

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA RACING COMMISSION

In the Matter of the Occupational
License of Jeff L. Smith

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson on Wednesday, August 20, 1986, at the Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota. The record on this matter closed on September 15, 1986, the date of submission of the last post-hearing brief.

Mary B. Magnuson, Special Assistant Attorney General, 200 Ford Building, 117 University Avenue, St. Paul, Minnesota 55155, appeared on behalf of the Minnesota Racing Commission. Sam Anderson, Jr., Attorney at Law, 455 West Grand Avenue, Hot Springs, Arkansas 71901, appeared on behalf of the Licensee, Jeff L. Smith.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, the final decision of the Commission shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commission. Exceptions to this Report, if any, shall be filed with the Commission at Suite 201, 11000 W. 78th Street, Eden Prairie 55344. Pursuant to Minn. Stat. 214.10, subd. 2, a Commission member who was consulted during the course of an investigation may participate at the hearing, but may not vote on any matter pertaining to the case.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether:

(1) The Licensee failed to disclose multiple ownership interests in his Class C license application in violation of Minn. Rule 7877.0130, subp. 2D;

(2) The Licensee failed to fully and truthfully provide information requested by the stewards in the course of an investigation, inquiry or hearing in violation of Minn. Rule 7877.0155, subp. C;

(3) The Licensee conducted himself in a manner that is detrimental to the best interest of racing in violation of Minn. Rule 7877.0155, subp. H;

(4) The Licensee knowingly made a false statement in an application required to be submitted to the Commission in violation of Minn. Stat.

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(5) The Racing Commission should take disciplinary action against Jeff Smith's license if any of the above-violations are proved.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Jeff L. Smith is a 23 year-old male who maintains a permanent residence at 3313 Prince George, Memphis, Tennessee. On June 9, 1986, Mr. Smith filed an application for a Class "C" individual owner's license with the Minnesota Racing Commission. The application requires that the applicant disclose all horses which the applicant owns wholly or in part. Mr. Smith listed a 100% ownership in the following horses: Four Bet Tor Joe, Reason to Run, Diplomat Lou, Magnus Effect, and Dreamy Croussiant. Smith Also indicated that he owned a 50% interest in the horse Nice Step and no percentage was listed for the horse Meloncoley Man. Mr. Smith registered the horses For Bet Tor Joe and Nice Step at Canterbury Downs to be eligible to race as part of the licensing procedure. On June 18, 1986, a temporary Class "C" individual owner's license was granted to Jeff Smith.

2. At the time Mr. Smith filled out his application for licensure, he was aware that Karen C. Tuohy, a resident of Chatfield, Minnesota, owned a 25% interest in the horse, For Bet Tor Joe. Ms. Tuohy also became a 1/3 owner of the horses Magnus Effect and Diplomat Lou sometime in May of 1986.

3, Jeff Smith brought a horse trainer with him to the State of Minnesota, Javier Dominquez. Mr. Dominquez was paid by a business entity called Ford Farms which was owned by Jeff Smith's parents, Bert and Nancy Smith, and was located in Michigan.

4. On June 19, 1986, Jeff Smith, Bert Smith and Javier Dominquez opened an account with the horseman's booker at Canterbury Downs. This account was opened in the name of Jeff Smith because he was a licensed owner, at the direction of Bert Smith. The Smith's presented a cashiers check in the amount of \$50,000 which was drawn on the United American Bank of Memphis, Tennessee. The check was written on the account of Southeastern Racing Stables, a horse-claiming syndicate owned and operated by Bert Smith.

5. After a thoroughbred horse is born, the Jockey Club in New York issues a foal certificate which indicates ownership of the horse. These certificates are amended by the person in possession of the certificate (the owner or trainer) if ownership changes. All of the owners appearing on a foal certificate must be licensed by the Minnesota Racing Commission before a horse

is permitted to race at Canterbury Downs. This applies to all owners in a multiple ownership situation. The foal certificate submitted to the track secretary at Canterbury Downs was never amended by Jeff Smith to show that Karen Tuohy was a part-owner of For Bet Tor Joe. Neither For Bet Tor Joe or Nice Step were ever raced at Canterbury Downs, however.

6. On June 19, 1986, Javier Dominquez "dropped" a claim on behalf of Jeff Smith for the horse, Royal Bargain, which was running in the sixth race. The

claiming price was \$7,500.1 Subsequent to the race, Jeff Smith appeared at the bookkeeper's office to have his claim to the horse, Royal Bargair, honored. However, the claim was voided because an investigation had been commenced by Canterbury Downs and the Racing Commission concerning Jeff Smith's qualifications for licensure.

7. On June 20, 1986, Bert Smith, Jeff Smith and Javier Dominquez appeared at the bookkeeper's office to withdraw all monies from Jeff Smith's account. However, the bookkeeper did not release those funds because of a pending action initiated by the stewards.'

8. Jeff Smith and Javier Dominquez met with the stewards on June 20, 1986. At that time, the stewards stated that the reason Mr. Smith's claim was voided were: (1) the stewards were not aware that a horse owned by Jeff Smith had been registered at Canterbury Downs; (2) the stewards had not had a chance to interview Jeff Smith prior to his temporary licensure; (3) the stewards had never seen or interviewed Javier Dominquez; (4) the stewards had never approved Mr. Dominquez' authority to act as an agent for Jeff Smith; and (5) there was a question as to the source of the funds to claim Royal Bargain. At this time, the stewards were aware that Jeff Smith's father, Bert Smith, owned and operated Southeastern Racing Stables, a claiming syndicate in West Memphis, Arkansas. They were aware that Bert Smith was a convicted felon and thus, unable to be licensed by the Minnesota Racing Commission. During the meeting on June 20, Jeff Smith stated that he had no business arrangement with Southeastern Racing Stables and that he owned 100% of the horse, For Bet Tor Joe. Additionally, Mr. Smith stated that he jointly owned Ford Farms with his mother. A second meeting was held between Jeff Smith and the stewards on June 22, 1986. At that time, Mr. Smith admitted that Karen Tuohy owned at least a 25% interest in For Bet Tor Joe. Mr. Smith denied any business relationship with his father and stated that Bert Smith was only an advisor.

9. Jeff Smith has no ownership interest in Ford Farm.

10. After further investigation by investigators of the Minnesota Racing Commission and Canterbury Downs, a hearing was held by the stewards on July 23, 1986, at which time the investigators presented the results of their investigation. Karen Tuohy testified concerning her interest in For Bet Tor Joe. Jeff Smith and his attorney, Sam Anderson, Jr., were present. On

'The "claiming" procedure is a process which is used to "seed" horses so

that the same quality horses run against each other. As part of this process, a value is put on all the horses in the race which constitutes a sales price if a claimant agrees to buy the horse after the race is run. This "agreement" is in the form of a claim slip which is dropped at least ten minutes prior to the race.

2 There are currently two stewards employed by the Racing Commission to work at Canterbury Downs. A third is employed by the Canterbury Downs Racing Association. The duties of the stewards is to enforce all applicable rules and supervise the conduct of all persons associated with the racing industry. The stewards are authorized by statute to take disciplinary action against licensees up to a \$500 fine and a license suspension not exceeding 30 days. Minn. Stat. 240.16 (1985 Supp.).

July 24, 1986, the stewards issued a ruling which provided that: (1) Jeff Smith's license was suspended for a period of 30 days; (2) Jeff Smith was fined the sum of \$500; and (3) the matter would be referred to the Minnesota Racing Commission for appropriate action.

11. On August 12, 1986, the Minnesota Racing Commission issued a Notice of and Order for Hearing which set forth the allegations stated above as issues in this proceeding.

12. Bert Smith owns and operates Southeastern Stables, a horse buying and selling syndicate. This business solicits potential purchasers throughout the United States. Mr. Smith purchases horses and then sells multiple interests in them to purchasers. The foal certificates would show the owners to be Mr. Smith's daughters or son, Jeff Smith, and not be amended to show the correct proportional ownership of the horses. Additionally, Bert Smith owns, with his wife, Ford Farms in Michigan. Jeff Smith is listed on a certificate of co-partnership as a business partner with Bert Smith in the Ford Farm operation.

13. All of Jeff Smith's business transactions are channeled through Southeastern Racing Stables. Mr. Smith's accountant, Joe Wilkerson is employed by Southeastern. Jeff Smith's name appears on a business card as an agent for Southeastern Racing Stables.

14: Karen Tuohy purchased a 25% interest in For Bet Tor Joe in November of 1985 by remitting a check for \$3,500 to Bert L. Smith payable to Southeastern Racing Stables. On May 7, 1986, Ms. Tuohy purchased an additional 25% interest in For Bet Tor Joe by remitting a check for \$3,400 to Bert Smith payable to Southeastern Racing Stables. This second, 25% interest, was purchased from Jeff Smith's 50% interest in the horse. The estate of a deceased owner, Nelly Cole, also owned a 25% interest in For Bet Tor Joe. That interest was purchased in November of 1985.

15. Jeff Smith claimed the horses Magnus Effect and Diplomat Lou in Michigan in mid-May of 1986. At that time, he informed his father that he would be willing to sell ownership interests in those horses. Subsequently, Bert Smith sold 1/3 interest in both horses to Karen Tuohy in May of 1986. Jeff Smith was not aware of those purchases at the time his application was filed in June of 1986.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Minnesota Racing Commission have jurisdiction over this matter pursuant to Minn. Stat. 240.08, subd. 5 (1985 Supp.) and 14.50 (1984).

2. The Notice of hearing in this matter was proper in all respects and the Commission has complied with all substantive and procedural requirements of law or rule.3

3. The Commission has proved by a preponderance of the evidence that Jeff Smith violated Minn. Stat. 240.25, subd. 6 (1984) and Minn. Rule 7877.0130, subp. 2D. by failing to disclose the multiple ownership interests in the horse For Bet Tor Joe, when his application for licensure was filed with the Minnesota Racing Commission.

4. The Commission has proved by a preponderance of the evidence that Jeff Smith failed to fully and truthfully provide information requested by the stewards in the course of their investigation concerning his licensure in violation of Minn. Rule 7877.0155, subp. C.

5. The Commission has proved by a preponderance of the evidence that Jeff Smith has conducted himself in a manner which is detrimental to the best interest of racing in violation of Minn. Rule 7877.0155, subp. H.

6. Due to the above-violations of statute and rules, the Racing Commission is empowered to impose additional disciplinary sanctions against the owner's license of Jeff L. Smith pursuant to Minn. Stat. 240.08, subd. 5 (1985 Supp.).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Racing Commission take action consistent with the Findings and Conclusions set forth above.

Dated this day of October, 1986.

PETER C. ERICKSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail .

Reported: Taped, no transcript prepared.

'The statutory notice and report issuance requirements contained in Minn. Stat. 240.08, subd. 5 (1985 Supp.) were waived by both parties in this proceeding.

MEMORANDUM

Pertinent Rules and Statutes

Minn. Rule 7877.0130, subp. 2D.

A multiple owner must make its best effort, as defined in part 7870.0030, item E, to disclose to the commission in writing at the time of each Class C license application and renewal request, the nature and extent of every direct or indirect record of beneficial ownership or other voting interest or contingent, in the multiple owner. The disclosure shall include the names and addresses of every individual and other entity. The individuals and other entities identified, except those required to be licensed pursuant to item B, shall not be licensed and shall not have access to restricted areas at racetracks.

Minn. Rule 7877.0155.

Acceptance of a Class C license, including a temporary or emergency license shall mean that the licensee consents and agrees to the following conditions.

A. The licensee will abide by commission rules

C. The licensee will fully and truthfully provide information requested by the stewards or the commission in the course of an investigation, inquiry, or hearing

H. The licensee will conduct himself or herself in a manner that is not detrimental to the best interests of racing.

Minn. Stat. 240.25, subd. 6.

No person may knowingly make a false statement in a document or application required to be submitted to the commission or in a sworn statement or testimony before the commission.

Jeff Smith admitted that at time he filed his application for licensure with the Minnesota Racing Commission, he was aware that there were multiple ownership interests in the horse, For Bet Tor Joe. However, those interests were not disclosed in the application. Smith contends that because the horse was never run in Minnesota, no harm was done and he should not be further

penalized. The Judge points out that Mr. Smith has already been fined the amount of \$500 and his license was suspended for 30 days because of this failure to disclose.

Jeff Smith did state to the track stewards on June 20, 1986, that he was the sole owner of For Bet Tor Joe and that he had no business relationship with his father or Southeastern Racing Stables and he owned, at least a portion of Ford Farm in Michigan. Mr. Smith admitted that Karen Tuohy owned at least a 1/4 interest in For Bet Tor Joe on June 22, 1986 and later that she owned a 50% interest at the hearing on July 23, 1986. As the Findings and above-discussion indicate, Mr. Smith knew of Ms. Touhy's part ownership before his application was filed. The record in this matter shows clearly that Jeff Smith has an on-going business relationship with his father. Jeff claims (buys) horses in his name so his father can sell interests in them through Southeastern Racing Stables. The records showing title to Ford Farm supplied by the Shiawassee County Register of Deeds in Michigan indicate that Jeff Smith has no ownership interests. Consequently, Jeff Smith's conflicting and untruthful statements to the stewards constitute a violation of Minn. Rule 7877.0155, subp, C.

The record in this matter shows clearly that a major reason for Jeff Smith's appearance in Minnesota was to operate on behalf of his father and Southeastern Racing Stables. The Judge doubts that Mr. Smith had a serious interest in racing horses at Canterbury Downs. Rather, his primary reason for being in Minnesota was to claim horses which could be resold by Southeastern Racing Stables and Bert Smith. Jeff Smith stated quite candidly at the hearing that his father "sells quite a bit of my horses." Additionally, Mr. Smith stated that Bert Smith "does a lot of things without my knowledge." What happened in this case is that Bert Smith was selling interests in Jeff Smith's horses without Jeff's knowledge, but as part of the business arrangement between the two. The investigators and stewards testified that this type of "undisclosed" dealing in horses is detrimental to the interest of racing because true ownership cannot be determined. In addition, the resale of claimed horses, which is a violation of Minnesota rules if the sale happens within 30 days of the claim, cannot be traced. The Judge has concluded that based upon the evidence in this record, Jeff Smith has conducted himself in a manner that is detrimental to the best interest of racing in violation of Minn. Rule 7877.0155, subp. H. Although this standard is very broad, the Commission's witnesses testified as to standards in the racing community. See, Reyburn v. Minnesota State Board of Optometry, 78 N.W.2d 351, 355 (Minn. 1956).

Lastly, the Judge points out that certain evidence received in this

proceeding was admitted over the hearsay objection of Respondent's attorney. Respondent argues that because this evidence is hearsay, no specific findings can be made which will result in any disciplinary action by the Commission, citing State ex rel. Independent School District No. 276 v. Department of Education, 256 N.W.2d 619 (Minn. 1977). That case stands for the proposition that an administrative agency cannot rest findings of fact solely upon hearsay evidence which is inadmissible in a judicial proceeding. 256 N.W.2d at 627. However, in that case, the Court went on to state that the fact finder is in the best position to judge the inherent trustworthiness and reliability of the evidence presented. Id. The Court concluded that only where it appears that the administrative agency clearly abused its discretion in relying upon inherently unreliable evidence would the courts intervene. Id.

in this case, the Judge has made a determination concerning the trustworthiness and reliability of all of the evidence presented. Much of the investigative report "hearsay" admitted over objection is admissible pursuant to Exception (8)C, Public Records and Reports, contained in Rule 803 of the Rules of Evidence. The Judge has made his findings in this case based only upon evidence which he has determined to be reliable and trustworthy and relevant to the issues presented.

P.C. E.