWTHORNE RACE COURSE, INC., and NATIONAL JOCKEY CLUB v. ILLINOIS RACING BOARD, ILLINOIS THOROUGHBRED HORSEMEN'S ASSOCIATION, ILLINOIS HARNESS HORSEMEN'S ASSOCIATION, ARLINGTON PARK RACE COURSE, LLC, BALMORAL RACING CLUB, INC., FAIRMOUNT PARK, INC., ASSOCIATES RACING ASSOCIATION, INC., MAYWOOD PARK TROTting ASSOCIATION, INC., EGYPTIAN TROTting ASSOCIATION, INC., and SUBURBAN DOWNS, INC.

2006 Ill. App. LEXIS 412

May 19, 2006

The Racing Board's Director initially calculated recapture based on the National Jockey Club's (NJC) races wherever the races took place – Hawthorne or Sportsman's Park. He did so in order to reimburse NJC for renovating Sportsman's Park. However, the Board took over the task of calculating recapture and used the statute's definition of "wagering facility" to determine the amount. NJC argues for the old calculation, but the court denied petitioner's request.

Petitioners argue reliance on the old recapture equation, but the court points out that courts generally do not provide estoppel relief against public entities. Next petitioners argue that legislatures never changed the statute after the director's false interpretation; therefore it meets the legislative intent. However, the legislature did allocate extra funds for those years in order to protect others from the director's erroneous allocation. Finally, the public policy argument proposed by petitioners – that the recapture will keep the horse industry competitive in the state – comes with a legislative formula that the court will not alter. As a result, plaintiffs fail to prevail in the action.

HIALEAH RACING ASSOCIATION, LLC vs. DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING

907 So. 2d 1235; 2005 Fla. App. LEXIS 10788; 30 Fla. L. Weekly D 1699

July 13, 2005

Here Hialeah Racing failed to run scheduled races due to financial concerns. The Department of Business revoked Hialeah's license for violation of the racing statute. Hialeah appeals to the court to overturn the Department's decision. However, the court supports an agency interpretation of the statute it enforces when that interpretation is not clearly erroneous. In this case the statute clearly states that financial concerns do not allow permit holders to cancel scheduled races. The Statute requires all licensed operators to run scheduled races unless it meets one of the general exceptions. Financial insolvency is not one of those exceptions. Therefore, the Department's decision to revoke Hialeah's license was well supported by clear statutory language.

In the Matter of the Class A License Application of North Metro Harness, Inc.
711 N.W.2d 129; 2006 Minn. App. LEXIS 32
March 28, 2006

N. Metro Harness applied to the Racing Commission for a license to operate a track. Initially the Commission denied the application citing concerns about the quality of accommodations and stalls, poor road access, lack of community support and the potential competition with a nearby thoroughbred track. N. Metro negotiated with the Horsemen's Benevolent & Protective Association (HBPA), promising a kick back to the thoroughbred track, and redesigned the plans to resolve the Commission's concerns. At an off the record meeting, the Commission heard the proposed changes. However, the opposition refused to reconsider the license. Instead, before the end of the appeal deadline, the Commission conducted an open forum for the public to hear the new information and then passed its own motion to reconsider. As a result, the opposition appealed to the District Court, claiming the Commission violated due process, and lacked jurisdiction or sufficient facts for granting the license.

However, the court found that without a statutorily created process, the commission conducting quasi-judicial proceedings can reopen a case sua sponte after off the record conversations. In fact, the Commission has an inherent right to rededuce cases based on new information so long as the time allotted for an appeal is still pending. Furthermore, the Commission did not violate the complainant's due process rights since it provided an open public forum to discuss the new information. The Commission also accepted new concerns from the public before making a final decision. Finally, the Court found that the Commission relied on sufficient facts in granting the license since N. Metro's changes resolved all of the issues of concern.

INDIANAPOLIS DOWNS, LLC, d/b/a INDIANA DOWNS vs. RICHARD S. HERR and A. GERALDINE HERR As Trustees of the Richard S. Herr and A. Geraldine Herr Trust
834 N.E.2d 699; 2005 Ind. App. LEXIS 1751
September 20, 2005, Decided

Indianapolis Downs (ID) purchased property with wetland. In an effort to dry some of the land, ID dug two ponds, dried the soil from the digging and spread the dried soil on the rest of the land. ID then diverted water to a nearby lake. After receiving complaints, ID diverted water away from the lake. A lawsuit ensued in which a recreational facility (FRC) claimed ID's actions ruined their business for the year through its intentional diverting of water. FRC won the case. However, shortly thereafter the Herrs filed suit. ID moved for summary judgment, claiming the suit is precluded because of the former lawsuit's resolution under both res judicata and collateral estoppel (claim and issue preclusion). The court denied the motion and ID appeals.

On appeal this court determines too that neither the issue nor the claim is precluded. Instead, the court finds that only the unjust enrichment of Indianapolis Downs at the expense of FRC was resolved in the previous case. Here, the Herrs' real estate was affected, and the FRC could not litigate for the Herrs even though FRC operates its business on the Herrs' land. The two could have combined their suits since they arise from the same incidents, but were not required to do so. Therefore, the collateral estoppel and issue preclusion assertions fail.

LINDA FITZGERALD v. TOM CODDINGTON STABLES and N.J. HORSE RACING
INJURY COMPENSATION BOARD

186 N.J. 21; 890 A.2d 933; 2006 N.J. LEXIS 12
January 25, 2006, Decided

Fitzgerald was a horse trainer for Coddington Stables. At the stable during her work hours she cared for a horse her employer did not own. The horse jumped and hit her while landing. She suffered injuries from the impact and sued both her employer and the Compensation Board for Worker's Compensation. Initially, both the Worker's Compensation judge and the Appellate Division decided that the Compensation Board was responsible for paying her worker's compensation. However, on appeal the court found that the Board's compensation program was meant as a safety net. In addition, the statute requires trainers – like Coddington Stables – to provide private insurance for injuries. The safety net of the Board was intended for those injured while working for out of state horse owners or trainers. Therefore, the employer's private insurance would need to pay Fitzgerald's worker's compensation. The case was remanded for reconsideration in light of the court's interpretation of the Horse Racing Worker's Compensation Act.

Matter of David Flanigan v. New York State Racing and Wagering Board Division of Harness
Racing

23 A.D.3d 1161; 804 N.Y.S.2d 284
November 10, 2005

NYRA denied Flanigan's request for a groom's license. Flanigan appeals. But the court confirmed the denial and dismissed the complaint.

Finger Lakes Racing Association v. New York Racing Association

812 N.Y.S.2d 924
April 28, 2006

NYRA moved for a stay pending the outcome of an action in Albany County Court. The Supreme Court granted the stay. However, the Appellate Division found that the current proceeding and the Albany Court proceeding shared similar relief and issues. Therefore, the Appellate Division affirmed the original order appealed in lower court.

Bardis v Capitol Racing et al.

2006 Cal. App. Lexis 350
March 6, 2006

The court vacated the lower court decision and granted the appellant's petition for rehearing.

ARTHUR YATES, BEVERLY YATES, and YATES KENNEL, INC. vs. IOWA WEST RACING ASSOCIATION, d/b/a BLUFFS RUN CASINO and HARVEY'S BLUFFS RUN MANAGEMENT COMPANY, INC.

707 N.W.2d 336; 2005 Iowa App. LEXIS 1581

October 12, 2005

Here the defendants appeal based on accusations of slander and negligence against plaintiffs. The court reversed the lower court's finding for the plaintiff and remanded the case.

Michael Castille v. The Old Evangeline Downs, LLC

05-1251 (La. App. 3 Cir. 04/05/06)

Castille owns a truck stop that offers video poker filed suit to stop Old Evangeline Downs (Downs) from offering video poker. The lower court agreed with Castille, interpreting the Louisiana state law as requiring a referendum to pass before a parish could offer new forms of gambling to its facility. However, on appeal the court clarifies the intent of the statute as requiring a referendum when the form of gambling had not been approved or used in the area. Here, video poker had been approved and used in the St. Martin area when the statute's amendment was written. Therefore, the court reversed the lower court's findings and dismissed Castille's petition.

PENNSYLVANIANS AGAINST GAMBLING EXPANSION FUND, INC. ET AL. v. COMMONWEALTH OF PENNSYLVANIA, ET AL.

583 Pa. 275; 877 A.2d 383; 2005 Pa. LEXIS 1318

June 22, 2005

The State of Pennsylvania's legislature made amendments to the Gaming statute that the petitioners challenge on a number of grounds. The main issue however is whether the amendments were constitutionally enacted. Article III of the state constitution prohibits logrolling, or the combining of several subjects into one bill or statute. Likewise, the title must clearly state one subject, and all provisions contained therein must relate to the title. These restrictions act to restrain the legislature, create an open and accountable legislature, and garner more attention as a multi-subject amendment loses focus. In addressing the constitutionality of amendments the court presumes constitutionality. In order to overcome that presumption, the unconstitutional aspects must clearly, palpably and plainly violate the constitution. Here the amendments fall under the single subject of regulating gaming. Yet, the issue of the distribution and use of license fees lacked any precedence. Therefore the court considered the source nexus – that all funds came from gaming fees – and reasoned that the statute must handle how to distribute those funds. However, where the money goes must also meet the single subject requirement, as determined by the facts of the case. In this case, funds go to several gaming funds and two unrelated funds: the volunteer fire company and forest reserves. These are secondary to the primary purpose of the statute since the remaining funds would stand without them, and so are severable. The court severs the two from the statute and goes on to discuss the title. The title is 1) not deceptive and 2) puts readers on notice as to the subject. Therefore, the petitioners' title claim fails.

PITTSBURGH PALISADES PARK, LLC AND CHARLES J. BETTERS v. COMMONWEALTH OF PENNSYLVANIA et al.

888 A.2d 655; 2005 Pa. LEXIS 3099

December 28, 2005

Palisades and Betters purchased property with the intent to build homes and a gaming facility. The petitioners sued the state claiming the unconstitutionality of the Gaming Act. The Gaming Act provided that should the Board change within five years of issuing a license to a facility, the fee would be returned to the licensed facility owners. After five years any such change would prompt the return of a relevant portion of the license fee. Petitioners argue that this practice prevents the state legislature from acting in furtherance of Gaming laws. In addition, the return of fees depletes the treasury.

In this case, the court first considered whether the plaintiffs had standing. In order to establish standing, the petitioners must be more aggrieved by the matter than the average citizen. That is, the plaintiff must have a substantial, immediate and direct interest in the matter. Plaintiffs counter that they have standing as taxpayers. However, taxpayers do not have automatic standing unless they meet five exceptions: 1) the issue would not be litigated otherwise; 2) those affected would not bring an action; 3) it would be appropriate to provide a judicial remedy; 4) no other avenue exists for relief and; 5) no one else is a better candidate to bring suit. Here the court found that the plaintiffs are not particularly aggrieved by the Gaming Act. Furthermore, other parties, specifically legislators, are better candidates to bring suit.

STATE OF FLORIDA, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF PARI-MUTUEL WAGERING v. GULFSTREAM PARK RACING ASSOCIATION, INC., HARTMAN-TYNER, INC., WEST FLAGLER ASSOCIATES LTD., THE ARAGON GROUP, INC., SUMMERSPORT ENTERPRISES, LLLP, and FLORIDA GAMING CENTERS, INC. v. GULFSTREAM PARK RACING ASSOCIATION, INC.

912 So. 2d 616; 2005 Fla. App. LEXIS 13663; 30 Fla. L. Weekly D 2033
August 31, 2005

The state enacted a law prohibiting harness (quarter) horse tracks from intertrack wagering, here by selling broadcasts of its races to other tracks, within a 25 mile radius. It enforced the law against Gulfstream Park Racing Assoc. (Gulfstream), which then sued claiming the law was unconstitutionally formed as a general law when it is a special law that only applies to the one track region in the southern part of the state situated between Broward and Dade counties. Gulfstream won at the trial level. Now on its second appeal, the current court reviews the law's constitutionality de novo.

The court found that no other area in Florida could accommodate several of these tracks because of the change in the Racing and Wagering Law prohibiting facilities from being built within 100 mile radius of another racing facility. Therefore, the law discriminates against Gulfstream alone, making it a special law meant to regulate one region specifically, for local reasons. As such, the state created the law unconstitutionally because it used the general law process.

Steven Lore and Regina Lore against New York Racing Association Inc.

2006 NY Slip Op 50968U; 2006 N.Y. Misc. LEXIS 1261
May 23, 2006

Steven Lore worked for NYRA. He alleges that other employees referred to him as "Jew Boy" or "the Jewish Guy." He petitioned the court asserting that NYRA created a hostile work environment, Intentionally Inflicted Emotional Distress (IIED), and breached the employment contract. He sought leave to amend his complaint to add a Labor Law 740 claim – the whistleblower's statute – and to specify the harassment as an Executive Law 290 claim. NYRA

moved to dismiss all of the Lores' claims for failure to state a cause of action. The court grants NYRA's motion, thereby dismissing all of Lore's claims:

1. The Whistleblower Statute intends to protect employees disclosing an unsafe condition that impairs the public safety. Here, Lore claims that NYRA races horses with previous injuries and employs someone with a history of violence. Neither meets the Whistleblower Statute's intent.
2. New York's Human Rights Law requires that a plaintiff show an environment replete with severe or constant hostile comments that change the mood *and* constitute abuse. Lore only complained about a few isolated incidents and did not show how these incidents changed his work experience.
3. NYRA answers Lore's Whistleblowing and breach of contract claims by arguing that the collective bargaining agreement requires Lore to use grievance procedures set out in the agreement, which Lore failed to do.
4. NYRA answers the IIED claim by pointing out that Lore missed the statute of limitations of one year.
5. NYRA also asserts that the defamation of character claim is insufficient because the incidents did not expose Lore to public ridicule or hatred. Furthermore, plaintiff can not win damages on a harassment claim.

TEXAS THOROUGHBRED BREEDERS ASSOCIATION, DAVE HOOPER AND SUE COOK
v. JIM DONNAN AND GERALD MACKEY

2006 Tex. App. LEXIS 1620

February 28, 2006

Donnan and Mackey owned a thoroughbred horse named Chauffe Au Rouge (French for "Red Hot"). The Owners wanted to register Chauffe Au Rouge as an "accredited Texas bred" thoroughbred since it would garner extra earnings should the horse win, place or show (1st, 2nd or 3rd). However, the mare's owner sold her to meaters (slaughterhouse) before she could "breed back" to a Texas accredited stallion in order to make her foal Chauffe Au Rouge accredited. She would need to do this under Texas Thoroughbred Breeder's Association (TTBA) rules since Chauffe Au Rouge was born in Texas from the mating of the mare with a nonaccredited stallion. Even so, the mare's new owners signed a notarized statement swearing they intended to breed her with a specific accredited stallion. As a result, Chauffe Au Rouge was briefly accredited until someone who knew the slaughterhouse buyers called it into question when the horse entered and won the Texas Hall of Fame Race. He later won the Richard King Handicap at Sam Houston Raceway, his owners ignoring the investigation despite continued pressure to either withdraw the application for TTBA accreditation or face a hearing. At the hearing, the Stewards disqualified Chauffe Au Rouge from the races he won and rescinded Chauffe Au Rouge's accreditation.

Donnan appealed the decision to the State Office of Administrative Hearings which mostly upheld the Steward's findings. Donnan appealed then to the court, claiming the TTBA acts with unconstitutional legislative power, lacking any statutory authority and denied Donnan his Due Process rights. However, the court upheld the TTBA decision. Donnan then sought an injunction and damages claiming slander, libel, and gross negligence of those who instigated the investigation and the TTBA. The court awarded him over \$200,000 in damages and a permanent injunction to reaccredit Chauffe Au Rouge. The TTBA now appeals claiming the court lacks subject matter jurisdiction. The court agrees, reasoning that the rules of any voluntary agency (non-profit) are not subject to judicial intervention. Therefore, the court dismissed the complaint and vacated the lower court's order.

Wyoming Downs Rodeo Events, LLC et. al. v. State of Wyoming et. al.

2006 WY 55

May 4, 2006

Wyoming Downs (Downs) operates the only racetrack in the state. The Commission authorized Downs to provide Instant Racing Terminals at its facility. The Cheyenne Police ordered Downs to shut down the instant racing terminals. Downs sued in court, but the lower court granted the State's motion for summary judgment. Downs appeals again. However, the Supreme Court of Wyoming affirms. The court finds that the instant racing terminals fall under the definition of gambling devices. Furthermore, the Commission lacks statutory authority to grant Downs the ability to install and operate a gambling device.