

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

RAMON PRECIADO,
Plaintiff

v.

WALTER REMMERT, as an
individual and in his position as Executive
Secretary and Bureau Director of the
Pennsylvania Horse Racing Commission

SAM ELLIOTT, as an individual and in his
Position as racing secretary for Parx Racing
Defendants

1:16-cv-692

FILED
HARRISBURG, PA

APR 26 2016

MARIA E. ELKINS, CLERK
Per VE

COMPLAINT

Plaintiff Ramon Preciado ("Preciado") through his attorney, Alan Pincus, avers as follows:

PRELIMINARY STATEMENT

1. This is an action brought under 42 U.S.C. Sec. 1983 arising from Defendants' actions which were taken under color of law. These actions have deprived Preciado and continue to deprive him of his Constitutionally protected property interests including his right to utilize his license as a thoroughbred race horse trainer. This license was issued to Preciado without any limitations by the Pennsylvania Horse Racing Commission ("Commission"). The license allows him to pursue his chosen profession of training and racing thoroughbred race horses. In addition, Defendants' actions have deprived Plaintiff of Constitutionally protected liberty rights including damaging his reputation as a horse trainer. Defendants' actions were taken without due process of law in violation of the 14th Amendment of the United States Constitution.

2. Plaintiff requests, among other things, a declaration pursuant to 28 U.S.C. Sec. 2201, et seq., that Defendants are prohibited from preventing Plaintiff from entering and

racing his horses at Parx Race Track (“Parx”) without the due process Plaintiff is entitled to under 58 Pa Code 165.231 of the Pennsylvania Horse Racing Regulations. .

3. Plaintiff requests, among other things, a declaration that refusing to take Preciado’s entries amounts to a constructive ejection or denial of access.

JURISDICTION

4. This court has jurisdiction over this matter under 42 U.S.C. Sec 1983. in that Plaintiff alleges violation of his 14th Amendment rights by Defendants acting under color of law.

5. Venue is proper in this district as many of the acts or omissions involved in this case occurred in Dauphin County, Pennsylvania where the offices of the Pennsylvania Horse Racing Commission are located.

THE PARTIES

6. Plaintiff Ramon Preciado is an individual and a resident of Pennsylvania who makes his living primarily as a licensed trainer of thoroughbred race horses.

7. Defendant Walter Remmert (“Remmert”) is an individual who serves as Executive Secretary and Bureau Director of the Pennsylvania Horse Racing Commission. He has offices at 2301 North Cameron St., Harrisburg, PA 17109. Remmert presides over all aspects of the everyday work of the Commission. His duties include issuing rulings on a supersedeas and granting hearings held by the Commission.

8. Defendant Sam Elliott (“Elliott”) is the Racing Secretary of Parx Racing which is the business name of Bensalem Racing Association, Inc. and Keystone Turf Club, Inc. (Collectively “Parx”) who conduct racing at Parx Race Track in Bensalem, PA. Elliott is a racing official as designated by the Commission and has various powers including accepting entries of trainers who race at Parx.

THE FACTS

9. Preciado has been licensed and in good standing in Pennsylvania as a horse trainer for almost 20 years.

10. An applicant for a horse trainer's license in Pennsylvania must not only demonstrate ability but also integrity to receive and retain his license. Preciado has consistently demonstrated his ability and integrity for a period of almost 20 years. Pennsylvania would not issue a license to an individual whose presence would be detrimental to the best interests of racing.

11. Preciado is the most successful trainer in the state of Pennsylvania. In 2015 his horses earned \$5,575,811 and won 169 races making him one of the leading trainers in the country.

12. Preciado has had a series of positive post race tests for the therapeutic drug, clenbuterol. This has led to suspensions of his license which are currently under appeal and stayed until he receives hearings on the matters.

13. Preciado contends and will prove at the hearings that a disgruntled employee has sabotaged his horses by giving the drug without his knowledge.

14. On April 15, 2016 Parx ejected Preciado for a period of three years for the positive tests. (copy included as exhibit A) The ejection orders Preciado and his horses off the grounds of Parx and prevents Preciado from entering and racing his horses at Parx.

15. Parx is currently under quarantine ordered by the Commission because several horses at Parx have tested positive for the equine herpes virus. The virus is very contagious and has resulted in the deaths of several horses. Because of this no horses are currently allowed to enter or leave Parx until at least mid May. Thus Preciado's horses can only race at Parx during the period of the quarantine.

16. Preciado appealed the ejection on April 15, 2016 and requested a hearing on the matter and a supersedeas until he receives the hearing and its result per 58 Pa Code 165.231.

17. On April 18, 2016 Remmert granted Preciado a hearing on the ejection and issued a supersedeas. (copy attached as Exhibit B)

18. Elliott had let it be known that Parx would not accept Preciado's entries and he has not accepted Preciado's entries subsequent to the issuance of the supersedeas. For instance, Preciado attempted to enter horses on April 19, 2016 and was refused by Elliott.

19. This has left the owners of Preciado's horses in an untenable position. They can only race their horses at Parx yet Preciado cannot enter his horses.

20. Though the horse owners wish to have Preciado as their trainer their only alternative was to take the horses away from Preciado and give them to other trainers.

21. Preciado, who had 57 horses stabled at Parx prior to the ejection, has seen 43 of those horses removed from him and given to other trainers. This has been devastating to Preciado's business causing him irreparable harm that is unlikely to be reversed. The sole cause of the irreparable harm is the refusal of Elliott to accept the entries of Preciado's horses and Remmert's refusal to order Elliott to accept the entries pending the result of Preciado's hearing.

22. On April 20, 2016 Preciado requested that Remmert order Elliott to accept Preciado's entries in respect of the supersedeas which has been granted.

23. Remmert has refused to issue such an order based on the theory that refusal to accept entries is not part of the ejection, not part of the granted supersedeas and not part of the hearing that Preciado will receive on the ejection.

24. Refusal to accept entries is a constructive ejection in itself. Being able to enter horses and race them is the sine qua non of a horse trainer's license. Without Preciado being able to enter and race his horses the supersedeas issued by Remmert is useless and a sham and the ejection hearing is meaningless. The ability to enter and race horses is the single most essential element of a trainer's license.

25. If a track can simply refuse a trainer's entries without due process the Commission would be giving the track veto power over the licensing process and render a trainer's license meaningless.

26. Remmert's position that there is no such thing as a constructive ejection or denial of access is refuted by Moreno v. Penn National, 904 F. Supp. 2d 414 (M.D. Pa 2012). Remmert is well aware of this decision.

27. An ejection is devastating to a trainer. The trainer usually has the choice of either removing his horses from the grounds hoping to find stall space at another facility or turning his horses over to another trainer. Because of the unique facts in this case Preciado's only chance to save his horses was to obtain the supersedeas which was granted by Remmert. However, unless Remmert orders Parx to accept Preciado's entries the supersedeas is useless and Preciado's career is ruined. This is in violation of the intent of 58 Pa Code 165.231 which allows the trainer to have due process in the matter.

COUNT ONE – VIOLATION OF 42 U.S.C. Sec. 1983 BY REMMERT

28. Paragraphs 1-27 are hereby incorporated by reference.

29. Despite the fact that Plaintiff was issued a supersedeas by Remmert on the ejection such ruling becomes meaningless with Remmert's opinion that taking Preciado's entries is not part of the ejection, the supersedeas or the ejection hearing.

30. The subject ejection totally precludes Preciado's participation at Parx rendering his valid license useless at that facility. In addition, other racing venues routinely give reciprocity to the Parx ejection both during and after its actual timeframe. As Preciado cannot remove his remaining horses it is impossible at this time to ascertain what residual damage the ejection will cause at other venues.

31. In granting a supersedeas which is essentially meaningless Remmert has acted, and continues to act as a state actor under color of law.

32. The denial of entries taken against Plaintiff did not come as the result of the hearing which Plaintiff is entitled to under the Pennsylvania horse racing regulations.

The Commission, through Remmert's actions, has circumvented the due process which Plaintiff is entitled to before he is doomed to suffer grievous irreparable harm.

33. Defendants' denial of entries by Plaintiff, without a hearing and its ruling, amounts to an unauthorized limitation on Plaintiff's license, a function which by law can only be exercised by the Commission after a fair hearing and its result.

34. Remmert's position that a denial of entries is not a denial of access under 58 Pa Code 165.231 is simply wrong. Under that line of thinking a track need not eject a licensee at all and can effectuate prohibiting a licensee's participation merely by refusing entries. This would give the track unreviewable veto power over the licensing process rendering the concept of due process meaningless.

35. As the result of Remmert's unjustified, unprivileged and unlawful acts toward Plaintiff Preciado has been deprived and continues to be deprived of his Constitutionally protected property interest in his trainer's license and his reliance on that license to pursue his chosen profession. These actions also deprive Plaintiff of his liberty right to pursue his chosen profession.

36. Defendant's aforesaid unlawful conduct was knowing and intentional and done with malice.

37. As a result of Defendant's aforesaid unlawful conduct Plaintiff is suffering and will continue to suffer irreparable harm.

WHEREFORE, Plaintiff requests judgment in his favor awarding:

- a. Damages, including for destroying Plaintiff's business
- b. Attorney's fees, interest and costs of suit.
- c. Punitive Damages.
- d. Such other relief as the court deems proper.

COUNT TWO – VIOLATION OF 42 U.S.C. BY ELLIOTT

38. Paragraphs 1-37 are hereby incorporated by reference.

39. Under 58 Pa Code 163.391 et seq. the racing secretary is a racing official exercising designated powers by the state.

40. The racing secretary is a state actor. See Fitzgerald v. Mountain Laurel Racing, Inc., 607 F2d 589 (3rd Circuit 1979) and Moreno v. Penn National, 904 F. Supp 2d 414 (M.D. Pa (2012)). This is due to the close nexus of the racing secretary to the state.

41. Elliott acted and continues to act as a state actor under color of law.

42. Elliott's refusal to honor the supersedeas granted by Remmert is designed and has had the effect of destroying Preciado's business. Remmert encouraged and put the weight of the state behind Elliott's action.

43. The above has been done without the due process contemplated by 58 Pa Code 165.231.

44. Elliott's actions are merely an attempt to do an end run around Preciado's due process rights. If Preciado cannot enter horses his license is worthless. This is well known to Elliott. If Elliott can deny Preciado's entries without due process he is exercising an unreviewable veto of Preciado's property rights in his license.

45. As the result of Elliott's unjustified, unprivileged and unlawful acts toward Plaintiff Preciado has been deprived and continues to be deprived of his Constitutionally protected property interest in his license and his reliance on that property interest to pursue his chosen profession. These actions also deprive Plaintiff of his liberty right to pursue his chosen profession.

46. Elliott's unlawful actions were knowing and intentional and done with malice.

47. As a result of Elliott's unlawful conduct Plaintiff has suffered and will continue to suffer irreparable harm.

Wherefore, Plaintiff requests judgment in his favor awarding:

A: Damages, including for destroying Plaintiff's business

B: Attorney's fees including interest and costs of the suit

C: Punitive damages

D: Such other relief as the court deems necessary

COUNT THREE – DECLARATORY JUDGMENT

48. Paragraphs 1-47 are hereby incorporated by reference.

49. An actual case or controversy exists between Plaintiff and Defendants with regard to whether Defendants, acting under color of law, may lawfully allow the refusal of Plaintiff's entries at Parx and prevent Plaintiff from participating in racing at Parx without offering due process guaranteed to Plaintiff under the Pennsylvania racing regulations and the United States Constitution.

50. Refusal to accept entries by a trainer is a constructive ejection or denial of access as written in 58 Pa Code 165.231.

WHEREFORE, Plaintiff seeks a declaratory judgment in his favor pursuant to 28 U.S.C. 2201 et seq., and an order from the court declaring:

- a. Refusing to accept a trainer's entries by a track is a constructive ejection or denial of access as defined in 58 Pa Code 165.231.
- b. Awarding of attorney's fees
- c. Such other relief as the court deems proper

Respectfully submitted,

/s/ Alan Pincus

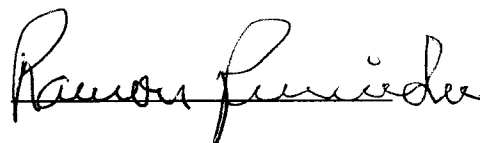
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Dated: April 26, 2016

VERIFICATION

I verify that the statements in the foregoing document are correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties relating to unsworn falsifications to authorities.

Date _____


RAMON PRECIADO