

**IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO**

<b>CHARLES H. BURNESON</b>	:	
<b>APPELLANT,</b>	:	<b>CASE NO. 12-CVF-04-4335</b>
<b>v.</b>	:	
<b>OHIO STATE RACING</b>	:	
<b>COMMISSION,</b>	:	<b>JUDGE BROWN</b>
<b>APPELLEE,</b>	:	

**DECISION AND FINAL JUDGMENT ENTRY**

***INTRODUCTION***

Appellant Charles H. Burneson (hereinafter, “Burneson”) had a license to train thoroughbred racehorses in the State of Ohio which was suspended by Appellee Ohio State Racing Commission (hereinafter, “Commission”) on January 23, 2007. Burneson appealed the decision and this Court and the Tenth District Court of Appeals upheld the suspension.

After Burneson’s suspension concluded he was required to appear in front of the Commission before any type of horseracing license would be issued. On March 13, 2012, Burneson appeared before the Commission seeking to be licensed. Although he sought to be licensed as a trainer, Burneson indicated he was seeking any of the various licenses the Commission grants as he simply wanted to get his foot back in the racehorse arena. (Tr. P. 9, L. 19 – P. 20, L.22). Burneson also offered testimony concerning his rehabilitation and compliance with the Commission’s previous Order. The Commission voted not to grant Burneson any type license and sent a “true and exact reproduction of the original *Adjudication Order*” on March 20, 2012, denying his request to be issued a

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license of any type by the Commission. From that Order, Burneson has filed the instant appeal.

### **STANDARD OF REVIEW**

Decisions of administrative agencies are subject to a “hybrid form of review” in which a common pleas court must give deference to the findings of an agency, but those findings are not conclusive. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 111, 407 N.E.2d 1265. In *Strausbaugh v. Dept. of Commerce, Div. of Real Estate & Professional Licensing* (10th Dist.), Case No. 07AP-870, 2008-Ohio-2456, ¶ 6, the Court of Appeals set forth more fully the standard of review under Ohio’s administrative procedure act as follows: “In an administrative appeal pursuant to R.C. 119.12, the trial court reviews an order to determine whether it is supported by reliable, probative and substantial evidence and is in accordance with the law. *Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St.3d 83, 87, [487 N.E.2d 1248]; *Belcher v. Ohio State Racing Comm.*, 10<sup>th</sup> District No. 02AP-998, 2003-Ohio-2187, at ¶10.” The meaning of reliable, probative and substantial evidence was defined in *Our Place, Inc. v. Ohio Liquor Control Comm.* (1992), 63 Ohio St.3d 570, 571.

The common pleas court conducts a de novo review of questions of law, exercising its independent judgment to determine whether the administrative order is “in accordance with law.” *Ohio Historical Soc. v. State Emp. Relations Bd.* (1993), 66 Ohio St. 3d 466, 471, 613 N.E.2d 591.

### **ASSIGNMENTS OF ERROR**

Burneson raises three assignments of error. First, he argues that the Commission’s regulations with respect to the unbridled discretionary authority to refuse

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to grant, revoke, or suspend a license is a delegation of legislative power and therefore unconstitutional.

In Burneson's 2007 suspension litigation, he claimed the same enabling statute was unconstitutional for the same reasons as in this appeal. The Tenth District held that Ohio Adm.Code 3769-2-26(A)(1) is constitutional:

“Allowing the OSRC discretion to take action against the license of a horse trainer who is a convicted felon clearly bears a reasonable relationship to the state's interests in maintaining the integrity of the horse-racing industry. The regulation is particularly relevant her, where the record indicates that the felony conviction against appellant arose from appellant's theft of racehorses. Consequently, we conclude that Ohio Adm.Code 3769(A)(1) is constitutional.” *Burneson v. Ohio State Racing Comm'n.*, 2009-Ohio-1103 at ¶33 (10<sup>th</sup> Dist.)

Here, giving the Commission the discretion to deny Burneson a license bears a reasonable relationship to the state's interest in maintaining the integrity of the horseracing industry given Burneson's conviction for felony theft of two racehorses within the past 10 years. Burneson's first assignment of error is without merit.

Next, Burneson argues the Commission's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law because it does not set forth a basis for the denial. In support of this argument, Burneson cites *S & P Lebos, Inc. v. Ohio Liquor Comm'n.*, 163 Ohio App.3d 803, 2005-Ohio-4552 for the proposition that the evidence before the commission did not comport with the minimum standards of due process as discussed in *Lebos* at ¶29.

In *Lebos*, the Commission relied on an investigator's unsworn, unauthenticated preliminary report which the court found did not provide reliable, probative and substantial evidence on which to base its action. In contrast, the evidence before the Commission here included evidence from its earlier action against Burneson. The facts

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found by the Commission and affirmed by both the Franklin County Court of Common Pleas and the Tenth District Court of Appeals provided the Commission with reliable, probative, and substantial evidence that Burneson had been convicted of a felony within 10 years of the Commission's refusal to grant him a license.

Burneson also argues the Commission failed to set forth a basis for denying his request to obtain a license. Given that the 2007 Order specifically tied reinstatement to the conduct that the Commission found as a basis for suspension, the present Order clearly relates to that conduct. Burneson could not have been misled on such a basic fact and can show no prejudice from such purported deficiency in the Commission's Order of Denial.

The Order is also lawful. The Commission is charged with the duty to ensure those seeking any type of license related to horseracing meet essential minimum criteria to ensure ethical standards in their industry are maintained. Burneson had stolen two racehorses and had them slaughtered. The Commission rightly found his application to reenter the racing industry wanting. This assignment of error is without merit.

Finally, Burneson claims he was denied his constitutional right to due process with respect to the Commission's hearing. Burneson reasserts the argument outlined in his first assignment of error, namely that due process requires procedural safeguards, and cites *Goldman v. State Med. Bd. of Ohio*, (1996), 110 Ohio App.3d 124 at P. 129 in support.

*Goldman* held:

“The procedural safeguards which would make any hearing meaningful may not require a full adversarial and evidentiary proceeding, but some sort of reliable evidentiary review, including the sworn testimony of the investigator, and as well as a more considered review of the

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circumstances of the case, would be needed to fulfill the requirement for a hearing under R.C. 4731.22.”

Here, Burneson was afforded a hearing before the Commission as well as the opportunity to testify. Burneson explained that his felonious conduct was triggered by alcoholism, but that he was no longer drinking and had been 5 years sober. He further explained he had not needed detox, but had attended meetings (he called it a neighborhood program, but did not specify the neighborhood or the name of the program) to control his drinking. However, he offered no proof of attendance beyond his self-serving testimony.

The Commission did not find Burneson’s statements persuasive and voted to deny his application for any type of racing license. It is within their discretion to do so. Although the Court does not view the rejection of a license application as a penalty, the Court finds the Commission properly exercised its subject matter expertise in denying Burneson’s request for a license. As taught by *Henry’s Café, Inc. v. Bd. of Liquor Control*, (1959), 170 Ohio St. 233, the Court defers to the agency’s expertise in determining penalties for misconduct in relation to a person who holds a license. Where, as here, a person has not yet been granted a license, the Commission’s discretion to grant an applicant a license is more expansive. Accordingly, the Court finds this assignment of error without merit.

The Court has found each of Burneson’s assignments of error meritless. To the extent Burneson’s Reply Brief raises a new issue related to Burneson’s having served a one year suspension and now is willing to remit the fine previously imposed (and it appears still owing), the Court declines to address the issue as counsel for the Commission has not had an opportunity to address the issue.

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The Order of the Ohio State Racing Commission is **AFFIRMED** in all respects.  
Costs to Appellant.

**IT IS SO ORDERED.**

Franklin County Court of Common Pleas

**Date:** 08-06-2013

**Case Title:** CHARLES H BURNESON -VS- OHIO STATE RACING  
COMMISSION

**Case Number:** 12CV004335

**Type:** ENTRY

It Is So Ordered.

A handwritten signature in black ink, appearing to read 'K. Brown', is written over a blue circular seal. The seal contains the text 'COMMON PLEAS COURT' at the top, 'FRANKLIN COUNTY, OHIO' around the inner edge, and 'ALL THINGS ARE POSSIBLE' at the bottom.

/s/ Judge Kim Brown

Court Disposition

Case Number: 12CV004335

Case Style: CHARLES H BURNESON -VS- OHIO STATE RACING  
COMMISSION

Case Terminated: 08 - Dismissal with/without prejudice