

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIAN CALLAHAN,	§	No. 285, 2012
	§	
Appellant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	Kent County
	§	
STATE OF DELAWARE	§	C.A. No. K11A-09-010
DEPARTMENT OF	§	
AGRICULTURE, DELAWARE	§	
HARNESS RACING	§	
COMMISSION,	§	
	§	
Appellees Below,	§	
Appellees.	§	

Submitted: September 12, 2012

Decided: September 25, 2012

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 25th day of September 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Brian Callahan, the appellant-below (“Callahan”), appeals from a Delaware Harness Racing Commission (“DHRC”) order requiring him to repay \$190,798 in past winnings and imposing a \$5,000 fine for fraudulently obtaining a “Delaware Owned” horse racing license. On appeal, Callahan argues that the DHRC’s finding—that Callahan was not a Delaware resident—was “arbitrary and capricious.” We disagree and affirm.

2. Horse owners who reside primarily in Delaware qualify to participate in so-called “Delaware Owned” races. For such races, purse winnings are set 20% higher above the typical level, to help revitalize the racing industry in Delaware. To qualify for these “Delaware Owned” races, applicants bear the burden of proving that they have resided in Delaware for at least 183 days in the preceding calendar year.¹

3. In early 2009, Callahan applied for, and received, a “Delaware Owned” racing license, after he submitted to the DHRC a Delaware driver’s license and a lease for a rental apartment in Dover. In late 2010, the DHRC began investigating Callahan, because Callahan owned an 88-acre farm in Maryland that was listed with the Maryland Department of Assessments and Taxation as Callahan’s “principal residence.” In March 2011, the DHRC Board of Judges held a hearing and determined that Callahan had “failed to produce proof of Delaware residency.” As a result, Callahan was “deemed ineligible to participate in Delaware Owned races.” Callahan did not appeal from that ruling.

4. In August 2011, the DHRC held a hearing to consider sanctioning Callahan for falsely representing himself as a Delaware resident. In September 2011, the DHRC issued a decision finding that Callahan had faked his Delaware residency to obtain his “Delaware Owned” license. The DHRC ordered Callahan

¹ See DHRC Rule 6.6.6.11, 3 Del. Admin. C. § 501-6.6.6.11.

to repay his \$190,798 purse winnings from his “Delaware Owned” races, and to pay a \$5000 fine for “willfully provid[ing] incorrect or untruthful information” to the DHRC.

5. The DHRC found, among other things, that: (i) Callahan had obtained a Dover rental apartment, Delaware car insurance, and a Delaware driver’s license just before applying for his “Delaware Owned” license; (ii) Callahan had not filed federal or state tax returns for 2008 and 2009, yet filed both federal and state returns “within days of the August 9, 2011 hearing” before the DHRC; (iii) “Callahan ha[d] continued to claim a homestead property tax credit [where the tax credit only applies to the principal residence] on his Maryland farm”; and (iv) “Callahan claim[ed] that he spends the night in his Dover apartment for more than 183 days of each year but ha[d] no records to support his claim.”

6. Callahan appealed the DHRC’s order to the Superior Court, which affirmed. On appeal, Callahan argues that the DHRC’s determination that he faked his Delaware residency was “for no reason other than the Board has chosen not to believe” him. Contrary to Callahan’s assertion that we must review the DHRC’s decision under an “arbitrary and capricious” standard, here we review the DHRC’s decision for substantial evidence.² Substantial evidence is such evidence that a

² *DHRC v. Mitchell*, 442 A.2d 77, 78-79 (Del. 1982).

reasonable mind could accept as adequately supporting a conclusion.³ We review questions of law *de novo*.⁴

7. We find that the DHRC’s conclusions rested on substantial evidence, not merely the DHRC’s judgment about Callahan’s credibility. Specifically: (i) Callahan represented to Maryland state officials that his property there was his “principal residence,” (ii) the timing of Callahan’s decisions to rent a Dover apartment and to obtain Delaware car documentation closely coincided with his decision to apply for a “Delaware Owned” license, (iii) a comparison of Callahan’s Maryland and Dover residences strongly suggested that the Maryland farm was Callahan’s “principal residence,” and (iv) Callahan kept his horses on his Maryland farm, tended to them every day, and presented no witnesses to support his claim of frequent overnight stays in Dover—despite testifying that he lived in Dover with his girlfriend.

8. Given this ample evidence, the DHRC’s conclusion that Callahan failed to establish his residency in Delaware was based on substantial evidence. Therefore, Callahan’s claim lacks merit.

³ *Id.*

⁴ *Stanford v. MERB*, 44 A.3d 923 (Del. 2012).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice