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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JERRY HOLLENDORFER,

Petitioner,

v.

CALIFORNIA HORSE RACING BOARD,

Respondent.

CASE NO. 37-2020-00016369-CU-WM-CTL

PETITIONER JERRY HOLLENDORFER'S REPLY TO OPPOSITION TO PETITION FOR WRIT OF MANDATE PURSUANT TO CODE OF CIVIL PROCEDURE *§1094.5*

[IMAGED FILE]

FILED: MAY 28, 2020

DATE: OCTOBER 7, 2022

TIME: 1:30 P.M.

JUDGE: HON. RONALD FRAZIER

DEPT.: C-65

I. INTRODUCTION

Respondent, the California Horse Racing Board, abused its discretion in adopting the findings of the hearing officer that determined Petitioner, Jerry Hollendorfer's, grievances against the racing associations were moot. The basis for that decision was that the Race Meet Agreements (RMAs) had expired. Respondent abused its discretion when it accepted those findings, but concurrently extended the RMAs for each subsequent race meet. The RMAs continue, to today, to be in effect and binding upon the parties.

Petitioner was obligated to follow the regulatory scheme established by Respondent, which required he seek a determination of his RMA-defined grievances via the California Thoroughbred Trainers (CTT). Petitioner's grievance claims were brought to hearing through CTT, as required by statute and the RMAs. At all times, Petitioner was the real party in interest as to such claims and had and continues to have standing to pursue his claim.

Respondent's decision has caused Petitioner damage, in an amount to be determined by a jury. For the reasons set forth in Petitioner's opening brief and herein, respectfully requests this Court issue as Writ of Mandamus in favor of Petitioner and set a jury trial as to damages.

II. STANDARD OF REVIEW

The trial court in an administrative mandamus action must exercise its independent judgment when the administrative decision substantially affects a fundamental vested right. *Code Civ. Proc. §1094.5*. The parties agree the "independent judgment" standard is applicable, but Respondent overreaches in asserting that the Court must afford a presumption of correctness concerning the administrative findings, citing to *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817. In *Fukuda*, the Court examined *Code of Civ. Proc. §1094.5*, and noted that *Gov. Code §11425.50(b)* directs the court to "give great weight to the determination to the extent that determination identifies the observed demeanor, manner, or attitude of the witness that supports [the factual basis for the decision]."

Section *1094.5* does not repeat the language differential to an agency's decision. At most, any presumption and deference afforded to the Respondent is limited to credibility of witnesses – which is not at issue in this matter. The Court should therefore exercise its independent judgment, and not presume Respondent's decision correct.

III. THIS COURT SHOULD ISSUE A WRIT OF MANDATE IN FAVOR OF PETITIONER

A. Petitioner Has Standing and is the Sole Beneficially Interested Party

Respondent erroneously asserts that Petitioner lacks standing. To reach this conclusion requires the Court disregard applicable CHRB Rules and contracts and would result in the untenable position of denying Petitioner the right to seek review of the administrative decisions that directly impact his property interest in his license. *See Barry v. Barchi* (1979) 443 U.S. 55; *Bixby v. Pierno* (1971) 4 Cal.3d 130, 144.

1. The CHRB Requires Petitioner Present His Claims through the CTT

CTT is statutorily obligated to negotiate with racing associations "issues related to the backstretch, track safety, and the welfare of backstretch employees." *Bus. & Prof. Code §19613.1*. Accordingly, Respondent "recognize[d] the need for horse owners and trainers to negotiate and to covenant with racing associations regarding the conditions for each race meet … and other matters relating to welfare, benefits and prerogatives of the parties to the agreement." CHRB Rule 2040.

Racing associations and CTT therefore enter into RMAs for the benefit of racetracks and CTT's members. (*See* AR00048¶D, AR00068¶D, AR00265, AR00281) Respondent requires CTT members/trainers to abide by the applicable RMAs. CHRB Rule 2041.

In accordance with the terms of the CHRB-required RMAs, Petitioner complained to CTT that LATC and PRA had acted arbitrary or capriciously by banning him from stabling and entering races and had done so without CTT's consent or concurrence. CTT found the claim to have merit and thus CTT was "entitled to present the merits of the grievance on behalf of such trainer to track." AR00070-71 (emphasis added). If the dispute could not be settled, then the matter proceeded to a hearing by a hearing officer appointed by the CHRB. AR00071.

The RMAs do not contemplate that Petitioner could individually present the merits of his own grievances. Rather, the RMAs clearly lay out that CTT, in presenting Petitioner's claims to a CHRB appointed hearing officer, was acting on behalf of licensees it represents – members/licensed trainers, including Petitioner. By virtue of CHRB Rule 2041, Petitioner was bound by and required to comply with the RMAs. Accordingly, Petitioner and CTT followed the RMAs – which Respondent requires be in place. CTT presented Petitioner's claim on his behalf.

There simply is no factual nor legal merit to the notion that CTT was pursuing Petitioner's grievances on its own behalf.

The record is replete with references of the wrongful conduct by the racing associations *against Petitioner*, and that the entire gravamen of the grievances related to Petitioner's exclusion. CTT's letter to the CHRB requesting a hearing on behalf of Petitioner clearly referenced the June 2019 ban of Petitioner and requested the CHRB immediately intervene to stay Petitioner's exclusion. (AR00041-42) CTT's involvement in the underlying proceedings was a procedural requirement advanced on behalf of Petitioner, as set forth by CHRB Rules and the required RMAs.

Respondent incorrectly asserts that Petitioner is asking to stand in the shoes of the CTT; i.e., that the administrative review was limited to the determination of substantive issues effecting only the CTT's interests as such related to LATC/PRA. This position would reverse the doctrine of associational standing.

"Under the doctrine of associational standing, an association that does not have standing in its own right may nevertheless have standing to bring a lawsuit on behalf of its members." *Amalgamated Transit Union v. Superior Court* (2009) 46 Cal.4th 993, 1003. Associational standing only exists when the association's members would otherwise have standing to sue in their own right. *Id.* at 1004, citing *Hunt v. Washington Apple Advertising Comm'n* (1977) 432 U.S. 333, 343.

By virtue of statute and CHRB regulation, Petitioner was bound to the terms of the RMAs that CTT was by law required to negotiate with LATC and PRA of behalf of individually licensed trainers. In that associational/representative capacity, CTT was legally and contractually obligated to present Petitioner's claims, and its standing to do so was based upon and derivative of Petitioner's own standing – not that of CTT.

Petitioner's individual standing is not extinguished when CTT acts on his behalf, as required by law: particularly when the RMA and CHRB Rules required the same. Petitioner has always had and continues to have standing and is the beneficially interested party under the law.

2. <u>CTT Is Not a Beneficially Interested Party</u>

A writ must be brought by one who is beneficially interested, as required by *Code of Civ. Proc. §1086*. The "beneficial interest" standard requires an invasion of a legally protected interest that is (a) concrete and particularize, and (b) actual or imminent, not conjectural or hypothetical. *SJJC Aviation*

Services, LLC v. City of San Jose (2017) 12 Cal.App.5th 1043, 1053. "A petitioner has no beneficial interest within the meaning of the statute if he or she 'will gain no direct benefit from [the writ's] issue and suffer no direct detriment if it is denied." *Id.* (citations omitted).

In this instance, Respondent does not dispute that Petitioner is a beneficially interested party.

Unlike Petitioner, there is no evidence that CTT has neither a concrete or particularized interest in its members' protected interest, nor that CTT itself would suffer any actual or imminent invasion.

3. Accepting Respondent's Position Would Eliminate any Trainer from Seeking Judicial Review, which is Contrary to Public Policy

As discussed above, Petitioner was required by the RMAs and CHRB Rules to bring *his grievance* through the CTT, which acted on his behalf.

Respondent tacitly suggests that CTT would have standing, although it cannot meet the "beneficially interested party" requirement. This dichotomy illustrates the error in Respondent's position – if accepted the CHRB would have created a regulatory scheme by which a trainer could never petition for administrative review.

Petitioner is the beneficially interested party because he is the individual directly impacted by the hearing officer's decision. As set forth above, Petitioner was required by CHRB Rules and RMAs to pursue his grievance through CTT, and Respondent requires CTT negotiate with the tracks and have an RMA for the benefit of individual CTT members/licensees. With that regulatory scheme, Respondent cannot in good faith assert that Petitioner cannot have standing to continue to pursue his claim before this Court.

Reliance on *Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101 is minimally instructive, if at all, and is completely distinguishable from this action. That case involved a declaratory relief action brought under *Cal. Unemp. Ins. Code §§409-409.2*, a statute granting limited review rights to a class of "interested" nonparties to seek declaratory relief against a precedent decision by the Appeals Board. Under that law, the declaratory relief can have no impact on the factual findings and the actual award or denial of benefits to the claimant in the underlying proceeding. In discussing that limitation, the court pointed out that it would raise "serious due process problems" if a third person not affected by the "adjudicatory aspects" of the original proceeding could bring an action to which the

original disputants were not parties that reexamined adjudicated facts and orders directly concerning those disputants. *Id.* at 110.

A myriad of differences between this case and *Pacific Legal Foundation* prevents it from providing any meaningful guidance here.

This is not an Unemployment Insurance case, not a declaratory relief action, and the writ does not seek to disrupt a finding of third-parties. Petitioner was at all times the individual directly impacted by the underlying proceedings and thus the real party at interest, which were brought on his behalf by CTT. There is no "due process problem" because the Petitioner and Respondent were directly involved in the underlying administrative proceedings which this Court is asked to review. That case is procedurally distinct because it did not have the same or similar requirements imposed on Petitioner, *to wit*, Petitioner was required to bring his grievance to CTT, which determined it had merit and then presented the issued on his behalf before LATC/PRA and Respondent.

Pacific Legal Foundation simply has nothing to do with Petitioner's standing to bring a Writ Petition under *Code Civ. Proc. §1094.5*, or to challenge Respondent's factual findings or the fairness of its proceedings as it relates to Petitioner.

Petitioner at all times complied with the statutory and contractual scheme established in part and imposed by Respondent. To find that Petitioner lacks standing to proceed with judicial review of a proceedings that directly impacts his ability to practice his profession would be contrary to public policy.

4. Petitioner is an Intended Third Party Beneficiary, and the RMA Cannot Eliminate Petitioner's Right to Seek Judicial Review

A contract made for the benefit of a third person may be enforced by him. *Civ. Code §1559*. The contract must be taken together, with each clause helping to interpret the other. *Civ. Code §1641*.

"A third party may enforce a contract where he shows that he is a member of a class of persons for whose benefit it was made." *Garratt v. Baker* (1936) 5 Cal.2d 745, 748. "Whether a third party is an intended beneficiary or merely an incidental beneficiary to the contract involves construction of the parties' intent, gleaned from reading the contract as a whole in light of the circumstances under which it was entered." *Jones v. Aetna Casualty & Surety Co.* (1994) 26 Cal.App.4th 1717. A "no third party beneficiaries," clause within a contract does not bar an action where the plaintiff is an intended beneficiary.

Prouty v. Gores Technology Group (2004) 121 Cal.App.4th 1225 (emphasis added). CHRB Rule 2040, in pertinent part, states: "The Board *recognizes the need for horse owners and trainers to negotiate and to covenant with racing associations regarding the conditions for each race meeting,* …" (Emphasis added.)

The stated purpose of the RMAs is to stabilize aspects of conducting a race meet and avoid controversies that might interfere with the race meet "to the detriment of Track, CTT, and its members…" (AR00048¶D, AR00068¶D) As a member of the CTT, Petitioner is a member of the class of person for whose benefit the RMA was specifically authorized and executed. Thus, it was anticipated that Petitioner would benefit from the RMA.

Section 5 of the RMA provides that: "The agreement of CTT shall be a condition precedent to any execution of a decision by Track to limit or eliminate Applicant's ability to participate in racing or training activities at Track or any auxiliary training facility." (AR00050, AR00070) This provision unquestionably was intended to benefit individual trainers, including Petitioner, by providing a modicum of oversight by the CTT *before* the track could exclude them/him.

Section 6 of the RMAs also sets forth the procedure under which a trainer could submit a grievance against a racing association and have a hearing. If CTT determines an individual trainer's grievance to have merit, but the racing association disagrees, the RMAs provide that that trainer's grievance is to be arbitrated before a neutral hearing officer. Again, this provision/procedure provides a benefit to Petitioner — as an individual trainer — in the form of negotiated and agreed upon procedural oversight and safeguards against a track's unilateral determination of arbitrary and capricious behavior as such relates to "the allocation and assignment of stall space." (AR00050, AR00070)

The tracks and CTT also agreed that if the track sought to use the name, image or likeness of any trainer for promotional purposes they must contract separately with and reasonably compensate that trainer. (AR00056, AR0076) This is another internally integrated example evidencing that the RMA included contractual procedures and benefits that could only be asserted by or on behalf of individual trainers, including Petitioner.

Permitting Plaintiff to pursue judicial review of the administrative action is consistent with the objectives and reasonable expectations of CTT, and the statutory framework for this writ. The RMA

provides for multiple benefits to licensed trainers. CTT negotiates the RMA on behalf of individual licensed trainers, for their benefit. It is therefore reasonable to expect that an aggrieved trainer would independently pursue the rights afforded him/her under an RMA. To inexplicably interpret the RMA otherwise would eviscerate any meaningful enforcement mechanisms.

B. <u>The RMA Was Continually Extended and It Is an Abuse of Discretion for Respondent to Dismiss Petitioner's Grievance on Those Grounds</u>

Respondent have improperly taken two opposing and conflicting positions with respect to the RMAs. On the one hand, Respondent asserts that the hearing officer correctly found that because the RMA had expired by the time Respondent's appointed hearing officer issued a decision, notwithstanding its unreasonable delay in appointing a hearing officer. Therefore, the Board adopted the finding and decision of the hearing officer. On the other hand, Respondent has continually extended the very same 2018/2019 RMAs as a condition of licensure for *all* subsequent race meets. By doing so the same RMAs cannot be deemed to have expired for one purpose but not another.

Respondent does not dispute that the RMAs have been continually extended and imposed on the racing associations (LATC, PRA and DMTC). The CHRB Meeting transcripts make this clear. The extension of the RMAs is an official act, and the statements of CHRB Board members are admissible hearsay as a party admission.

The hearing officer's dismissal of the claim was based upon a clearly erroneous determination that the RMAs had expired. Respondent accepted this rationale, while concurrently extending the RMA. Though the factual finding of the hearing officer was plausibly correct based solely on a reading of the RMA, the Board's simultaneous extension of the RMAs, while accepting that finding clearly constitutes an abuse of discretion.

Respondent cannot have their cake and eat it too.

Respondent is estopped from contending the RMA is moot. Respondent has ignored Petitioner's argument and briefing on this issue, and did not provided any contrary briefing. As discussed herein, Respondent takes conflicting positions solely to Petitioner's detriment. Petitioner urges the Court to estop Respondent from continuing to assert this blatant prejudicial fallacy.

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C. Petitioner Addressed the DMTC Grievance in His 1085 Writ

Petitioner's opening brief specifically stated that based on this Court's prior ruling that DMTC's exclusion of Petition was to be treated and addressed as a *§1085* claim, Petitioner's briefing as to the §*1085* claim addressed DMTC.

Respondent's assertion that Petitioner waived a claim is not valid when Respondent asserts for the first time as a defense an unrelated issue: settlement of claims and a Settlement Agreement ("SA") between DMTC and CTT.

Petitioner has no obligation to preemptively anticipate and brief defenses that Respondent may elect to assert in its opposition. Petitioner has not waived the claims and issues related to DMTC.

Respondent's contentions are merely a red herring, and Respondent cannot rely upon the SA. The express terms of the SA make this clear. The SA did not relate to this action. The SA did not waive any of Petitioner's rights. Respondent is not a party nor third-party beneficiary to the SA.

The SA is a contract between DMTC and CTT. Respondent and Petitioner are not parties to that contract. The SA is clearly between CTT and DMTC only. (AR00394) The Recitals discuss CTT's claim against DMTC and subsequent lawsuit, *Hollendorfer v. Del Mar Thoroughbred Club*[1]. (AR00394-398) The SA related to the litigation filed, in part, by CTT against DMTC, and did not have any bearing on Petitioner's claims against Respondent. The SA related solely to CTT's claims against DMTC, which are not the subject of Petitioner 1094 writ.

The SA expressly states that it is not intended to have any impact on Petitioner's claim in the DMTC litigation, as it specifically carved an exception for Petitioner to continue his action against DMTC. "For purposes of clarity, [Petitioner] is not a CTT Releasee and nothing contained in the foregoing release shall be construed or interpreted in any way as a release or waiver by DMTC of any claim or defense of any nature … that [Petitioner] has asserted or may assert in the Action or any other forum." (AR00400-401) It is untenable that Petitioner somehow waived rights in this writ proceeding that were specifically not waived by the SA in the DMTC action.

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[1] *Hollendorfer v. Del Mar Thoroughbred Club, et al.,* case number 37-2019-00036284-CU-BC-CTL, is a pending, related action between Petitioner and DMTC that is also assigned to this Department. CTT was initially a party to that action but reached a settlement of its claims with DMTC.

Assuming *arguendo* the SA had any bearing on these writs, Respondent bears the onus of proving its defense, which as a threshold issue would require Respondent prove that it was an intended third-party beneficiary to the SA. It has failed to even attempt to do so in its Opposition.

To determine whether a contract was made for the benefit of a third person, the court looks at the terms of contract to determine if the contract necessarily requires a benefit to a third person; incidental benefit from performance is insufficient. *The H.N. & Frances C. Berger Foundation v. Perez* (2013) 218Cal.App.4th 37, 44. The SA does not confer any benefit upon Respondent, and Respondent has failed to identify any benefit.

IV. PETITIONER'S REQUEST FOR JURIDICAL NOTICE IS PROPER

Where there is relevant evidence that could not have been produced at the hearing before respondent, the court may admit the evidence at the hearing on the writ without remanding the case. *Code Civ. Proc. 1094.5(e)*. When the Legislature granted superior courts the ability to receive into evidence documents that could not have been produced, it is inferred that this authorized the receipt of evidence which took place after the administrative hearing. *Windigo Mills v. Unemployment Ins. Appeal Bd.* (1979) 92 Cal.App.3d 586.

Each of the CHRB meeting transcripts are judicially noticeable as official acts of Respondent, which includes the official act of extending the applicable RMAs for each and every subsequent race meet. Notably, Respondent concedes that the RMAs have been extended for each meet.

The statements made by Respondent's board members are admissible as a party admission. *Evid. Code §1220* ("Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity, regardless of whether the statement was made in his individual or representative capacity.")

New articles are properly judicially noticed under *Evid. Code §452(g)* and *(h)*. *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 193.

V. PETITIONER HAS BEEN DAMAGED AND ENTITLED TO DAMAGES

Petitioner is entitled to recover damages which he has suffered, as determined by a jury. *Code Civ. Proc. §1095*. This Court should enter judgment in favor of Petitioner and promptly schedule a jury trial to determine damages. *Id. §§1094.5(f), 1095,* and *Gov. Code §815.6.*

While the Court may remand the balance of the case to the CHRB to hear new evidence related to the extension of the RMAs, the damage to Petitioner has already been done. Respondent should have never adopted the findings of the hearing officer, which was an abuse of its discretion. By adopting those findings, the damage to Petitioner was complete. Accordingly, a jury trial must be scheduled to determine the amount of those damages. The issue of damages is separate and apart from whatever further conduct Respondent may take on remand.

VI. CONCLUSION

Based on the foregoing, Petitioner respectfully requests his Petition for Writ of Mandamus be granted, a jury trial be scheduled for the purpose of determining the harm and damages sustained by Petitioner.

Dated: September 28, 2022

Respectfully submitted

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