

35285

G. Campbell

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

FRED AND SHARON JOHNSON,

Appellants,

v.

**BOARD OF STEWARDS
OF CHARLES TOWN RACES,**

Appellee.

RECEIVED

MAR 11 2009

CIVIL ACTION NO. ~~08-00000~~
JEFFERSON COUNTY
CIRCUIT COURT
HONORABLE DAVID H. SANDERS

**ORDER AFFIRMING WEST VIRGINIA
RACING COMMISSION'S ORDER OF JULY 7, 2008**

By Ruling, dated November 29, 2007, the Board of Stewards of Charles Town Races ("BOS") ordered the redistribution of the purse and disqualification of the horse "Eastern Delite," who finished first in the seventh race on October 20, 2007, at the Charles Town Racetrack, in Charles Town, West Virginia for having tested positive for the drug caffeine. Thereafter, by Order, dated July 7, 2008, the West Virginia Racing Commission ("WVRC") affirmed the BOS's November 29, 2007 Ruling disqualifying Eastern Delite and ordering the redistribution of the purse. This matter is now before the Court pursuant to Fred and Sharon Johnson's ("Appellants") appeal from the WVRC's Order of July 7, 2008.

On December 19, 2008, a hearing was held before the Court during which the parties were permitted to present oral argument in support of their positions. After a thorough review of the entire record, as well as the pleadings and arguments of the parties, the Court finds the following:

1. The Court finds that the WVRC was given the authority delegated by the West Virginia Legislature to promulgate rules to establish how racing will be conducted against the backdrop of pari-mutual betting.

2. The Court finds that it is within the legitimate police powers that the WVRC adopt a zero tolerance rule to ban any drug substance, metabolite or analog not naturally occurring in a horse.

3. The Court finds that the zero tolerance rule is rationally based to take uncertainty out of the process and eliminate litigation in every case resulting in a positive test because determining whether such positive tests had an actual impact upon a horse in a race would be impractical and would lead to the rule being unenforceable.

4. The Court finds that there is ample evidence before the WVRC that caffeine was a drug, including the testimony of Danny Wright and Dr. Thomas Tobin. Further, caffeine is banned in other states and the levels of caffeine in the blood of Eastern Delite is well above the thresholds that are established in states where thresholds are utilized.

5. The Court finds that the absolute insurer rule is rationally based.

6. The Court finds that the WVRC was neither clearly wrong nor arbitrary and capricious when applying the zero tolerance rule to the facts at hand.

ACCORDINGLY, for the reasons stated on the record of this Court, it is

~~ORDERED~~ and ADJUDGED as follows:

1. ~~The~~ WVC.S.R. 1, Section 66.5, which states, "No horse participating in a race shall carry in its ~~body any~~ substance, its metabolites, or analog, which are foreign to the natural horse

except as provided, by this rule", has a rational basis related to the objectives of the State and Legislature in seeking that horse racing be fair and untainted and is therefore constitutional;

2. That the record in this case is replete with evidence showing that caffeine is a drug and a prohibited substance under the above rule;

3. That the Court is not persuaded with the argument that the above cited rule is arbitrary, capricious, and unenforceable as a matter of law, because it lacks sufficient standards and is therefore unconstitutional. The Court finds that this rule, which provides that "No horse participating in a race shall carry in its body any drug substance, its metabolites, or analog, which are foreign to the natural horse except as provided, by this rule", has sufficient standards to be enforceable and is not arbitrary and capricious as a matter of law; therefore, this rule is constitutional in accordance with the prior decisions of the West Virginia Supreme Court of Appeals.

4. That the argument that a horse should not be disqualified for ingesting caffeine that has no impact on the speed of the horse or equine performance is unpersuasive. Such an approach, if adopted, would necessarily result in almost endless conflicts between chemical and medical experts at the hearing conducted by the BOS and the WVRC before the winner of a race could be declared. Endless debate as to whether the speed of a particular horse was "affected" by a given concentration of a certain drug during a race would not enhance the interest of the horse racing industry in West Virginia nor its patrons. The essence of horse racing is the immediate finality of declaring the winner,

5. That the Decision of the WVRC was not in violation of constitutional or statutory provisions; was not in excess of the statutory authority or jurisdiction of the WVRC; was not made upon unlawful procedures; was not affected by other error of law; was not clearly wrong in view of

the reliable, probative and substantial evidence on the whole record; and was not arbitrary or capricious or characterized by abuse of discretion or clearly unwanted exercise of discretion.

6. That the findings made by the WVRC should not be disturbed on appeal because they are not contrary to the evidence or based on a mistake of law. The WVRC findings are not clearly wrong to warrant judicial interference.

7. That the Order of the WVRC, dated July 7, 2008, be and it is hereby affirmed.

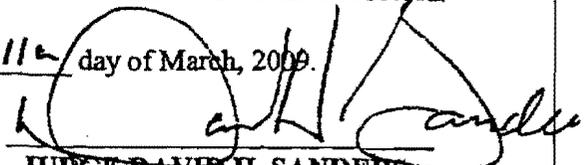
8. That the parties are hereby granted an objection and exception to the ruling of the Court.

9. That by Order Granting Stay and Injunction Pending Appeal, dated July 14, 2008, the Court stayed enforcement of the WVRC's July 7, 2008 Order and issued a preliminary injunction enjoining the redistribution of the purse for the Breeders Classic, held on October 20, 2007. That ~~Appellants~~ have requested, with no objection from the WVRC, the Court to extend the stay of the ~~enforcement~~ of the WVRC's July 7, 2008 Order as well as the preliminary injunction enjoining the redistribution of the first place purse for the Breeder's Classic held on October 20, 2007, in order for Appellants to perfect an appeal with the West Virginia Supreme Court of Appeals. Accordingly, the Court hereby further **ORDERS** that the stay of the enforcement of the WVRC's July 7, 2008 Order as well as the preliminary injunction enjoining the redistribution of the first place purse for the Breeder's Classic held on October 20, 2007, be and they are hereby extended forty-five (45) days from the entry of this Order or fifteen (15) days after the filing of the transcript of the oral arguments ~~in this case~~, whichever is later.

All which is accordingly **ADJUDGED, ORDERED** and **AGREED**.

The Clerk is directed to mail a certified copy of this Order to all counsel of record.

THIS FINAL ORDER ENTERED this 11th day of March, 2009.


JUDGE DAVID H. SANDERS

cc's

J. Campbell
R. Brown - B. Kana
3-12-09

Prepared by and with
Objections Noted on the Record:


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CLERK, CIRCUIT COURT
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