

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2012-CA-001610-MR

JOHN VEITCH

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 12-CI-00313

KENTUCKY HORSE RACING COMMISSION

APPELLEE

OPINION  
AFFIRMING IN PART, REVERSING IN PART,  
AND REMANDING

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BEFORE: CAPERTON, DIXON, AND STUMBO, JUDGES.

CAPERTON, JUDGE: John Veitch appeals from the Franklin Circuit Court's affirmation of the final order of the Kentucky Horse Racing Commission ("KHRC"), wherein the KHRC suspended Veitch for one year based on findings that he violated KHRC regulations. On appeal, Veitch argues that the regulations that he was accused of violating and the KHRC order are unconstitutional. After a

thorough review of the parties' arguments, the record, and the applicable law, we affirm in part, reverse in part, and remand for further proceedings.

On November 5, 2010, Veitch was serving as KHRC's Chief Steward at the 2010 Breeders' Cup World Championships ("Breeders' Cup") taking place at Churchill Downs in Louisville, Kentucky. The Breeders' Cup is an annual culmination of the thoroughbred racing season in North America and features the most elite equine athletes from around the world with more than twenty-five million dollars in purse money given away over two days of racing. The Breeders' Cup is held at different North American tracks each year.

The KHRC<sup>1</sup> is charged with regulating pari-mutuel horse racing "of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled

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<sup>1</sup> Our Kentucky Supreme Court addressed the function of the KHRC in *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 301 (Ky. 1972):

The Kentucky State Racing Commission is more than an administrative agency having the quasi-judicial function of finding the facts and applying the law to the facts. The Commission was created for the purpose of maintaining integrity and honesty in racing; the promulgation and enforcement of rules and regulations effectively preventing the use of improper devices, the administration of drugs or stimulants, or other improper acts for the purpose of affecting the speed or health of horses; and the promotion of interest in the breeding of and improvement of the breed of thoroughbred horses. The Commission is vested with extensive authority over all persons on racing premises for the purpose of maintaining honesty and integrity and orderly conduct of thoroughbred racing. On the basis of the statutes heretofore referred to, the Commission is charged with the duty of protecting substantial public interest and is therefore a representative of this interest in all proceedings.

horse racing practices....” KRS 230.215(2).<sup>2</sup> The KHRC utilizes the board of stewards to carry out this legislative mandate. The board is comprised of the chief state steward, who is hired by the KHRC, and two association stewards who are supplied by the racing track. The chief steward is the embodiment of the KHRC at the track.

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<sup>2</sup> KRS 230.215 sets forth the legislative purpose concerning the horse racing commission:

(1) It is the policy of the Commonwealth of Kentucky, in furtherance of its responsibility to foster and to encourage legitimate occupations and industries in the Commonwealth and to promote and to conserve the public health, safety, and welfare, and it is hereby declared the intent of the Commonwealth to foster and to encourage the horse breeding industry within the Commonwealth and to encourage the improvement of the breeds of horses. Further, it is the policy and intent of the Commonwealth to foster and to encourage the business of legitimate horse racing with pari-mutuel wagering thereon in the Commonwealth on the highest possible plane. Further, it hereby is declared the policy and intent of the Commonwealth that all racing not licensed under this chapter is a public nuisance and may be enjoined as such. Further, it is hereby declared the policy and intent of the Commonwealth that the conduct of horse racing, or the participation in any way in horse racing, or the entrance to or presence where horse racing is conducted, is a privilege and not a personal right; and that this privilege may be granted or denied by the racing commission or its duly approved representatives acting in its behalf.

(2) It is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the racing commission 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 so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth. In addition to the general powers and duties vested in the racing commission by this chapter, it is the intent hereby to vest in the racing commission the power to eject or exclude from association grounds or any part thereof any person, licensed or unlicensed, whose conduct or reputation is such that his presence on association grounds may, in the opinion of the racing commission, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing.

As noted, Veitch served as the Chief Steward on November 5, 2010.

Mr. Brooks Becraft and Mr. Richard Leigh also served as stewards during this two-day event; they were supplied by Churchill Downs. The tenth race on November 5<sup>th</sup> was the Ladies' Classic which was the final and biggest race of the day with a \$2,000,000 purse awarded to the winner. On November 5, 2010, the second betting favorite in the race was Life at Ten due to her recent racing success and consecutive wins in major stakes races.

Approximately five minutes before the race, ESPN commentator Jerry Bailey interviewed Life at Ten's jockey, John Velazquez, while he was aboard the horse and on the track preparing her to race. Velazquez was asked how Life at Ten was warming up and he stated, "Right now, I'm not sure, Jerry, to tell you the truth. She's not warming up the way she normally does." These comments led the ESPN commentators to speculate about the horse's fitness to run.

Immediately after Velazquez<sup>3</sup> made these comments ESPN Producer Amy Zimmerman called Veitch. Zimmerman testified that she said, "Judge are you listening to this? Johnny said his horse ain't right" and that he should turn on the ESPN feed. Veitch testified that he recalled Zimmerman simply telling him to turn on ESPN.<sup>4</sup> After watching ESPN after Zimmerman's call, Veitch testified that that he believed that Velazquez stated his opinion that his horse was "dull," which

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<sup>3</sup> Velazquez testified that his statement was not meant to imply that he had any concerns about Life at Ten's soundness or ability to run. Velazquez testified that at the time Life at Ten walked into the starting gate she had no apparent physical problems.

<sup>4</sup> There is conflicting evidence as to whether the stewards were watching ESPN prior to Zimmerman's call.

he took to mean that Life at Ten was not focused. Veitch went out to the stewards' stand on the sixth floor of the track and used binoculars to look at Life at Ten.

Veitch testified that he believed Life at Ten looked fine.<sup>5</sup>

Becraft testified that when the stewards were informed of Velazquez's statements he suggested to Veitch that they ask a veterinarian<sup>6</sup> to look at Life at Ten. Veitch responded that if they called a veterinarian the horse might as well be scratched.<sup>7</sup> Becraft stated that if something was wrong with the horse, she should be scratched, but made no further individual effort to call a veterinarian or otherwise convince Veitch or Leigh to do so. Becraft testified that Veitch, as the KHRC Chief Steward, had authority over these kinds of decisions. A veterinarian was not called to evaluate Life at Ten before the race.

Life at Ten finished the race at a distant last. After the race, Life at Ten walked without any apparent discomfort or distress back to her barn and was not examined or sampled following her surprising performance.<sup>8</sup> Becraft and Leigh testified that there was no discussion among the stewards whether to have Life at Ten sampled. Veitch and the stewards did not begin an investigation into Life at Ten's performance until two days after the Ladies' Classic took place. The

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<sup>5</sup> Veitch directs this court to the multiple witnesses, ranging from veterinarians to the assistant starter who loaded Life at Ten into the gate, that the horse did not appear to be in distress.

<sup>6</sup> The veterinarians at the track knew about a rumor that a jockey had commented on the condition of his horse.

<sup>7</sup> According to Veitch, prior to 2010, the Breeders' Cup rules required that any horse examined by a veterinarian on the track to be scratched. This rule was changed for the 2010 races, but Veitch claims that KHRC failed to inform him of the rule change.

<sup>8</sup> Veitch asserts that each steward did have a concern about Life at Ten's health and well-being in light of her poor performance and so wanted the horse to go to her own barn for any necessary medical treatment. Dr. Peckham testified Life at Ten had to be treated for "tying up" at her barn.

KHRC quickly turned the investigation over to the Office of Inspector General in the Transportation Cabinet. The investigation involved over ninety interviews and hundreds of documents reviewed. Following this investigation, the KHRC charged Veitch with five regulatory violations.

A three-day hearing was held before a hearing officer. According to the hearing officer, Veitch gave conflicting versions of the events, beginning with the telephone call from Zimmerman. The hearing officer found Veitch to not be a credible witness. Additionally, the hearing officer found that Veitch had attempted to mislead KHRC investigators by claiming Becraft had not requested that a veterinarian examine the horse. This led the hearing officer to determine that the change in Veitch's prehearing discovery response and his explanation for the change was deceptive and self-serving, and was calculated to provide the appearance that all the stewards supported Veitch's decision to not call the veterinarians. The hearing officer concluded that the deceptive answer and explanation reduce the probative value which can be assigned to Veitch's testimony.

Veitch's explanation for the inconsistencies in his statements to the investigators and his testimony at the hearing was that, "At the time I could not remember that I said that. But I do remember now." The hearing officer found that Veitch violated five regulations based upon the evidence in the record and recommended a penalty of a one-year suspension. The KHRC adopted the hearing

officer's findings and recommended order<sup>9</sup> and imposed the recommended suspension of Veitch's license for one year.

Veitch appealed the KHRC's final order to the Franklin Circuit Court. Following briefing and oral argument, the court affirmed the KHRC's final order which found that the order was supported by substantial evidence, that its conclusions were not arbitrary, and that the penalty was proper and constitutional. Additionally, the court concluded that the regulations at issue were not void for vagueness. It is from this that Veitch now appeals.

On appeal, Veitch argues: (1) the regulations which he is accused of violating are unconstitutional as they are void for vagueness; (2) the KHRC's order violates equal protection and due process guarantees; and (3) that KHRC's order is arbitrary and capricious, and is not supported by substantial evidence within the record.

In response, KHRC argues that: (1) the regulations pass constitutional muster; (2) the punishment imposed on Veitch is lawful; (3) ample evidence supports each of the KHRC findings; (4) the KHRC order is based on established fact and is within its authority. With these arguments in mind we now turn to our appellate standard of review.

Concerning our review of an administrative action, the court in *American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission*, 379 S.W.2d 450 (Ky. 1964) held:

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<sup>9</sup> There was a slight modification to one paragraph.

Basically, judicial review of administrative action is concerned with the question of arbitrariness....The above three grounds of judicial review, (1) action in excess of granted powers, (2) lack of procedural due process, and (3) lack of substantial evidentiary support, effectually delineate its necessary and permissible scope....In the final analysis all of these issues may be reduced to the ultimate question of whether the action taken by the administrative agency was arbitrary.

*American Beauty Homes Corp.* at 456-57 (internal citations omitted).

Generally speaking:

The circuit court's role as an appellate court is to review the administrative decision, not to reinterpret or to reconsider the merits of the claim, nor to substitute its judgment for that of the agency as to the weight of the evidence. Thus, the circuit court must determine both “[i]f the findings of fact are supported by substantial evidence of probative value” and “whether or not the administrative agency has applied the correct rule of law to the facts so found.” “The test of substantiality of evidence is whether ... it has sufficient probative value to induce conviction in the minds of reasonable [persons].” Further, “ ‘the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.’ ” As long as there is substantial evidence in the record to support the agency's decision, the court must defer to the agency, even if there is conflicting evidence.

An administrative agency, such as the Cabinet, is “afforded great latitude in its evaluation of the evidence heard and the credibility of witnesses appearing before it” [citation omitted]. “[A]lthough a reviewing court may arrive at a different conclusion than the trier of fact in its consideration of the evidence in the record, this does not necessarily deprive the agency's decision of support by substantial evidence” [citation omitted]. Further, even if this Court would have come to a different conclusion if it



heard the case de novo, it must affirm the administrative agency's decision if supported by substantial evidence. “[I]t is the exclusive province of the administrative trier of fact to pass upon the credibility of witnesses, and the weight of the evidence” [citation omitted]. Indeed, an administrative agency's trier of facts may hear all the evidence “ ‘and choose the evidence that he believes’ ” [citation omitted]. “ ‘If the findings of fact are supported by substantial evidence of probative value, then they must be accepted as binding and it must then be determined whether or not the administrative agency has applied the correct rule of law to the facts so found’ ” [citations omitted].

*500 Associates, Inc. v. Natural Resources and Environmental Protection Cabinet*, 204 S.W.3d 121, 131-32 (Ky. App. 2006) (internal citations omitted). With this in mind we now turn to the issues raised by the parties.

Veitch first argues the regulations which he is accused of violating are unconstitutional because they are void for vagueness. As mentioned previously, Veitch was charged with five regulatory violations. Veitch was first charged with violating 810 Kentucky Administrative Regulations (KAR) 1:004 §4(1)<sup>10</sup> which requires a steward to take appropriate action on all misconduct by investigating any possible administrative regulation infraction, and to take appropriate action to prevent any such infraction. The hearing officer found that Veitch violated this

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<sup>10</sup> 810 KAR 1:004 Section 4 states in part:

Duties and Responsibilities of Stewards. In addition to the duties and responsibilities necessary and pertinent to general supervision, control, and regulation of race meetings, and without limiting the authority of the stewards to perform these and other duties enumerated in these administrative regulations, the stewards shall have the following specific duties and responsibilities:

(1) To take appropriate action on all misconduct or administrative regulation infractions, to cause investigations to be made of all instances of possible infractions, and to take appropriate action to prevent an administrative regulation infraction....

regulation by not taking appropriate action based on Velazquez's comments and by his failure to have Life at Ten tested for prohibited substances.

Second, Veitch was charged with violating 810 KAR 1:004 Section 4(8).<sup>11</sup> This regulation requires stewards to supervise the taking of entries and receive all declarations and scratches. The KHRC determined that Veitch violated this regulation when he, "overruled [Becraft's] request to have Life at Ten examined by the state veterinarians."

Third, Veitch was charged with violating 810 KAR 1:012 Section 10(1)<sup>12</sup> which prohibits the entry of a horse that is not in "serviceable, sound racing condition" and allows stewards to require a horse to be examined by a qualified person. The hearing officer determined that Veitch violated this regulation by his failure to have Life at Ten inspected by a veterinarian to evaluate her racing condition and by "actively block[ing]" the direction of another steward to do so.

Fourth, the KHRC concluded that Veitch violated 810 KAR 1:016 Section 14<sup>13</sup> which requires stewards to take note of any marked reversal of form of a horse

<sup>11</sup> 810 KAR 1:004 Section 4(8) states:

To supervise the taking of entries and receive all declarations and scratches and determine all questions arising and pertaining to declarations and scratches. The stewards may in their discretion refuse the entry of any horse by any person, refuse to permit a declaration or scratch, or may limit entries[.]

<sup>12</sup>810 KAR 1:012 Section 10(1) states:

Serviceable for Racing. A horse shall not be entered or raced that:

(1) Is not in serviceable, sound racing condition. The stewards may at any time require a horse on association grounds to be examined by a qualified person[.]

<sup>13</sup> 810 KAR 1:016 Section 14 states:

Horses to be Ridden Out. Every horse in every race shall be ridden so as to win or finish as near as possible to first and demonstrate the best and fastest performance of which it is capable at the time. A horse shall not be eased up without adequate cause, even if it has no apparent chance to earn a portion of the purse money. A jockey who unnecessarily causes a horse

and to conduct an inquiry into such a performance. The KHRC determined that Veitch's failure to have Life at Ten sampled after her surprising performance and by the delay into the start of his investigation violated this regulation.

Finally, Veitch was found in violation of 810 KAR 1:018 Section 11(1),<sup>14</sup> a regulation allowing stewards to designate a horse for sampling to determine if there had been an administrative regulation violation. The KHRC concluded that Veitch violated this regulation by his failure to designate Life at Ten for blood and/or urine collection to determine whether a regulatory violation had occurred.

Veitch's void for vagueness argument focuses on the discretion granted the stewards per regulations but asserts that the regulations fail to set forth any required or prohibited acts. Veitch contests the evidence relied upon by the KHRC in reaching its determination. Additionally, Veitch argues that these regulations do not distinguish between the duties and responsibilities of the chief steward and those of the other stewards; only Veitch was charged with violations of the

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to shorten stride may be penalized at the discretion of the stewards. Stewards shall take cognizance of any marked reversal of form of a horse and shall conduct inquiries of the licensed owner, licensed trainer, and all other persons connected with the horse. If the stewards find that the horse was deliberately restrained or impeded in any way or by any means so as not to win or finish as near as possible to first, any person found to have contributed to that circumstance may be penalized at the discretion of the stewards.

<sup>14</sup> 810 KAR 1:018 Section 11(1) states:  
Sample Collection, Testing, and Reporting. (1) Sample collection shall be done in accordance with the procedures provided in 810 KAR 1:130 and under the instructions provided by the commission veterinarian.

regulations. The KHRC argues that Veitch's discretion was not unlimited and that he was aware of his obligations to both Life at Ten and the sport of horse racing.

We note that courts should be reasonably lenient in evaluating a claim of vagueness when a statute is not concerned with criminal conduct or first amendment considerations. *See Grayned v. City of Rockford*, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). Likewise, in *Doe v. Staples*, 706 F.2d 985 (C.A. Ohio 1983), the 6th Circuit Court stated:

When a statute is not concerned with criminal conduct or First Amendment considerations, the court must be fairly lenient in evaluating a claim of vagueness. *Exxon Corp. v. Busbee*, 644 F.2d 1030 (5th Cir. 1981), cert. denied, 454 U.S. 340, 102 S.Ct. 430, 70 L.Ed.2d 239 (1981). As the court in *Exxon* stated:

[T]o constitute a deprivation of due process, it must be "so vague and indefinite as really to be no rule or standard at all." *A.B. Small Co.*, 267 U.S. [233] at 239, 45 S.Ct. [295] at 297 [69 L.Ed. 589] (1925).

To paraphrase, uncertainty in this statute is not enough for it to be unconstitutionally vague; rather, it must be substantially incomprehensible. 644 F.2d at 1033.

Whether a statute is unconstitutionally vague must be assessed in the context of the particular conduct to which it is being applied. *United States v. National Dairy Products Corp.*, 372 U.S. 29, 83 S.Ct. 594, 9 L.Ed.2d 561 (1963).

*Doe v. Staples*, 706 F.2d 985 at 988.<sup>15</sup> Furthermore, in *State Board for Elementary and Secondary Education v. Howard, et al.*, 834 S.W.2d 657 (Ky. 1992), our Kentucky Supreme Court stated:

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<sup>15</sup> *See also Gurnee v. Lexington Fayette Urban County Government*, 6 S.W.3d 852, 856 (Ky. App. 1999), in which this Court held that, "The fact that a statute is nonsensical if read literally, or is susceptible to more than one interpretation, does not require a holding that the statute is unconstitutional if, as the circuit court determined, those who are affected by the statute can reasonably understand what the statute requires of them."

In reviewing the standard for vagueness, this Court and the United States Supreme Court have followed two general principles underlying the concept of vagueness. First, a statute is impermissibly vague if it does not place someone to whom it applies on actual notice as to what conduct is prohibited; and second, a statute is impermissibly vague if it is written in a manner that encourages arbitrary and discriminatory enforcement.

When considering vagueness challenges to an administrative regulation, the regulation must be considered in its entirety and not piecemeal. *See Alliance for Kentucky's Future, Inc., v. Environmental and Public Protection Cabinet*, 310 S.W.3d 689, 689 (Ky. App. 2008).

Upon our consideration of parties' arguments and the regulations at issue, we agree with the court below that the regulations, while having discretionary elements, are not void for vagueness. Veitch should have understood from the regulations that he had the authority to call for a veterinarian to evaluate Life at Ten (810 KAR 1:004 Section 4(8)) and *could* have used that discretion to take action on Velazquez's statement (810 KAR 1:004 Section 4(1)).<sup>16</sup> Veitch should have understood that a horse that substantially underperforms, as Life in Ten did, should be tested and investigated for regulatory violations immediately following a race (810 KAR 1:004 Section 4(1), 810 KAR 1:016 Section 14, 810 KAR 1:018 Section 11(1)). Accordingly, we cannot agree with Veitch that the regulations are void for vagueness.

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<sup>16</sup> We disagree with the KHRC that such a comment mandated action by Veitch. We direct the KHRC to the inherent discretion contained within the regulations.

Veitch next argues that the KHRC's order violates equal protection and due process guarantees, to which the KHRC disagrees. Veitch premises his argument on what he asserts is disparate treatment against him as KHRC did not charge Becraft or Leigh and entered into an agreed disposition with Velazquez. The KHRC defends its actions, arguing that Veitch was in a unique position as the Chief Steward having authority over Becraft and Leigh. KHRC asserts that Veitch overruled Becraft's attempt to have Life at Ten evaluated and deceived investigators as to his role in his decisions concerning Life at Ten.

This Court in *Commonwealth, Transp. Cabinet, Dept. of Highways v. Express Mart, Inc.*, 759 S.W.2d 600, 601 (Ky. App. 1988), addressed equal protection and due process:

Regarding the issue presented, the concept of equal protection embraces both equal protection under the law and due process of law. *See Kentucky Milk Marketing v. Kroger Co.*, Ky., 691 S.W.2d 893, 899 (1985). Discrimination or selectivity in enforcement is not, by itself, a constitutional violation. *See Oyler v. Boles*, 368 U.S. 448, 82 S.Ct. 501, 506, 7 L.Ed.2d 446 (1962). In order to rise to the level of unconstitutional discrimination, selection must be deliberately based upon an unjustifiable standard, e.g., race or religion; or motivated by an invidious purpose, such as an attempt to interfere with the lawful exercise of a constitutionally protected right. *See id.* *See also United States v. Hazel*, 696 F.2d 473, 474 (6th Cir.1983). *Cf. Yick Wo v. Hopkins*, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886).

In addition, due process requires that selection or classification be predicated upon some reasonable basis. Unequal enforcement to be violative of constitutional guarantees of due process must rise to the level of a "conscious violation of the principle of uniformity." *See*

*Standard Oil v. Boone County Board of Supervisors, Ky.*, 562 S.W.2d 83, 85 (1978). Violation of the principle of uniformity occurs where administration or enforcement “rests upon reasons so unsubstantial” as to amount to a violation of the constitutional protection against the arbitrary exercise of official power. See *Kentucky Milk Marketing, supra*, 691 S.W.2d at 899; *City of Lexington v. Motel Developers, Inc., Ky.*, 465 S.W.2d 253, 257 (1971). Whether a classification is reasonable is a matter of degree to be determined on the facts of a particular case. *Kentucky Milk Marketing*, 691 S.W.2d at 899.

*Com., Transp. Cabinet, Dept. of Highways v. Express Mart, Inc.*, 759 S.W.2d 600 at 601.

*Sub judice*, Veitch has failed to explain to this Court how any alleged disparate treatment of him in contrast to that of the jockey and the other two stewards rises to the level of unconstitutional discrimination based on either an unjustifiable standard or invidious purpose as explained by *Express Mart, Inc.* Thus, we decline to reverse on this ground.

Last, Veitch argues that KHRC’s order violates due process, is arbitrary and capricious, and is not supported by substantial evidence within the record. Veitch cites this Court to the conflicting evidence within the record and argues that the hearing officer improperly concluded that Veitch’s testimony was not credible.

This Court has previously discussed the latitude the KHRA is entitled to regarding the evidence heard by it and the credibility of witnesses:

Further, the KHRA “is afforded great latitude in its evaluation of the evidence heard and the credibility of witnesses appearing before the Commission.” *Id.* Also,

“the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.” *Id.* at 307, quoting *Chesapeake and Ohio Railway Co. v. United States*, 298 F.Supp. 734 (W.D.Ky.1969).

*Southern Bluegrass Racing, LLC v. Kentucky Horse Racing Authority*, 136 S.W.3d 49, 52-53 (Ky. App. 2004). Moreover,

neither the Franklin Circuit Court nor this court may substitute its judgment for that of the agency as to the weight to be given to the evidence and as to the credibility of the witnesses. *See* KRS 13B.150(2) and *Fuller*, 481 S.W.2d at 308. In short, the circuit court did

not err in its conclusion that the KHRA decision was supported by substantial evidence.

*Id.* at 53 (Ky. App. 2004).

We agree with Veitch that there was insufficient evidence to support the KHRC’s findings regarding his violations of 810 KAR 1:004 Section 4(1) and 810 KAR 1:012 Section 10(1) based on the pre-race comments of the jockey standing alone. Simply stated, the jockey’s pre-race comments did not immediately call into question Life at Ten’s health and well-being, mandating action by Veitch. However, the horse’s poor, unexpected racing performance certainly did require Veitch to take action based on the regulations. We agree with the KHRC that ample evidence within the record supports such findings by the KHRC based on the poor performance. Accordingly, we affirm in part the KHRC’s findings and conclusions that Veitch violated regulations based on the



post-race performance of Life at Ten and reverse in part concerning the violations based on the pre-race commentary.

In light of the aforementioned, we reverse and remand for further proceedings, including reconsideration of the penalty, in a manner not inconsistent with this opinion.

DIXON, JUDGE, CONCURS IN PART AND DISSENTS IN PART,  
AND WILL NOT FILE SEPARATE OPINION.

STUMBO, JUDGE, CONCURS.

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