



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF NEW JERSEY RACING COMMISSION

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

PO Box 088
TRENTON, NJ 08625-0088

GURBIR S. GREWAL
Attorney General

PAMELA J. CLYNE
Chairman

MICHAEL J. ARNONE, D.D.S.
FRANCIS X. KEEGAN, JR.
GLEN VETRANO
Commissioners

JUDITH A. NASON
Executive Director

_____)	OAL Dkt. No. RAC-10441-18S
MARTEN WOODHOUSE,)	AGENCY Ref. No. NJRC-5-H-18-MD
)	
Petitioner,)	
)	
v.)	
)	ORDER OF REMAND
NEW JERSEY RACING)	
COMMISSION,)	
)	
Respondent.)	
_____)	

The New Jersey Racing Commission (“Commission”) has reviewed the initial decision of the Administrative Law Judge (“ALJ”) in the matter of Marten Woodhouse v. New Jersey Racing Commission, OAL Docket Number RAC 10441-18S. The Commission has determined that the factual record is incomplete and therefore **REMANDS** the matter to the Office of Administrative Law (“OAL”) for reasons set forth below.

In her initial decision, the ALJ determined there to be inaccuracies in the laboratory which “cast doubt on the reliability of the results and the penalties that flow from them.” Initial Decision at 17. Further, the ALJ stated that the Commission’s imposition of a penalty should be reversed due to circumstances



in which the “recording errors were replete and no satisfactory explanation was proffered ... to ensure testing accuracy.” Ibid.

There were several typographical mistakes in the laboratory’s report. The ALJ noted that an attempt to correct at least one of the errors was made as the incorrect batch number was crossed out and replaced with the correct batch number. The correction was handwritten along with the date and the initials “PW.” However, the ALJ concluded that no reliable testimony was given to explain the typographical errors because Dr. Anthony Fontana, the director of the laboratory, was the only witness to testify on behalf of the testing results and he was not able to “explain the discrepancies in [the] laboratory reporting numbers and the written change of the batch number.” Id. at 10. While it may be reasonable for the agency head to find that minor typographical errors should not invalidate comprehensive scientific testing, the Commission need not make that determination at this point.

As pointed out in both the initial decision and in the Deputy Attorney General’s uncontested exceptions to the initial decision, the record clearly establishes that another sample of blood was taken from the horse “Kingslayer” on the day of the race and remains sealed at the laboratory. Id. at 6; DAG Exceptions at 2, 20-23. Taking redundant duplicate samples is the standard practice of the Commission veterinarians when procuring post-race samples that are to be sent for testing. Initial Decision at 4. The record establishes that the chain of custody for the samples was intact as they were properly sealed, labeled, shipped, checked in and stored. Id. at 3-4. The trainer declined his opportunity to have the duplicate samples sent to a different laboratory for split sample

confirmation testing. Id. at 8. Therefore, the original duplicate sample remains at the testing laboratory where it can be tested and analyzed.

Thus, rather than question whether the typographical errors undermine the integrity of the original test results, the duplicate sample can be tested without prejudice to the Petitioner. The burden on Petitioner would be minimal as the penalties imposed have been stayed by the Commission pending a final decision. Remand would ensure that this case is decided on the best possible record. A strong public interest in policing the sport to ensure the integrity of the races also supports the remand as the Commission has been charged with strictly regulating the horse racing industry to ensure that racing is conducted fairly without chemical advantage. See, e.g., Devitas v. New Jersey Racing Commission, 202 N.J. Super. 484, 490-91 (App. Div. 1985). If the ability to remand this matter were not available to the Commission, it would be forced to render a final decision on an incomplete record, precluding the Commission from “fulfilling [its] responsibility to the public to decide a case on the best available record.” In re Kallen, 92 N.J. 14, 28 (1983).

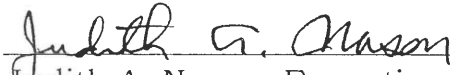
For the reasons set forth above and based upon the determination below, the New Jersey Racing Commission hereby **REMANDS** this contested case to the OAL pursuant to N.J.A.C. 1:1-18.7 to resume the hearing in the matter in order to consider additional facts and data relating to the testing of the duplicate sample of “Kingslayer’s” blood that is sealed and stored at the testing laboratory and accept additional testimony and evidence relating to same. The Commission directs the Executive Director to instruct the laboratory to conduct testing on the duplicate sample of blood taken from “Kingslayer,” prepare a complete data

packet and provide all necessary testimony to support the test results.

Specifically, the OAL is **ORDERED** to:

1. Continue the hearing in this matter to consider the testing results of the duplicate sample taken from "Kingslayer"; and
2. Accept testimony and evidence relating to the testing results of this duplicate sample.

NEW JERSEY RACING COMMISSION

By: 
Judith A. Nason, Executive Director

December 3, 2019