

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
FRANKFORT DIVISION

GARY AND MARY WEST,
:
:
Plaintiffs,
:
:
vs.
:
:
KENTUCKY HORSE RACING
COMMISSION, et al.,
:
:
Defendants.
:
:

AFFIDAVIT OF D. BARRY STILZ

Case No.: _____

Comes the Affiant, D. Barry Stilz, after having been duly sworn, and for his affidavit states as follows:

1. I represent Gary and Mary West with respect to the dispute that gave rise to the above-captioned lawsuit.
2. I hereby attest that Exhibit A to this Affidavit is a true and accurate copy of the May 6, 2019, letter I received from John L. Forgy, General Counsel, Kentucky Horse Racing Commission denying my clients' request for an appeal.

Further the Affiant sayeth naught.



D. BARRY STILZ

COMMONWEALTH OF KENTUCKY)
) SS.
COUNTY OF FAYETTE)

The foregoing was subscribed and sworn to before me by D. Barry Stilz, this the 14th day of May, 2019.




NOTARY PUBLIC, ID No. 599723
My Commission Expires: 5-12-22

MATTHEW G. BEVIN
GOVERNOR



K. GAIL RUSSELL
SECRETARY

FRANKLIN S. KLING, JR.
CHAIRMAN

MARC A. GUILFOIL
EXECUTIVE DIRECTOR

PUBLIC PROTECTION CABINET
KENTUCKY HORSE RACING COMMISSION
ESTABLISHED 1906
4063 IRON WORKS PKWY, BLDG. B
LEXINGTON, KENTUCKY 40511
TELEPHONE: (859) 246-2040 FAX: (859) 246-2039
WEBSITE: [HTTP://KHRC.KY.GOV](http://KHRC.KY.GOV)

May 6, 2019

Via electronic mail

D. Barry Stilz
PNC Tower
301 East Main Street, Suite 800
Lexington, Kentucky 40507
BStilz@ksattorneys.com

Dear Mr. Stilz:

The Kentucky Horse Racing Commission received your May 6, 2019 correspondence, which included a Notice of Appeal and Request for Stay Pending Appeal concerning the disqualification of Maximum Security after the 145th running of the Kentucky Derby on May 4, 2019. *See* Exhibit 1. Because the stewards' disqualification determination is not subject to appeal and for the reasons set forth below, your request for an appeal is denied. Consequently, your Request for Stay Pending Appeal is moot because the law does not provide for an appeal.

Pursuant to 810 KAR 1:017, the stewards are charged with determining "all objections and inquiries based on interference by a horse, improper course run by a horse, foul riding by a jockey, and all other matters occurring during and incident to the running of a race" as well as "the extent of disqualification, if any, of horses in a race for a foul committed during the race." 810 KAR 1:017, Section 4(1)(b) and (c). The regulations governing horse racing in Kentucky provide that in making determinations on objections, the stewards' "[f]indings of fact and determination shall be final and shall not be subject to appeal." *See* 810 KAR 1:017, Section 4(2); *see also* 810 KAR 1:029, Section 2(9).

As a condition of licensure and for the privilege of participating in horse racing, every licensee agrees to abide by the Commission's rules and regulations, including the rules and regulations outlined above. *See* 810 KAR 1:025, Section 21(1) and Section 21(4)(a) and (b). Your clients agreed "to abide by all applicable rules and regulations." *See* Gary West Renewal Application,



EXHIBIT A

D. Barry Stilz
May 6, 2019
Page 2 of 2

dated Dec. 7, 2018, attached as Exhibit 2; *see also* Mary West Renewal Application, dated Dec. 7, 2018, attached as Exhibit 3.

The stewards unanimously disqualified Maximum Security following two objections lodged immediately after the 145th running of the Kentucky Derby and after a thorough review of the race replay. That determination is not subject to an appeal. 810 KAR 1:017, Section 4(2); *see also* *March v. Kentucky Horse Racing Commission*, 2013-CA-000900-MR, 2015 WL 3429763 (Ky. App. May 29, 2015), attached as Exhibit 4.

Finally, you also submitted a Request for a Stay Pending Appeal of the “[d]isqualification of Maximum Security from the 145th running of the Kentucky Derby.” Exhibit 1. Because there is no right to appeal a disqualification and the stewards’ disqualification of Maximum Security is final, your request for a stay is moot.

Sincerely,

/s/ John L. Forgy
John L. Forgy
General Counsel
Kentucky Horse Racing Commission

cc: Karen Murphy, Esq.

Enclosures: Exhibit 1 – Stilz May 6, 2019 correspondence and attachments
Exhibit 2 – Gary West Renewal Application, dated Dec. 7, 2018
Exhibit 3 – Mary West Renewal Application, dated Dec. 7, 2018
Exhibit 4 – *March v. Kentucky Horse Racing Commission*, 2013-CA-000900-MR, 2015 WL 3429763 (Ky. App. May 29, 2015)



EXHIBIT A



D. BARRY STILZ

May 6, 2019

VIA HAND DELIVERY

Margi Stout
Kentucky Horse Racing Commission
4063 Iron Works Parkway, Building B
Lexington, Kentucky 40511

Re: Appeal of MAXIMUM SECURITY's disqualification in the running
of the 145th Kentucky Derby

Dear Ms. Stout:

I am enclosing a Notice of Appeal of the Stewards' May 4, 2019, decision disqualifying MAXIMUM SECURITY in the running of the 145th Kentucky Derby, as well as a copy of my correspondence to Executive Director Marc Guilfoil regarding the appeal. Please let me know if you need any additional information.

Thank you in advance for your cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Barry Stilz', written over a circular scribble.

D. Barry Stilz

Enclosures

cc: Gary and Mary West
Karen A. Murphy

PNC TOWER
301 EAST MAIN STREET, SUITE 800
LEXINGTON, KY 40507

D. BARRY STILZ
ATTORNEY
BSTILZ@KSATTORNEYS.COM

859.296.2300 FIRM
859.221.6982 CELL
859.296.2566 FAX
859.226.7555 DIRECT

EXHIBIT A



D. BARRY STILZ

May 6, 2019

VIA EMAIL (marc.guilfoil@ky.gov) AND HAND DELIVERY

Marc A. Guilfoil
Executive Director
Kentucky Horse Racing Commission
4063 Iron Works Parkway, Building B
Lexington, Kentucky 40511

Re: Complaint, protest, objection, and appeal of MAXIMUM SECURITY's disqualification in the running of the 145th Kentucky Derby

Dear Mr. Guilfoil:

I write in connection with the above-referenced matter and to advise that I, together with my co-counsel, Karen A. Murphy, represent Gary and Mary West, the owners of MAXIMUM SECURITY.

This letter is to formally and timely notify you that the Wests hereby submit their complaint and protest of the Stewards' arbitrary and capricious acts with regard to their review of the 145th Kentucky Derby on May 4, 2019, object to the Stewards' violation of administrative regulations involving the running and review of the race, and appeal the Stewards' decision to disqualify MAXIMUM SECURITY. A copy of the Notice of Appeal, which is also being submitted to the attention of Margi Stout, is enclosed. Our clients further request, pursuant to the enclosed Request for Stay Pending Appeal and applicable regulations, that all related purse monies be withheld and placed in escrow pending final determination of the matter.

Given the enormous importance of this race and the unprecedented outcome on Saturday, we ask that the Wests' complaint, protest, objection, and appeal be heard forthwith by the full Kentucky Horse Racing Commission and that we be provided with notice and an opportunity to be present at any meeting or proceeding at which MAXIMUM SECURITY's disqualification or the Wests' complaint, protest, objection, and appeal is discussed or reviewed.

PNC TOWER
301 EAST MAIN STREET, SUITE 800
LEXINGTON, KY 40507

D. BARRY STILZ
ATTORNEY
BSTILZ@KSATTORNEYS.COM

859.296.2300 FIRM
859.221.6982 CELL
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859.226.7555 DIRECT

EXHIBIT A

May 6, 2019
Page 2

Finally, we ask for copies of all views considered by the Stewards in connection with their decision to disqualify MAXIMUM SECURITY; recordings of all statements made by jockeys, trainers, and others that were obtained and considered by the Stewards in reaching that determination; the Stewards' notes concerning and the recording of their nearly 22 minutes of deliberations; any written decision issued by the Stewards with respect to MAXIMUM SECURITY's disqualification, and all daily logs and minute books maintained by the Stewards for the race day held at Churchill Downs in Louisville, Kentucky, on Saturday, May 4, 2019, as required by 810 KAR 1:004 Sections 11 and 13.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Barry Stilz', with a long horizontal stroke extending to the right.

D. Barry Stilz

Enclosures

cc: Gary and Mary West
Karen A. Murphy

EXHIBIT A

KENTUCKY HORSE RACING COMMISSION
Phone: (859) 246-2040 Fax: (859) 246-2039
<http://khrc.ky.gov>

NOTICE OF APPEAL

IN ORDER FOR AN APPEAL TO BE DEEMED EFFECTIVE AND FILED, THE NOTICE OF APPEAL MUST BE COMPLETED, SIGNED, DATED AND FILED WITH THE KENTUCKY HORSE RACING COMMISSION OFFICE, ATTENTION: MARGI STOUT. ALL APPEALS MUST BE RECEIVED DURING REGULAR BUSINESS HOURS, MONDAY-FRIDAY FROM 8:00 A.M. TO 4:30 P.M. ANY APPEAL RECEIVED AFTER 4:30 P.M. ON A REGULAR BUSINESS DAY, OR ON A WEEKEND OR STATE HOLIDAY, WILL BE DEEMED FILED THE NEXT REGULAR BUSINESS DAY.

Name: Gary West
Address: c/o D. Barry Stilz, Kinkead & Stilz, PLLC
300 E. Main St., Ste. 800, Lexington, KY
Telephone #: (859) 296-2300
E-mail: bstilz@ksattorneys.com
Track: Churchill Downs
Date of Infraction: May 4, 2019



I hereby appeal the Order/Ruling of Stewards Barbara Borden, Brooks Becraft, & Tyler Picklesimer
(Steward, Judge or Other Official)

issued on May 4, 2019 regarding disqualification of MAXIMUM SECURITY
(Date of Order/Ruling) (Decision being appealed)

in the Kentucky Derby for the following reasons (attach additional page(s) if necessary):

The Stewards' acts in reviewing the 145th running of the Kentucky Derby were arbitrary and capricious and did not comply with applicable administrative regulations. Their determination to disqualify MAXIMUM SECURITY is not supported by substantial evidence.

I request a hearing before the Kentucky Horse Racing Commission (check one) Yes No

Gary West c/o D. Barry Stilz Lexington KY 40507
(Printed Name) Kinkead & Stilz, PLLC (Address) (City) (State) (ZIP)
300 E. Main St., Ste. 800

Gary West
(Signature)

May 6, 2019
(Date)



KENTUCKY HORSE RACING COMMISSION
4063 Ironworks Parkway, Building B
Lexington, Kentucky 40511
Phone: (859) 246-2040 Fax: (859) 246-2039
<http://khrc.ky.gov>

REQUEST FOR STAY PENDING APPEAL

All requested information must be provided for request to be effective

Date: May 6, 2019
To: Marc A. Guilfoil, Executive Director
From: Gary West



Pursuant to KRS 230.320, the undersigned hereby requests a stay of penalty pending appeal. The stay must be filed within ten (10) calendar days of the issuance of the Stewards' Ruling.

- Date of Issuance of Stewards' Ruling: May 4, 2019
- Penalty: Disqualification of MAXIMUM SECURITY from the 145th running of the Kentucky Derby
- Period of time for which stay requested: Until all administrative and judicial remedies and appeals have been exhausted
- Justification for the stay (attach additional page(s) if necessary): Gary and Mary West have filed a protest of the Stewards' arbitrary and capricious acts with respect to their review of the 145th running of the Kentucky Derby and appealed their decision disqualifying MAXIMUM SECURITY from that race. A stay of the Stewards' ruling is necessary to prevent payout of the purse monies, which will be impossible to recapture in the event the Wests prevail in their protest and/or appeal.

Gary West GARY WEST
Print name

Gary West
Signature

c/o D. Barry Stiliz, Kinkead & Stiliz, PLLC
300 E. Main St., Ste. 800
Lexington, KY 40507
Address

bstiliz@ksattorneys.com
E-mail

(859) 296-2300
Telephone



EXHIBIT A

ALL APPLICANTS - Have any of the following matters occurred since your last license application (in the past 3 years):

- 19a. Has your or your spouse's racing license been denied, suspended for more than 7 days, or revoked? : Yes No
- b. Has any other type of license or permit of you or your spouse been suspended, denied, or revoked? : Yes No
- c. Have you been expelled, discharged or ejected from any race track, or fined more than \$100? : Yes No
- d. Have you or your spouse been convicted (including by nolo contendere) for, or forfeited bail on, any felony or misdemeanor criminal offense (including DWI or DUI)? : Yes No
- e. Are there any criminal charges currently pending anywhere against you or your spouse? : Yes No
- f. Are you or your spouse currently on parole or probation? : Yes No
- g. Have you or your spouse used illegal drugs or excessive-alcohol? : Yes No
- h. Have you or your spouse been associated or involved with any activity or person that is disreputable (involving organized crime, illegal gambling, extortion, racketeering, fraud, misrepresentation, race fixing/influencing, bookmaking, touting, pool-selling, bet solicitation, or similar misconduct)? : Yes No
- i. Are there any outstanding civil judgments against you or your spouse? : Yes No
- j. Are you 4 months or more in arrears in child support? : Yes No
- k. Have you any racing conflicts of interest (connections to government, regulators or race tracks)? : Yes No

If you have answered "yes" to any of these questions, provide full details (date, matter, location) on a separate page or below.

SUPPLEMENTAL INFO: - Use this space (or a separate page) for any additional information requested above.

AFFIRMATION and CONSENT

I consent to a background investigation and report, including information from personal interviews with third parties (family, business, financial sources, etc.) and of my character and general reputation. I consent to a search within the grounds of any racetrack or racing association of my person and property, including premises and vehicles that I have the right to (or do) occupy or control, and to the seizure of articles related to unlawful conduct. I consent to be subject to the subpoena powers of authorized regulatory agencies and to written requests in lieu thereof, and shall provide any such agency with all information and documents it may request. I agree that participating in racing is a privilege, not a right, that my license is subject to conditions precedent in the rules of racing, that failure to comply with those rules shall be grounds for immediate suspension or revocation of my license, and that rulings in one jurisdiction may be applied in others including directly on my national racing compact license. I agree to abide by all applicable rules and regulations where I race or am licensed, including conflict of interest rules of each jurisdiction, and affirm that my use of my license will not violate them, and I accept that my license may be suspended or revoked at any time for misstatements or omissions I have made in my application. Where I submit with this application a fingerprint card designating the national racing compact as an entity to which the Federal Bureau of Investigation ("FBI") is authorized to send my criminal history record report, I agree that I am also authorizing each racing commission (or its equivalent) of a state that is a member of the Compact to receive and retain the criminal history record report and if I fail to indicate on my fingerprint card that the FBI is authorized to send that report to such racing bodies, I authorize the Compact to do so for me. I consent to the Compact keeping my fingerprints on file for later use, such as making a fingerprint submission for any State where I plan to race that seeks my state criminal history record, for any disciplinary action relating to me, or for review of my eligibility or renewal of my Compact license, and I authorize those and related uses.

"I hereby affirm, under penalty of perjury and knowing that false statements herein may be prosecuted as a crime, that I have read the foregoing application (including any attachments) and affirm every statement herein is true and correct. Where I have left certain questions unanswered because the application asks only for changes, I affirm that my information is the same as my last application."

Name: Cary West Signature: Cary West Date: 12/7/18
Email: jc.kahnk@gmuse.org Removal App. 2009.doc

ALL APPLICANTS - Have any of the following matters occurred since your last license application (in the past 3 years):

- 19a. Has your or your spouse's racing license been denied, suspended for more than 7 days, or revoked? Yes No
- b. Has any other type of license or permit of you or your spouse been suspended, denied, or revoked? Yes No
- c. Have you been expelled, discharged or ejected from any race track, or fined more than \$100? Yes No
- d. Have you or your spouse been convicted (including by nolo contendere) for, or forfeited bail on, any felony or misdemeanor criminal offense (including DWI or DUI)? Yes No
- e. Are there any criminal charges currently pending anywhere against you or your spouse? Yes No
- f. Are you or your spouse currently on parole or probation? Yes No
- g. Have you or your spouse used illegal drugs or excessive-alcohol? Yes No
- h. Have you or your spouse been associated or involved with any activity or person that is disreputable (involving organized crime, illegal gambling, extortion, racketeering, fraud, misrepresentation, race fixing/influencing, bookmaking, touting, pool-selling, bet solicitation, or similar misconduct)? Yes No
- i. Are there any outstanding civil judgments against you or your spouse? Yes No
- j. Are you 4 months or more in arrears in child support? Yes No
- k. Have you any racing conflicts of interest (connections to government, regulators or race tracks)? Yes No

If you have answered "yes" to any of these questions, provide full details (date, matter, location) on a separate page or below.

SUPPLEMENTAL INFO: - Use this space (or a separate page) for any additional information requested above.

AFFIRMATION and CONSENT

I consent to a background investigation and report, including information from personal interviews with third parties (family, business, financial sources, etc.) and of my character and general reputation. I consent to a search within the grounds of any racetrack or racing association of my person and property, including premises and vehicles that I have the right to (or do) occupy or control, and to the seizure of articles related to unlawful conduct. I consent to be subject to the subpoena powers of authorized regulatory agencies and to written requests in lieu thereof, and shall provide any such agency with all information and documents it may request. I agree that participating in racing is a privilege, not a right, that my license is subject to conditions precedent in the rules of racing, that failure to comply with those rules shall be grounds for immediate suspension or revocation of my license, and that rulings in one jurisdiction may be applied in others including directly on my national racing compact license. I agree to abide by all applicable rules and regulations where I race or am licensed, including conflict of interest rules of each jurisdiction, and affirm that my use of my license will not violate them, and I accept that my license may be suspended or revoked at any time for misstatements or omissions I have made in my application. Where I submit with this application a fingerprint card designating the national racing compact as an entity to which the Federal Bureau of Investigation ("FBI") is authorized to send my criminal history record report, I agree that I am also authorizing each racing commission (or its equivalent) of a state that is a member of the Compact to receive and retain the criminal history record report and if I fail to indicate on my fingerprint card that the FBI is authorized to send that report to such racing bodies, I authorize the Compact to do so for me. I consent to the Compact keeping my fingerprints on file for later use, such as making a fingerprint submission for any State where I plan to race that seeks my state criminal history record, for any disciplinary action relating to me, or for review of my eligibility or renewal of my Compact license, and I authorize those and related uses.

"I hereby affirm, under penalty of perjury and knowing that false statements herein may be prosecuted as a crime, that I have read the foregoing application (including any attachments) and affirm every statement herein is true and correct. Where I have left certain questions unanswered because the application asks only for changes, I affirm that my information is the same as my last application."

Name: Mary West Signature: Mary West/jl Date: 12/7/18
Email: jekehnt@gmwe.org Renewal App.2009.doc

2015 WL 3429763

Only the Westlaw citation is currently available.

Unpublished opinion. See KY ST
RCP Rule 76.28(4) before citing.

NOT TO BE PUBLISHED
Court of Appeals of Kentucky.

William E. March, Appellant

v.

The Kentucky Horse Racing
Commission, Appellee

NO. 2013-CA-000900-MR

MAY 29, 2015; 10:00 A.M.

Discretionary Review Denied by
Supreme Court February 10, 2016

APPEAL FROM FRANKLIN CIRCUIT
COURT, HONORABLE THOMAS D.
WINGATE, JUDGE, ACTION NO. 12-CI-01495

Attorneys and Law Firms

BRIEFS FOR APPELLANT: William E. March,
Pro Se, Lexington, Kentucky

BRIEF FOR APPELLEE: Katherine M. Paisley,
Lexington, Kentucky

BEFORE: DIXON, J. LAMBERT, AND
TAYLOR, JUDGES.

OPINION

TAYLOR, JUDGE:

*1 William E. March brings this *pro se* appeal from an April 18, 2013, Opinion and Order of the Franklin Circuit Court affirming a Final Order of the Kentucky Horse Racing Commission dismissing March's action. We affirm.

On February 24, 2012, the thoroughbred horse, Ethical Lawyer, raced in the twelfth race at Turfway Park. Ethical Lawyer is owned and trained by

March. Although Ethical Lawyer crossed the finish line first, the stewards found that his jockey had engaged in a careless riding foul in violation of 810 Kentucky Administrative Regulations (KAR) 1:016 Section 12 during the race and disqualified Ethical Lawyer from winning the race. Later, on March 1, 2012, the stewards suspended the jockey for three racing days due to the careless riding foul.

On March 10, 2012, March *pro se* appealed the March 1, 2012, suspension of the jockey and the disqualification of Ethical Lawyer for the riding foul to the Kentucky Horse Racing Commission (Commission). By recommended order dated August 28, 2012, the hearing officer concluded that March had no standing to contest the March 1, 2012, suspension of the jockey as he was not the person subject to the steward's ruling. 801 KAR 1:029 Section 2. The hearing officer also determined that no appeal is available from the stewards' decision to disqualify a horse for a foul occurring during the race. 810 KAR 1:029 Section 2(9); 810 KAR 1:025 Section 21. Thus, the hearing officer recommended to the Commissioner to dismiss March's action. After March filed exceptions to the recommended order, the Commission issued a Final Order adopting the recommended order and dismissed March's action. March then sought judicial review with the Franklin Circuit Court. By Opinion and Order entered April 18, 2013, the circuit court concluded that the Commission properly dismissed March's action. This appeal follows.

Our review of an administrative proceeding is limited. Under Kentucky Revised Statutes (KRS) 13B.150, a court "shall not substitute its judgment for that of the agency as to the weight of evidence on questions of fact." And, our review of an administrative decision is for arbitrariness. *Am. Beauty Homes Corp. v. Louisville & Jefferson Cnty. Planning and Zoning Comm'n*, 379 S.W.2d 450 (Ky. 1964).

March has advanced myriad arguments of error in his *pro se* brief. Specifically, he contends:

I. 810 KAR 1:029 were void or voidable; stewards had no lawful authority to hold hearings or adjudicate.

II. Was the denial of right to hearing and appeal to owner of winning race horse at regulated race meeting a denial of due process?

III. Can the Kentucky Horse Racing Commission take owner/trainer's winnings purse without a disciplinary ruling against him.

IV. Was it legal for Board of Stewards to hold hearing and adjudicate jockey when owner/trainer, affected party, was denied participation in 12-0027 steward's hearing from which winning purse was denied and withheld from owner of winning horse?

V. Hearing officer's recommendation which was void of findings of fact and conclusions of law and further stating that parties agree on the facts, in violation of; is error.

*2 VI. Did court error in dismissing subpoenaed witnesses from testifying to unusual records?

March's Brief at 2-4.

Having reviewed the entire record and applicable law, we agree with the circuit court's thorough opinion to dismiss and adopt its analysis verbatim:

a. Introduction

In his appeal to this Court, March raises two distinct legal issues. First, March maintains he was deprived of the right to appeal Ethical Lawyer's disqualification. Second, March maintains that he has standing to contest and appeal Villeda's disciplinary action, Stewards' Ruling 12-0027, even though Villeda himself did not appeal that ruling. We shall take both issues in turn.

b. March Does Not Have a Right to Appeal Ethical Lawyer's Disqualification

The right to appeal the disqualification of a horse is governed by 810 KAR 1:017, Section 4, which is entitled Final Determination of Objection to Acts in Race. That regulation is enacted pursuant to the KHRC's plenary authority to issue administrative regulations, the authority for

which is granted in KRS 230.215(2). Section 4 states that[:]

The stewards shall make all findings of fact to all matters occurring during and incident to the running of a race; shall determine all objections, and inquiries based on interference by a horse, improper course run by a horse, found riding by a jockey, and all other matters occurring during and incident to the running of a race; and, shall determine the extent of disqualification, if any, of horses in a race for a foul committed during the race. Findings of fact and determination shall be final and no appeal may be taken thereon. [...].sic

810 KAR 1:017, Section 4 is dispositive on March's right to appeal the disqualification of Ethical Lawyer in the 12th race at Turfway on February 24, 2012. The Stewards' decision to disqualify Ethical Lawyer for Villeda's careless riding infraction is final and non-appealable.

KRS 230.320(2)(a), contrary to March's position, does not require that he be afforded a hearing before the Stewards regarding Ethical Lawyer's disqualification nor does it grant him the right to appeal that qualification. March was not entitled to a Stewards' hearing, as he acknowledged by being a licensee under the KHRC's rules and regulations. See 810 KAR 1:025, Section 21(1) and (4)(a) and (b). The KHRC applied the correct rule of law in dismissing March's appeal of Ethical Lawyer's disqualification. The dismissal must stand as Ethical Lawyer's disqualification is final and non-reviewable.

c. March Lacks Standing to Appeal Villeda's Disciplinary Action

March next maintains that he has standing to appeal Villeda's disciplinary action because Villeda's careless riding caused him to forfeit Ethical Lawyer's purse. Regarding March's assertion that he was forced to forfeit Ethical Lawyer's purse, March is mistaken. One cannot forfeit something one does not possess. Ethical Lawyer did not win the 12th race even though he crossed the finish line first. The horse was disqualified and placed seventh. Ethical Lawyer's

purse was not forfeited, it was awarded to the horse which won the race.

*3 Regarding March's position that he has standing to appeal Villeda's disciplinary action, March is again incorrect. Stewards' Ruling 12-0027 disciplined Felipe Villeda. The right to appeal an order or ruling by the Stewards is limited to the person "who is the subject of any order or ruling of the stewards." 810 KAR 1:029, Section 2(9). Because March was not the subject of Stewards' Ruling 12-0027 nor was he the individual charged with a violation, he does not have standing to appeal the ruling to the KHRC or to this Court. The KHRC was correct in dismissing March's Complaint to the extent it was based on an attempt to appeal Villeda's disciplinary action.

d. March was Not Deprived of Due Process

March's final argument against the validity of the KHRC's Final Order is that it deprived him of due process as it required him to forfeit Ethical Lawyer's purse without a hearing. As discussed, March was not required to forfeit Ethical Lawyer's purse, he simply did not win it to begin with. March's purse money was not taken or forfeited as March insists. Rather, March never had an entitlement to the purse monies because Ethical Lawyer did not win the race. Even assuming that March was entitled to a hearing on Ethical Lawyer's post-race disqualification, March's interest in the purse money does not constitute the required protected property interest. His interest in Ethical Lawyer's purse was, at best, a privilege, not a property interest. *See* KRS 230.215(1). However, even assuming that March did have a protected property interest, all proceedings before the KHRC are governed by the provisions of KRS Chapter 13B, which guarantee that all individuals before the Commission are afforded due process. Despite various defects in March's pleadings and because he was a pro se Petitioner, the Hearing Officer afforded him a panoply of due process rights he should have been denied. March cannot now maintain that he was deprived of due process.

e. 810 KAR 1:029 is Not Void

March argues that, because 810 KAR 1029's original enabling statute, KRS 230.355, was repealed in 1996 that 810 KAR 1:029 is void for lack of statutory authority. March's argument is misguided as KRS 230.215 grants the KHRC authority to promulgate administrative regulations governing horse racing in Kentucky. KRS 230.215(2) "vest[s the KHRC] forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth[...]." The administrative regulations relied upon herein as well as by the KHRC in issuing its Final Order, then, are not without an enabling statute and are not void.

III. Conclusion

This Court's review is limited to whether substantial evidence supports the KHRC's findings and whether the KHRC applied the correct rule of law. The parties do not contest the underlying facts, and this Court finds that substantial evidence supports the factual determinations made by the KHRC. Reviewing the law applied by the KHRC in rendering its Final Order, this Court finds that the KHRC applied the correct rule of law to the facts as found. Accordingly, the KHRC's Final Order must stand. March's Petition fails to state a claim and must be dismissed.

Opinion and Order at 4-9 (citations and footnotes omitted). Additionally, the circuit court was confined to a review of the administrative record in this case and was not permitted to call additional witnesses. KRS 13B.150. Hence, we conclude that the circuit court correctly analyzed the issues and properly affirmed the Commission's Final Order dismissing March's action.

*4 For the foregoing reasons, the Opinion and Order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

All Citations

Not Reported in S.W.3d, 2015 WL 3429763

End of Document

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