

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

BRIAN CALLAHAN,	:	
	:	C.A. No. K11A-09-010 WLW
Respondent Below,	:	
Appellant,	:	
	:	
v.	:	
	:	
STATE OF DELAWARE,	:	
DELAWARE HARNESS RACING	:	
COMMISSION,	:	
	:	
Appellee.	:	

Submitted: February 24, 2012

Decided: May 8, 2012

**ORDER**

Upon an Appeal from a Decision of the  
Delaware Harness Racing Commission.

*Affirmed.*

Peter K. Schaeffer, Esquire of Avenue Law, Dover, Delaware; attorney for the Appellant.

Stacey Cohee, Esquire, Department of Justice, Dover, Delaware; attorney for Appellees.

WITHAM, J.

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Before the Court is the issue of whether the decision by the Delaware Harness Racing Commission to require a return of Appellant Brian Callahan's winnings from the two previous years, to revoke his licensing privileges for two years, and to impose a fine of \$5,000 is supported by substantial evidence and is free from legal error.

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**FACTS**

In January of 2009, Brian Callahan (hereinafter "Appellant") applied to the Delaware Harness Racing Commission (hereinafter "DHRC") to participate in the Delaware-owned or bred races. These races are the product of a concerted effort by the State of Delaware to revitalize and support Delaware's harness racing industry.<sup>1</sup> The Delaware-owned or bred races offer purses that are twenty percent higher than other races. Through its investigator, Brian Mangus, the DHRC approved Appellant's application to participate in these races on January 4, 2009.<sup>2</sup> From 2009 to 2011, Appellant amassed \$190,798.00 in winnings in the Delaware-owned or bred races.

At a March 1, 2011 hearing, however, the Board of Judges for the DHRC deemed Appellant ineligible for the Delaware-owned or bred races on the ground that he failed to produce proof of his Delaware residency.<sup>3</sup> The Board of Judges referred

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<sup>1</sup>*State v. McCrea*, 1999 WL 1427772, at \*1 (Del. Super. Oct. 29, 1999).

<sup>2</sup>Hearing Tr. at 22-25.

<sup>3</sup>3 *Del. C.* § 10032(e) states, in pertinent part: "The Commission or its designee shall determine all questions about a person's eligibility to participate in Delaware-owned races." Therefore, it appears proper that the Board of Judges, acting as designees of the DHRC, determined Appellant's then current eligibility.

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the question of Appellant's past eligibility for Delaware-owned or bred races to the DHRC.<sup>4</sup> Appellant did not appeal the Board of Judges ruling.<sup>5</sup>

In a letter dated March 23, 2011, the DHRC notified Appellant that a hearing was to be held on April 12, 2011 to determine compliance with and possible sanctions for violations of 3 *Del. C.* § 10032 and 3 *Del. Admin. C.* § 501-6.6. Evidently, Appellant's hearing before the DHRC was postponed several times, and it finally occurred on August 9, 2011. On September 13, 2011, the DHRC issued a decision, which held that Appellant had never complied with residency requirements necessary to participate in Delaware-owned or bred races.<sup>6</sup> The DHRC determined that, pursuant to 3 *Del. Admin. C.* §501-6.6.10 and 6.6.11, Appellant must return purse money in the amount of \$190,798.00, Appellant must pay a fine of \$5,000.00, and the DHRC revoked his license for two years.<sup>7</sup> Appellant timely filed his appeal on September 26, 2011.<sup>8</sup> A briefing schedule was issued. With the briefing schedule complete, this constitutes the Court's decision.

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<sup>4</sup>*See* 3 *Del. Admin. C.* § 501-3.2.3.9 (DHRC Rules and Regulations).

<sup>5</sup>The applicable time period for appeal from this ruling was forty-eight hours. 3 *Del. Admin. C.* § 501-3.2.4. Although the Court has concern for the brevity of such a period for appeal, Appellant did not raise the issue, nor did Appellant attempt to appeal the ruling of the Board of Judges.

<sup>6</sup>*In re Brian Callahan*, No. DD-041-11, at 2-3 (D.H.R.C. Sept. 13, 2011).

<sup>7</sup>*Id.*

<sup>8</sup>The time period for appeal is “[w]ithin fifteen (15) days after service of a final adjudication or order of the Commission . . . .” 3 *Del. Admin. C.* § 501-10.3.15.

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***Standard of Review***

In reviewing a decision by the Delaware Harness Racing Commission, the Court's function is to determine whether the Commission's decision is supported by substantial evidence and is free from legal error.<sup>9</sup> Substantial evidence equates to "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>10</sup> Substantial evidence is "more than a scintilla but less than a preponderance . . . ."<sup>11</sup> "The Court does not weigh the evidence, determine questions of credibility, or make its own factual findings."<sup>12</sup> As such, if substantial evidence exists for the decision and there is no mistake of law, the decision must be affirmed.<sup>13</sup> "A reviewing court may accord due weight, but not defer, to an agency interpretation of a statute administered by it. A reviewing court will not defer to such an interpretation as correct merely because it is rational or not clearly erroneous."<sup>14</sup>

**DISCUSSION**

In Appellant's opening brief, he asks the Court to reverse the administrative

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<sup>9</sup>*Delaware Harness Racing Comm'n v. Mitchell*, 442 A.2d 77, 79 (Del. 1982).

<sup>10</sup>*Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (quoting *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620, 86 S.Ct. 1018, 1026, 16 L.Ed.2d 131 (1966)).

<sup>11</sup>*Id.* (quoting *Cross v. Califano*, 475 F.Supp. 896, 898 (D. Fla. 1979)).

<sup>12</sup>*Richards v. Delaware State Harness Racing Comm'n*, 1998 WL 960717, at \*2 (Del. Super. Oct. 20, 1998) (citing *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965)).

<sup>13</sup>*Id.*

<sup>14</sup>*Public Water Supply Co. v. DiPasquale*, 735 A.2d 378, 382-83 (Del. 1999) (footnotes omitted).

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decision below, and he requests reinstatement of his license to participate in Delaware-owned races.<sup>15</sup> Reinstatement of Appellant’s license to participate in Delaware-owned races is not a matter properly before the Court.<sup>16</sup> Appellant never appealed the Board of Judges ruling that revoked his license. The doctrine of exhaustion of administrative remedies states that “where a remedy before an administrative agency is provided, relief must be sought by exhausting this remedy before the courts will either review any action by the agency or provide an independent remedy.”<sup>17</sup> The doctrine applies “only where a claim must be initiated before an administrative agency which has exclusive jurisdiction over the matter and is able to provide an adequate remedy.”<sup>18</sup> The DHRC has exclusive jurisdiction over licenses for participation of Delaware-owned or bred races,<sup>19</sup> and any license issued

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<sup>15</sup>Appellant’s Opening Br. at 21.

<sup>16</sup>A conversation on the record before the DHRC is particularly enlightening on this point: Mr. Kerber: Okay. And can I clarify something? Our agenda says Delaware owned appeal, but this is – is, in fact, not an appeal?

Ms. Cohee: That’s correct. There was no appeal taken of the judges’ ruling.

Mr. Schaeffer: Oh, I’ll agree with that, too. The notice I received said this is a hearing to interpret compliance with. And I didn’t do anything about an appeal. It just said to interpret compliance with the Delaware owned racing rules.

Hearing Tr. at 4.

<sup>17</sup>*Levinson v. Delaware Compensation Rating Bureau, Inc.*, 616 A.2d 1182, 1187 (Del. 1992) (citations omitted).

<sup>18</sup>*Id.* (citations omitted).

<sup>19</sup>3 *Del. C.* § 10032(e).

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is subject to revocation by the DHRC “for any cause whatsoever which the Commission deems sufficient.”<sup>20</sup> Thus, the DHRC has exclusive jurisdiction over such licenses with a right of appeal to the Superior Court of the county within which the license was granted.<sup>21</sup> As noted above, however, Appellant did not exercise his right to appeal the license revocation. The DHRC was certainly capable of restoring his license on appeal if the situation merited such an action.

Under the doctrine of exhaustion of administrative remedies, Appellant’s request to restore his license to compete in Delaware-owned or bred races is not properly before this Court and is therefore dismissed from this appeal.

Review of the DHRC’s determination of Appellant’s eligibility to be licensed as a Delaware-owned or bred competitor during the time period before his license was revoked is properly before this Court. Appellant presents four grounds for appeal: (1) the DHRC decision is not supported by substantial evidence; (2) the DHRC failed to properly apply the law to the facts; (3) the DHRC’s decision was arbitrary, capricious, and constituted an abuse of discretion; and (4) the DHRC’s decision committed legal error.

This Court’s powers of review are limited to evaluating whether the Commission’s decision is supported by substantial evidence and is free from legal

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<sup>20</sup>3 *Del. C.* § 10026.

<sup>21</sup>*Id.*

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error.<sup>22</sup> The DHRC examined whether Appellant met residency requirements for Delaware-owned or bred races from the inception of the DHRC's approval of his participation on January 4, 2009. In conducting this examination, the DHRC made the following findings of fact:

(a) Mr. Callahan owns a horse farm in Queen Annes [sic], Maryland with 88 acres of land and three homes, one of which is a three bedroom two bath house built by Mr. Callahan in 2002, and that the horses trained by Mr. Callahan are stabled at his farm in Maryland; (b) Mr. Callahan began renting a one bedroom apartment in Dover, Delaware in June 2008; (c) Mr. Callahan obtained a Delaware drivers [sic] license and voters [sic] registration card and has registered and insured his cars in Delaware since 2008; (d) Mr. Callahan did not file federal or state tax returns for several years including 2008 and 2009 until he filed federal and Delaware returns within days of the August 9, 2011 hearing before the Commission; (e) Mr. Callahan has continued to claim a homestead property tax credit on his Maryland farm for the years since 2008; and (f) Mr. Callahan claims that he spends the night in his Dover apartment for more than 183 days of each year but has no records to support his claim.<sup>23</sup>

In evaluating these facts, the DHRC looked to its regulation on residency at 3 Del. Admin. C. § 501-6.6.5. Three Del. Admin. C. § 501-6.6.5 is an exact copy of 3 Del. C. § 10032(e). The statute reads as follows:

The Commission or its designee shall determine all questions about a person's eligibility to participate in Delaware-owned races. In

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<sup>22</sup>*Mitchell*, 442 A.2d at 79.

<sup>23</sup>*In re Brian Callahan*, No. DD-041-11, at 2.

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determining whether a person is a Delaware resident, the term “resident” shall mean the place where an individual has his or her permanent home, at which that person remains when not called elsewhere for labor or other special or temporary purposes, and to which that person returns in seasons of repose. For purposes of this section, the term “residence” shall mean a place a person voluntarily fixed as a permanent habitation with an intent to remain in such place for the indefinite future.<sup>24</sup>

Based upon the above facts, the DHRC found that Appellant’s testimony concerning his residency in Delaware was not credible. The DHRC found that Appellant was not a resident of Delaware under 3 Del. Admin. C. § 501-6.6 generally and that Appellant’s apartment in Dover, Delaware was not his residence under 3 Del. Admin. C. § 501-6.6.5 specifically.

“Statutory interpretation is ultimately the responsibility of the Courts.” From a statutory standpoint, the only potential concern in this case is the fact that the DHRC did not specifically cite 3 Del. Admin. C. § 501-6.6.6, which states the factors to be considered in arriving at a determination of residency. The section, which is exactly the same as 3 *Del. C.* § 10032(f), lists ten factors and goes on to state:

None of these factors when considered alone shall be dispositive, except that a person must have resided in the State of Delaware in the preceding calendar year for a minimum of 183 days. Consideration of all of these factors together, as well as a person’s expressed intention, shall be considered in arriving at a determination. The burden shall be on the applicant to prove Delaware residency and eligibility for Delaware-

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<sup>24</sup>3 *Del. C.* § 10032(e).



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owned or bred races.<sup>25</sup>

Although the DHRC did not specifically cite 3 Del. Admin. C. § 501-6.6.6, it is clear that the section was the key to reaching their decision. The Court reaches this understanding for two reasons. First, each of the DHRC's findings of fact pertained to a factor from the section. In fact, the DHRC's finding with regard to the threshold of 183 days could only be known to the DHRC by consulting the section. Second, the DHRC cited to the general section, 3 Del. Admin. C. 501-6.6, in which 6.6.6 is contained. Therefore, it is abundantly clear to the Court that the DHRC properly utilized 3 Del. Admin. C. § 501-6.6.6 and that the lack of citation to the section was a mere oversight.

It is likewise clear that the DHRC's decision was supported by substantial evidence. The DHRC found Appellant's sizable Maryland property, which is where he kept all of his horses, the timing of the inception of his apartment rental in Delaware, the timing of his tax filings, his Maryland homestead property tax credit, and his lack of evidence that he spent at least 183 days in Delaware to be determinative in the matter.

Based on the DHRC's residency ruling, the DHRC did not commit legal error in acting in accordance with 3 Del. Admin. C. § 501-6.6.10 mandating the return of purse money for redistribution.

The DHRC also acted pursuant to 3 Del. Admin. C. § 501-6.6.11, which is

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<sup>25</sup>3 Del. Admin. C. § 501-6.6.6.11.

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identical to 3 *Del. C.* § 10032(k), in suspending Appellant's license for two years and imposing a \$5,000.00 fine. The statute provides:

Anyone who willfully . . . commits any other fraudulent act in connection with the entry or registration of a Delaware-owned or bred horse, in addition to other penalties imposed by law, shall be subject to mandatory revocation of licensing privileges in the State of Delaware for a period to be determined by the Commission in its discretion except that absent extraordinary circumstances, the Commission shall impose a minimum revocation period of 2 years and a minimum fine of \$5,000 from the date of the violation or the decision of the Commission, whichever occurs later.<sup>26</sup>

Indeed, the findings of fact, listed in paragraph three of the decision,<sup>27</sup> provide substantial evidence to support of the conclusion that Appellant willfully provided incorrect or untruthful information that amounted to a fraudulent act in connection with the entry of a Delaware-owned horse. Therefore, the DHRC's actions were proper under 3 *Del. C.* § 10032(k).

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<sup>26</sup>3 *Del. C.* § 10032(k).

<sup>27</sup>*In re Brian Callahan*, No. DD-041-11, at 2.

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**CONCLUSION**

The decision by the Delaware Harness Racing Commission to take back Appellant's winnings from two previous years, to revoke his licensing privileges for two years, and to impose a fine of \$5,000 is supported by substantial evidence and is free from legal error. The decision of the DHRC is hereby affirmed.

IT IS SO ORDERED.

/s/ William L. Witham., Jr.  
Resident Judge

WLW/dmh

oc: Prothonotary

xc; Counsel