

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JOHNNY DALE WAITE,)
) C.A. No. 08A-03-004 (JTV)
 Appellant,)
)
 v.)
)
 STATE OF DELAWARE,)
 DEPARTMENT OF)
 AGRICULTURE,)
 DELAWARE HARNESS RACING)
 COMMISSION,)
)
 Appellee.)

Submitted: October 3, 2008

Decided: January 30, 2009

John R. Garey, Esq., Dover, Delaware. Attorney for Appellant.

Robert W. Willard, Esq., Department of Justice, Wilmington, Delaware. Attorney for Appellee.

*Upon Consideration of Appellant's Appeal
From Decision of the Delaware Harness Racing Commission*

AFFIRMED

VAUGHN, President Judge

OPINION

Johnny Dale Waite, trainer of the racehorse *Noble Tess*, appeals the Delaware Harness Racing Commission's ("the Commission" or "DHRC") decision finding that he violated DHRC Rule 3.2.8¹ by racing *Noble Tess* at the Meadowlands in New Jersey, while the horse was on the DHRC Steward's List. The Commission upheld the decision of a racing judge imposing a 45-day suspension and a \$2,000 fine.

FACTS

On February 5, 2008, *Noble Tess* was scheduled to race at Dover Downs Raceway. Prior to the race, a blood sample was taken to determine the base excess level in the horse's blood. The base excess reading was high, at 13, and *Noble Tess* was declared unfit to race that evening. The horse was placed on the Steward's List, which meant that it could not race until a re-test was completed in 14 days.

Prior to the scheduled re-test, Mr. Waite attempted to enter *Noble Tess* into a race at Yonkers Raceway in New York. A raceway official denied the horse's entry, recognizing that *Noble Tess* was ineligible to race. Thereafter, Mr. Waite entered *Noble Tess* into two races at the Meadowlands. The raceway accepted *Noble Tess*' entry, and the horse raced on February 10 and February 17, 2008.² When the

¹ Under Rule 3.2.8.2, "[a] horse that is unfit to race because it is dangerous, unmanageable or unable to show a performance to qualify for races at the meeting, scratched as a result of a high blood gas test, or otherwise unfit to race at the meeting may be placed on the Steward's List by the Presiding Judge and declarations and/or entries on the horse shall be refused." The owner or trainer is notified of a Steward's List designation and the reasons therefor. The Rule further provides: "When any horse is placed on the Steward's List, the Program Director shall make a note on the electronic eligibility certificate of such horse, showing the date the horse was put on the Steward's List[,], the reason and the date of removal if the horse has been removed." Delaware Harness Racing Commission Harness Racing Rules and Regulations, R. 3.2.8.2.

² Mr. Waite testified that the relevant Meadowlands official attempted to determine if *Noble Tess* was on the USTA list of disqualified horses, and concluded: "Well, the horse is not

Meadowlands later learned that *Noble Tess* had been placed on the Steward's List in Delaware for being unfit to race, New Jersey racing officials imposed a fine of \$2,000 on Mr. Waite.

After the races at the Meadowlands, *Noble Tess* was returned to Delaware, where a second blood gas reading was taken. The second reading again exceeded the limits prescribed by DHRC. *Noble Tess* therefore remained on the Steward's List and was deemed ineligible to race in Delaware. Mr. Waite received notice of a judges hearing to determine the appropriate sanction for the unfit condition of *Noble Tess* as a result of the high blood gas readings. Mr. Waite received a second notice of a judges hearing based on his conduct in racing *Noble Tess* at the Meadowlands on two occasions while the horse was on the DHRC Steward's List. The subject of the second notice, racing at the Meadowlands, is the subject of this appeal. On that issue, the judges imposed a \$2,000 fine and a 45-day suspension. The Commission upheld these penalties, and the instant appeal followed.

STANDARD OF REVIEW

The function of this Court in reviewing an appeal from the Delaware Harness Racing Commission is to determine whether the Commission's decision is supported by substantial evidence and is free from legal error.³ Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁴ The appellate court may not weigh the evidence, determine questions

on the list according to the eligibility." Hearing Tr. 47.

³ *Richards v. Del. State Harness Racing Comm'n*, 1998 WL 960717, at *2 (Del. Super. Oct. 20, 1998) (citing *Del. Harness Racing Comm'n v. Mitchell*, 442 A.2d 77, 79 (Del. 1982); *Olney v. Cooch*, 425 A.2d 610, 612-13 (Del. 1981)).

⁴ *Richards*, 1998 WL 960717, at *2. See also *Ringler v. Paintin*, 1980 WL 332988, at *8 (Del. Super. July 24, 1980) (citations omitted) ("Substantial evidence has been defined as that

of credibility, or make its own factual findings.⁵ The court merely determines if the evidence is legally adequate to support the agency's factual findings.⁶ If there is substantial evidence for the Commission's decision, and there is no mistake of law, the decision will be affirmed.⁷

DISCUSSION

Mr. Waite claims that the Commission's decision goes against the weight of the evidence presented at the hearing, and that the Commission committed legal error when it interpreted and applied its rules and regulations to the facts of this case. Mr. Waite provides no support for the first argument.

As to the second argument, Mr. Waite contends that the DHRC has no authority to police the actions of its licensees outside of Delaware. He claims that he was never advised that the Commission intended for the Steward's List designation to apply to other jurisdictions. He cites the testimony of Scott Egger, the Presiding Judge for Delaware, stating that Mr. Waite complied with all of the rules governing the re-testing process. Further drawing from Egger's testimony, Mr. Waite argues that *Noble Tess*' racing in New Jersey had no injurious effects on racing in Delaware; that there is no DHRC rule addressing the racing of a horse outside Delaware while the horse is on the Steward's List; and that the denial of entry to tracks outside Delaware is not always the necessary result of a horse's placement on the Steward's

which affords a substantial basis of fact from which the fact in issue can reasonably be inferred; if the trial went to a jury, it must be enough to justify a refusal to direct a verdict.”).

⁵ *Richards*, 1998 WL 760717, at *2.

⁶ *Id.*

⁷ *Id.* See also *Givens v. State of Del. Harness Racing Comm'n*, 1999 WL 169400, at *4 (Del. Super. Feb. 26, 1999) (“It is the Commission's job to weigh the evidence and its determination will not be disturbed on appeal.”).

List. Mr. Waite contends that he was penalized by the Commission under Rule 3.2.8 for a violation that does not exist.

The Delaware Harness Racing Commission has the statutory authority to establish its own rules for the benefit of the public.⁸ When reviewing the Commission's interpretation of regulatory provisions, the Court will defer to the construction placed by the Commission on regulations promulgated and enforced by it, unless shown to be clearly erroneous.⁹ The Court finds that the Commission's interpretation of DHRC Rule 3.2.8 to prohibit the racing of a Steward's List horse anywhere, not just in Delaware, is supported by substantial evidence.

Under 3 *Del. C.* § 10027, every licensed trainer in Delaware is subject to the rules and regulations of the United States Trotting Association.¹⁰ Pursuant to USTA Rule 14, Section 6, “[a] horse that is unfit to race because he is . . . scratched as a result of a high blood gas test . . . may be placed on a ‘Steward’s list’ by the Presiding Judge and *declaration on said horse shall be refused*, but the owner or trainer shall

⁸ *Givens*, 1999 WL 169400, at *5.

⁹ *Hochstetler v. Del. Harness Racing Comm’n*, 2003 WL 549181, at *2 (Del. Super. Feb. 26, 2003).

¹⁰ The statute provides:

Every license issued under this chapter shall contain a condition that all harness races or racing meets conducted thereunder shall be subject to the reasonable rules and regulations from time to time prescribed by the United States Trotting Association. . . . All grooms, drivers and owners and their employees of any horses entered, or to be entered, in any harness racing meet licensed under this chapter shall be subject to said rules and regulations prescribed as aforesaid by the said United States Trotting Association.

3 *Del. C.* § 10027. *See also Hochstetler*, 2003 WL 549181, at *3 (“Under 3 *Del. C.* § 10027, the rules and regulations of the United States Trotting Association (‘USTA’) are incorporated as a matter of law into Delaware Harness Racing rules, unless changed upon notice to the USTA.”).

be notified in writing of such action and the reason as set forth above shall be clearly stated on the notice.”¹¹ This is a mandatory, unqualified rule applicable to all trainers in all jurisdictions that are subject to the USTA.¹² The rule makes clear that a horse placed on “a” Steward’s List may not race, at all, and that fact is reflected on the horse’s Electronic Eligibility file. As illustrated by the actions of the Yonkers and Meadowlands officials, each racetrack consults the Electronic Eligibility of a horse before approving its entry to a race. This universal practice should have been familiar to Mr. Waite as a licensed trainer. By Mr. Waite’s own testimony,¹³ and the March

¹¹ Rules and Regulations of the United States Trotting Association, 2007, R. 14 § 6(a) (emphasis added). The Rule further provides that, when any horse is placed on the Steward’s List, the Clerk of the Course must make a note on the Electronic Eligibility of the horse, showing the date the horse was put on the list and the reason therefor, as well as the date the horse was removed from the list, if applicable. It bears noting that USTA Rule 14, Section 6(a) is substantively identical to DHRC Rule 3.2.8.2.

¹² Mr. Waite cites USTA Rule 14, Section 6, subsection (b), in support of his argument that Rule 14 is not mandatory as to all jurisdictions. Subsection (b) is inapposite to this appeal, as it pertains only to horses placed on a Steward’s List for being “dangerous” or “unmanageable.” The subsection provides:

No Presiding Judge or other official at a non-extended meeting shall have the power to remove from the Steward’s List and accept as an entry any horse which has been placed on a Steward’s List and not subsequently removed therefrom *for the reason that he is a dangerous or unmanageable horse*. Such meetings may refuse declarations on any horse that has been placed on the Steward’s List and has not been removed therefrom.

USTA R. 14 § 6(b) (emphasis added). Only subsection (a) of the rule applies to a horse scratched as a result of a high blood gas reading, and in that circumstance, “declaration on said horse *shall* be refused.” USTA R. 14 § 6(a) (emphasis added).

¹³ Mr. Waite testified at the administrative hearing that he knew he was on the Delaware Steward’s List, and that he knew he was not allowed to race in Delaware. He also stated: “Well, my understanding is there is supposed to be, when a horse is not allowed to race, it’s on the USTA, I guess, or it’s on the eligibility where everybody can view when you drop the horses in.” Hearing Tr. 58.

14, 2007 order of the New Jersey Racing Commission,¹⁴ it is evident that Mr. Waite knew and understood that *Noble Tess* was on the Steward's List for being unfit at the time he registered the horse at the Meadowlands. Moreover, Robert Collison, chief investigator for DHRC, testified that it was common knowledge in the industry that a horse on the Steward's List could not race anywhere until released.¹⁵

Based upon the evidence that it was common knowledge in the industry that a horse on the Steward's List could not race anywhere until released; the Yonkers official's denial of Mr. Waite's request that the horse race there; the action of the Meadowlands officials in punishing Mr. Waite once the officials there realized that they had permitted Mr. Waite to race in apparent error; and all of the attendant facts and circumstances which tend to show that Mr. Waite knew or should have known *Noble Tess* should not race at any track while on the Steward's List; the Court is not satisfied that Mr. Waite's interpretation of DHRC Rule 3.2.8 is reasonable. To the

¹⁴ The order states:

[I]t has been determined, through your own testimony, that you were fully aware that "NOBLE TESS" was on the Stewards [sic] list as being "unfit" during the time he was entered and raced in New Jersey. Additionally, you testified that you were aware that it was your duty to be aware of the N.J.A.C. Rules as a condition of holding your license. Consequently, it has been determined that you did enter and race "NOBLE TESS" in direct violation of these rules.

Order of the New Jersey Racing Commission Board of Judges, No. 07MDH39 (Mar. 14, 2007). One of Mr. Waite's New Jersey violations provides strong evidence of the custom of reciprocity among racing jurisdictions. Rule 13:71-1.12 states: "No person or horse ruled off by, or under suspension by, any recognized turf authority, trotting association included, shall be admitted to the grounds of any association." *N.J. Admin. Code* § 13:71-1.12.

¹⁵ Mr. Collison noted: "It is generally an industry standard knowledge that when you are on the steward's list you can't race the horse until released by that agency." Hearing Tr. 11. Scott Egger, one of the DHRC judges on Mr. Waite's case, agreed with Collison's assessment. *Id.* at 24.

contrary, the Court finds that the Commission's interpretation of the relevant provisions is legally correct. Mr. Waite cannot validly claim that he was never advised of the scope of the rule or its interplay with USTA Rule 14. Mr. Waite is an experienced trainer, and it is well established in Delaware that ignorance of the law is no defense.¹⁶ If he was uncertain of the implications of Rule 3.2.8 outside of Delaware, Mr. Waite should have made a reasonable inquiry to the Commission, or an appropriate racing official, instead of exposing himself to substantial financial penalties in two jurisdictions.¹⁷

Based on the foregoing, the decision of the Delaware Harness Racing Commission is *affirmed*.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary
cc: Order Distribution
File

¹⁶ *Vosters v. Del. Racing Comm'n*, 1987 WL 8896, at *2 (Del. Super. Apr. 1, 1987). *See also Ringler v. Paintin*, 1980 WL 332988, at *6 (Del. Super. July 24, 1980) (“It is the belief of this Court that a party who seeks to do business in this State has an affirmative duty to reasonably seek out those laws and regulations applicable to his business.”).

¹⁷ *See Ringler*, 1980 WL 332988, at *6 (“Just as an ordinary citizen is charged with knowledge of the law and cannot avoid accountability due to the inconvenience of obtaining knowledge, so too will the horseman be held accountable where a reasonable inquiry would have informed him of those rules regulating his business.”).