

RENDERED: MAY 29, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

**Commonwealth of Kentucky
Court of Appeals**

NO. 2013-CA-000900-MR

WILLIAM E. MARCH

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 12-CI-01495

THE KENTUCKY HORSE
RACING COMMISSION

APPELLEE

OPINION
AFFIRMING

*** * * * *

BEFORE: DIXON, J. LAMBERT, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: William E. March brings this *pro se* appeal from an April 18, 2013, Opinion and Order of the Franklin Circuit Court affirming a Final Order of the Kentucky Horse Racing Commission dismissing March's action. We affirm.

On February 24, 2012, the thoroughbred horse, Ethical Lawyer, raced in the twelfth race at Turfway Park. Ethical Lawyer is owned and trained by

March. Although Ethical Lawyer crossed the finish line first, the stewards found that his jockey had engaged in a careless riding foul in violation of 810 Kentucky Administrative Regulations (KAR) 1:016 Section 12 during the race and disqualified Ethical Lawyer from winning the race. Later, on March 1, 2012, the stewards suspended the jockey for three racing days due to the careless riding foul.

On March 10, 2012, March *pro se* appealed the March 1, 2012, suspension of the jockey and the disqualification of Ethical Lawyer for the riding foul to the Kentucky Horse Racing Commission (Commission). By recommended order dated August 28, 2012, the hearing officer concluded that March had no standing to contest the March 1, 2012, suspension of the jockey as he was not the person subject to the steward's ruling. 801 KAR 1:029 Section 2. The hearing officer also determined that no appeal is available from the stewards' decision to disqualify a horse for a foul occurring during the race. 810 KAR 1:029 Section 2(9); 810 KAR 1:025 Section 21. Thus, the hearing officer recommended to the Commissioner to dismiss March's action. After March filed exceptions to the recommended order, the Commission issued a Final Order adopting the recommended order and dismissed March's action. March then sought judicial review with the Franklin Circuit Court. By Opinion and Order entered April 18, 2013, the circuit court concluded that the Commission properly dismissed March's action. This appeal follows.

Our review of an administrative proceeding is limited. Under Kentucky Revised Statutes (KRS) 13B.150, a court "shall not substitute its

judgment for that of the agency as to the weight of evidence on questions of fact.”

And, our review of an administrative decision is for arbitrariness. *Am. Beauty*

Homes Corp. v. Louisville & Jefferson Cnty. Planning and Zoning Comm'n, 379

S.W.2d 450 (Ky. 1964).

March has advanced myriad arguments of error in his *pro se* brief.

Specifically, he contends:

I. 810 KAR 1:029 were void or voidable; stewards had no lawful authority to hold hearings or adjudicate.

II. Was the denial of right to hearing and appeal to owner of winning race horse at regulated race meeting a denial of due process?

III. Can the Kentucky Horse Racing Commission take owner/trainer's winnings purse without a disciplinary ruling against him.

IV. Was it legal for Board of Stewards to hold hearing and adjudicate jockey when owner/trainer, affected party, was denied participation in 12-0027 steward's hearing from which winning purse was denied and withheld from owner of winning horse?

V. Hearing officer's recommendation which was void of findings of fact and conclusions of law and further stating that parties agree on the facts, in violation of; is error.

VI. Did court error in dismissing subpoenaed witnesses from testifying to unusual records?

March's Brief at 2-4.

Having reviewed the entire record and applicable law, we agree with the circuit court's thorough opinion to dismiss and adopt its analysis verbatim:

a. Introduction

In his appeal to this Court, March raises two distinct legal issues. First, March maintains he was deprived of the right to appeal Ethical Lawyer's disqualification. Second, March maintains that he has standing to contest and appeal Villeda's disciplinary action, Stewards' Ruling 12-0027, even though Villeda himself did not appeal that ruling. We shall take both issues in turn.

b. March Does Not Have a Right to Appeal Ethical Lawyer's Disqualification

The right to appeal the disqualification of a horse is governed by 810 KAR 1:017, Section 4, which is entitled Final Determination of Objection to Acts in Race. That regulation is enacted pursuant to the KHRC's plenary authority to issue administrative regulations, the authority for which is granted in KRS 230.215(2). Section 4 states that[:]

The stewards shall make all findings of fact to all matters occurring during and incident to the running of a race; shall determine all objections, and inquiries based on interference by a horse, improper course run by a horse, found riding by a jockey, and all other matters occurring during and incident to the running of a race; and, shall determine the extent of disqualification, if any, of horses in a race for a foul committed during the race. Findings of fact and determination shall be final and no appeal may be taken thereon. [. . .]. [sic]

810 KAR 1:017, Section 4 is dispositive on March's right to appeal the disqualification of Ethical Lawyer in the 12th race at Turfway on February 24, 2012. The Stewards' decision to disqualify Ethical Lawyer for Villeda's careless riding infraction is final and non-appealable.

KRS 230.320(2)(a), contrary to March's position, does not require that he be afforded a hearing before the Stewards regarding Ethical Lawyer's disqualification nor does it grant him the right to appeal that qualification. March was not entitled to a Stewards' hearing, as he acknowledged by being a licensee under the KHRC's rules and regulations. *See* 810 KAR 1:025, Section 21(1) and (4)(a) and (b). The KHRC applied the correct rule of law in dismissing March's appeal of Ethical Lawyer's disqualification. The dismissal must stand as Ethical Lawyer's disqualification is final and non-reviewable.

c. March Lacks Standing to Appeal Villeda's Disciplinary Action

March next maintains that he has standing to appeal Villeda's disciplinary action because Villeda's careless riding caused him to forfeit Ethical Lawyer's purse. Regarding March's assertion that he was forced to forfeit Ethical Lawyer's purse, March is mistaken. One cannot forfeit something one does not possess. Ethical Lawyer did not win the 12th race even though he crossed the finish line first. The horse was disqualified and placed seventh. Ethical Lawyer's purse was not forfeited, it was awarded to the horse which won the race.

Regarding March's position that he has standing to appeal Villeda's disciplinary action, March is again incorrect. Stewards' Ruling 12-0027 disciplined Felipe Villeda. The right to appeal an order or ruling by the Stewards is limited to the person "who is the subject of any order or ruling of the stewards." 810 KAR 1:029, Section 2(9). Because March was not the subject of Stewards' Ruling 12-0027 nor was he the individual charged with a violation, he does not have standing to appeal the ruling to the KHRC or to this Court. The KHRC was correct in dismissing March's Complaint to the extent it was based on an attempt to appeal Villeda's disciplinary action.

d. March was Not Deprived of Due Process

March's final argument against the validity of the KHRC's Final Order is that it deprived him of due process as it required him to forfeit Ethical Lawyer's purse without a hearing. As discussed, March was not required to forfeit Ethical Lawyer's purse, he simply did not win it to begin with. March's purse money was not taken or forfeited as March insists. Rather, March never had an entitlement to the purse monies because Ethical Lawyer did not win the race. Even assuming that March was entitled to a hearing on Ethical Lawyer's post-race disqualification, March's interest in the purse money does not constitute the required protected property interest. His interest in Ethical Lawyer's purse was, at best, a privilege, not a property interest. *See KRS 230.215(1).* However, even assuming that March did have a protected property interest, all proceedings before the KHRC are governed by the provisions of KRS Chapter 13B, which guarantee that all individuals before the Commission are afforded due process. Despite various defects in March's pleadings and because he was a pro se Petitioner, the Hearing Officer afforded him a panoply of due process rights he should have been denied. March cannot now maintain that he was deprived of due process.

e. 810 KAR 1:029 is Not Void

March argues that, because 810 KAR 1029's original enabling statute, KRS 230.355, was repealed in 1996 that 810 KAR 1:029 is void for lack of statutory authority. March's argument is misguided as KRS 230.215 grants the KHRC authority to promulgate administrative regulations governing horse racing in Kentucky. KRS 230.215(2) "vest[s the KHRC] forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth[. . .].". The administrative regulations relied upon herein as well as by the KHRC in issuing its Final Order, then, are not without an enabling statute and are not void.

III. Conclusion

This Court's review is limited to whether substantial evidence supports the KHRC's findings and whether the KHRC applied the correct rule of law. The parties do not contest the underlying facts, and this Court finds that substantial evidence supports the factual determinations made by the KHRC. Reviewing the law applied by the KHRC in rendering its Final Order, this Court finds that the KHRC applied the correct rule of law to the facts as found. Accordingly, the KHRC's Final Order must stand. March's Petition fails to state a claim and must be dismissed.

Opinion and Order at 4-9 (citations and footnotes omitted). Additionally, the circuit court was confined to a review of the administrative record in this case and was not permitted to call additional witnesses. KRS 13B.150. Hence, we conclude that the circuit court correctly analyzed the issues and properly affirmed the Commission's Final Order dismissing March's action.

For the foregoing reasons, the Opinion and Order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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