

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
CIVIL DIVISION NO. I
CASE NO. 09-CI- 861

DR. RODNEY STEWART

V.

**PETITION FOR JUDICIAL REVIEW OF
KENTUCKY HORSE RACING COMMISSION
FINAL ORDER**

PETITIONER
RECEIVED
MAY 22 2009
FRANKLIN CIRCUIT COURT
SALLY JUMP, CLERK

KENTUCKY HORSE RACING COMMISSION

RESPONDENT

Serve:

Jack Conway
Attorney General, Commonwealth of Kentucky
118 State Capitol
700 Capital Avenue
Frankfort, Kentucky 40601

*** **

Comes the Petitioner, Dr. Rodney Stewart, pursuant to KRS 13B.140, KRS 13B.150, and 810 KAR 1:029, and hereby petitions the Franklin Circuit Court for judicial review of the Final Order of the Kentucky Horse Racing Commission in the administrative appeal case of *Kentucky Horse Racing Commission v. Dr. Rodney Stewart*, File Nos. HRA-29424-047 (Suspension Order) and HRS-29425-047 (Failure to Cooperate) ("Final Order").¹ Attested copies of the Final Order, Hearing Officer's Recommended Findings of Fact and Conclusions of Law, and Hearing Transcript are filed herewith.

1. The parties to this judicial review are the following:

- (a) Petitioner, Dr. Rodney Stewart ("Dr. Stewart"). Dr. Stewart is represented by Michael D. Meuser and Michelle L. Hurley of Miller, Griffin & Marks, PSC, 271

¹HRS-29425-047 (Failure to Cooperate) has since been deemed moot.

West Short Street, Suite 600, Lexington, Kentucky 40507, telephone number: 859-255-6676, and Karen A. Murphy, 76 Phelps Road, Old Chatham, New York, telephone number: (518) 392-6471.

(b) Respondent, Kentucky Horse Racing Commission (“Commission”), Robert M. Beck, Jr., Chairman, 4063 Ironworks Parkway, Bldg. B, Lexington, KY 40511. The Commission is represented by Robert M. Watt, III, Stoll Keenon Ogden, PLLC, 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507, telephone number: (859) 231-3000.

2. The agency involved in this judicial review is the Kentucky Horse Racing Commission.

3. The grounds for this judicial review are the following:

- a. The Commission’s ruling that Dr. Stewart violated 810 KAR 1:018, Section 19 (1) and 19(2) is not supported by substantial evidence, is arbitrary and capricious, and/or an abuse of discretion.² That decision was based on evidence seized by the Commission during a June 22, 2007 search of Barn 74, located at the Rice Road Training Center.
- b. The length of the suspension imposed for violations of 810 KAR 1:018, Section 19(1) and 19(2) is excessive and unsupportable under Kentucky law.
- c. The application of 810 KAR 1:028 Section 9(1) is invalid because that Section *only* applies when the “administrative regulation” does not provide for a penalty

²The Hearing Officer’s Findings of Fact, Conclusions of Law and Recommended Report refer to 810 KAR 1:018, Sections 20(1) and 20(2), which have no application in this case. The Commission’s Final Order clarifies that the proper regulatory references are to 810 KAR 1:018, Sections 19(1) and 19(2).

with respect an alleged violation. Dr. Stewart was charged and found guilty of “[p]ossession on the grounds of Keeneland Race Course ... [of] a Class A medication ... in violation of 810 KAR 1:1018.” 810 KAR 1:028, Section 4(1)(a) expressly provides for penalties for “Class A ... Drug Violations.” That Section states that for a “first offense” the penalty is for a suspension of zero to three years, with the proviso that any suspension may be mitigated with the imposition of a fine. 810 KAR 1:028, section 4(1)(a)(2).

- d. 810 KAR 1:018(19)(1) and(2), which prohibits the possession of a drug, medication or substance which, if used, may “endanger the health and welfare of the horse” or “the safety of the rider,” is invalid because it is unconstitutionally vague and over-broad.
- e. The Commission’s finding that Cobra Venom is a drug which would “endanger the health and welfare of the horse” or the “safety of the rider” is not supported by substantial evidence, is arbitrary and capricious, and/or an abuse of discretion. The Commission ignored significant evidence set forth by Dr. Stewart, including but not limited to the fact that snake venom has a recognized therapeutic use in horses, and that, at the time of the search, it was not only approved but *recommended* for use in standardbred horses by the Commission’s own regulations. *See* 811 KAR 1:085 § 9(4)(a).
- f. The Commission’s finding that Carbidopa and Levodopa are drugs which would “endanger the health and welfare of the horse” or the “safety of the rider” is not supported by substantial evidence, is arbitrary and capricious, and/or an abuse of

discretion. The Commission ignored significant evidence set forth by Dr. Stewart, including but not limited to the fact that Carbidopa/Levodopa is approved by the FDA for human use. Therefore, possession of Carbidopa/Levodopa does not violate 810 KAR 1:018(19)(1) and(2).

- g. Dr. Stewart was denied both substantive and procedural due process because the Commission was without jurisdiction to search Barn 74 on June 22, 2007.
- h. The application of 810 KAR 1:025 § (3)(a), 810 KAR 1:018, Section 1(3), and KRS 230.210(9) are invalid. 810 KAR 1:025 § (3)(a) provides that a licensee shall consent to a reasonable search of his property, the property being “restricted to that on association grounds.” “Association grounds,” in turn, is defined as a “track” as defined in KRS 230.210(9). 810 KAR 1:018, Section 1(3). KRS 230.210(9) (paras. 15-18), expressly provides for Commission “approval” of any “noncontiguous” property (*i.e.*, Barn 74) in order for that property to be part of the “track.” The Commission ignored substantial evidence showing that the property in question was never approved by the Commission, and therefore, was not an area within the jurisdiction of the Commission as contemplated by KRS 230.210(9). Additionally, 810 KAR 1:026, Section 25(4) requires an Association to file maps and plans of association grounds with the Commission “upon any material change.” The Keeneland Association’s failure to comply with this regulation further deprived the Commission of jurisdiction over the property at issue.
- i. Dr. Stewart was denied procedural due process because of the Commission’s

failure to provide him with a prompt post-suspension hearing.

- j. All other issues raised in Petitioner's Exceptions to the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, filed with the Commission on April 21, 2009, are incorporated herein. Petitioner further references and incorporates the Hearing Transcript and Exhibits, his Proposed Findings of Fact and Conclusions of Law, all other pleadings and pre-hearing motions filed by Petitioner, and the administrative record.
4. Pursuant to KRS 13B.150, Dr. Stewart requests that the Court receive written briefs and hear oral arguments in this matter.

Respectfully submitted,
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