

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SCOTT LAKE)
)
Appellant,)
)
v.) C.A. No. 06A-11-003-PLA
)
DELAWARE THOROUGHBRED)
RACING COMMISSION)
)
Appellee.)

Submitted: November 21, 2006
Decided: November 30, 2006

UPON APPELLANT’S MOTION FOR REARGUMENT
DENIED.

This 30th day of November, 2006, upon consideration of appellant Scott Lake’s motion for reargument, it appears to the Court that:

1. On November 15, 2006, the Delaware Thoroughbred Racing Commission (“Commission”) determined that Mr. Lake, a renowned horse trainer, violated 3-1000-1001 DEL. CODE REGS. § 15.1.3.1.1 (“Section 15.1.3.1.1”) when one of his horses tested positive for a banned substance.¹

¹ Section 15.1.3.1.1 provides: “A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.”

For the violation, the Commission imposed a \$1000 fine and a 30 day suspension.²

2. On November 16, 2006, Mr. Lake filed this appeal as well as an emergency motion to stay the Commission’s decision pending his appeal.³ This Court held an emergency hearing pursuant to Mr. Lake’s motion to stay. The Court concluded that Mr. Lake’s appeal did not present “substantial issues and facts” and, accordingly, denied the motion.⁴ Mr. Lake has now filed the instant motion for reargument under Superior Court Civil Rule 59(e).⁵

3. Mr. Lake contends that the testing procedures used by the Commission did not comply with its own regulations for testing and, therefore, its decision is invalid. Specifically, Mr. Lake maintains that 3-

² See Docket 2, Ex. A, Commission Decision and Order, p. 16-17.

³ See Docket 1, 2.

⁴ See Docket 4. See also DEL. CODE ANN. tit. 29, § 10144 (“When an action is brought in the Court for review of an agency regulation or decision, enforcement of such regulation or decision by the agency may be stayed by the Court only if it finds, upon a preliminary hearing, that the issues and facts presented for review are substantial and the stay is required to prevent irreparable harm.”); *In re License of Ford*, 1990 WL 81889, at *5 (Del. Super. Ct. May 30, 1990) (Section 10144 “requires that as a threshold consideration, there must exist substantial issues and facts presented for review before reaching the issue of irreparable harm.”); *Galaxie Inn, Inc. v. Alcoholic Beverage Control Comm’n*, 1990 WL 127822, at *2 (Del. Super. Ct. Aug. 27, 1990) (“The law is clear. Unless [Appellant can] first show that there are substantial issues and facts presented for review there will be no need to reach the issue of irreparable harm.”).

⁵ See Docket 5.

1000-1001 DEL. CODE REGS. § 15.10.6.9 (“Section 15.10.6.9”) requires that blood samples drawn from a horse must be 20 milliliters and, because the Commission acknowledged that only 10 milliliter samples were drawn in this case, it is clear that the Commission did not comply with its own regulation. It is therefore appropriate, according to Mr. Lake, to render the Commission’s ruling invalid pursuant to precedent set in *Dugan v. Del. Harness Racing Comm’n*,⁶ which generally holds that an agency action is invalid absent strict compliance with its own regulations.⁷ Mr. Lake further argues that the Commission exceeded its authority by issuing a suspension that affects Mr. Lake’s ability to compete in races held outside of Delaware, given that the Commission only has the power to regulate racing within this state under DEL. CODE ANN. tit. 3, § 10103(c) (“Section 10103(c)”)⁸ In sum, Mr. Lake submits that the Commission’s failure to comply with its own testing procedures, and the effect the suspension has on him in other

⁶ 752 A.2d 529 (Del. 2000).

⁷ *See id.* at 531 (citations omitted) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.’ If an agency rule is designed ‘to afford … due process of law by providing safeguards against essentially unfair procedures,’ the action which results from the violation of that rule is invalid.”).

⁸ Section 10103(c) provides: “The Commission shall possess all necessary powers and duties to regulate the conduct of all participants in any thoroughbred and/or Arabian racing meet authorized by the Commission within this State[.]”

jurisdictions, present substantial issues on appeal which warrant a stay of the Commission's decision.⁹

4. The standard of review on a motion for reargument is well settled under Delaware law. A motion for reargument “will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.”¹⁰ Such motion “should not be used merely to rehash the arguments already decided by the Court.”¹¹

5. In applying that standard here, the Court finds that Mr. Lake has failed to demonstrate that this Court has “overlooked a controlling precedent or legal principles, or ... misapprehended the law or facts”¹² in its prior decision denying his motion to stay. Mr. Lake's argument that the Commission's ruling should be invalidated because it allegedly did not comply with its regulations is simply unconvincing. Section 15.10.6.9 provides that “[t]wo (2) blood samples shall be collected in twenty (20) milliliters vacutainers[.]” This clearly does not require that 20 milliliters of

⁹ See Docket 5, p. 1-4.

¹⁰ *Kennedy v. Invacare Corp.*, 2006 WL 488590, at *1 (Del. Super. Ct. Jan. 31, 2006) (citation omitted).

¹¹ *Friends of Paladin v. New Castle County Bd. of Adjustment*, 2006 WL 3026238, at *1 (Del. Super. Ct. Oct. 5, 2006).

¹² *Kennedy*, 2006 WL 488590, at *1.

blood be drawn, as Mr. Lake would have the Court believe. Rather, Section 15.10.6.9 appears to require that, whatever the amount of blood is drawn (in this case 10 milliliters), that it be “collected *in*” 20 milliliter vacutainers. There being nothing to definitively indicate that the 10 milliliter blood samples were not placed in 20 milliliter vacutainers, the Commission can not be found to have failed to comply with Section 15.10.6.9. Therefore, Mr. Lake’s reliance upon *Dugan* and other case law for the proposition that an agency’s action is invalid absent strict compliance with its own regulations is inapposite. Here, there is no indication that the Commission did not comply with its regulations.

6. Mr. Lake’s contention that the Commission exceeded its authority is also without merit. In its decision, the Commission stated that Mr. Lake was suspended “from all ground privileges *within the jurisdiction of the [Commission][.]*”¹³ Although Mr. Lake’s suspension may have implications for him in other states, the Commission has neither the power nor the reach to prevent Mr. Lake from racing outside of Delaware – and the Commission makes clear that it is empowered to suspend Mr. Lake only within this jurisdiction pursuant to Section 10103(c). What other state

¹³ Docket 2, Ex. A, Commission Decision and Order, p. 17.

racing commissions impose upon Mr. Lake as a result of this Commission's actions is outside the purview of the Commission and this Court.

7. Lastly, it is apparent that Mr. Lake is merely rehashing many of the same arguments he made initially in his brief in support of his motion to stay and which have already been decided by this Court.

8. Accordingly, for the foregoing reasons, Mr. Lake's motion for reargument is **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

cc: Richard H. Cross, Esquire
James J. Hanley, Esquire