

REMARKS PRESENTED TO KENTUCKY HORSE RACING COMMISSION AT ITS SEPTEMBER 24, 2020  
MEETING PERTAINING TO PROPOSED AMENDMENTS TO 810 KAR 3:020, SECTION 12(2), (3)

Remarks presented by Robert L. Heleringer, Attorney at Law

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INTRODUCTION

May it please the Commissioners:

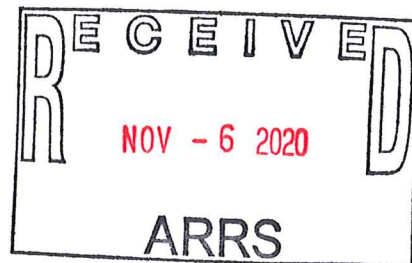
Good morning.

My name is Bob Heleringer and I am an attorney with an office in Louisville, KY. I have been a practicing lawyer for 44 years. A very long time ago, throughout the 1970's, I worked at all of Kentucky's thoroughbred racetracks in various capacities -- in the latter half of that decade as a racing official.

In 2012, I published a legal textbook, "*Equine Regulatory Law*," a copy of which I believe is in the Racing Commission's legal department along with the annual supplements to the book I published thereafter. I am currently writing a second edition of this book and hope to have it published next year.

I have taught Equine Regulatory Law classes at the University of Louisville's undergraduate Equine Business school and at U of L's Louis D. Brandeis School of Law. In more recent times, I was proud to own and race, with my four sisters, a number of good horses (and some not so "good" (slow)) we inherited from our late mother. The star of our modest stable was a filly, Put Me In, who won stakes races in 2004 all over the Midwest before she was retired after earning over \$400,000.00. Our excellent and dedicated trainer was Merrill Scherer, a true horseman who remains a loyal friend. Merrill made going to the races a lot of fun whether we had a horse running or not.

I provide some of these details about my "past performances" to indicate my profound love of this sport and my enormous respect for the job that each of you do --- Commissioners and staff -- to preserve, protect, and defend the integrity of our beloved sport of horse racing in the Commonwealth of Kentucky. Despite what some of you might think, as I appear before you this morning I am not representing anyone but myself -- no client, nor any prospective client has asked me to provide this testimony.



## BACKGROUND – THE JAMGOTCHIAN CASE

The current “financial responsibility” regulation, 810 KAR 3:020, Section 12, and the interpretation and the application of that regulation to a client of mine, was the subject of a recent lawsuit I filed that challenged the Racing Commission’s enforcement of that regulation against that client, Mr. Jerry Jamgotchian. Because we are making a record that will eventually be reviewed by our legislature’s Administrative Regulation Review Subcommittee, I would like to *briefly* outline the major points of that lawsuit since, in my view, the outcome of that case is the sole reason for the proposed amendments to the current financial responsibility regulation.

In October, 2019, after retaining me, Mr. Jerry Jamgotchian applied to this Commission for an owner’s license. Prior to that application, Mr. Jamgotchian had been a licensed owner in Kentucky from 2008-2017, inclusive, with no disciplinary rulings being issued against him. In 2019, he was also licensed (as an owner) in the states of California, Florida, Illinois, Indiana, Louisiana, New York, Ohio, Pennsylvania, Texas, and West Virginia.

On October 7, 2019, the Commission’s Executive Director, in a letter sent to my office, denied Mr. Jamgotchian’s application and also denied my request I had made previously that my client’s application for licensure (if it was going to be denied) be reviewed by the Commission’s License Review Committee. (A copy of this letter is attached to these remarks as an exhibit.)

The reason for the rejection, as stated in the letter, was that the Commission, in 2017, had been notified by a lawyer for the Coolmore farms that Coolmore had obtained a civil judgment against Mr. Jamgotchian issued by a court in Ireland for \$538,154 for unpaid (by Mr. Jamgotchian) stud fees. This judgment was subsequently “domesticated” first in California (where Mr. Jamgotchian resides) and then in Kentucky. Prior to the domestication of the Irish judgment, Mr. Jamgotchian was a party to a negotiated settlement of this judgment with Coolmore which settlement was approved/accepted and entered by a federal court in California. The settlement requires Mr. Jamgotchian to make substantial, equal monthly payments to Coolmore through a court-enforced attachment of one of his bank accounts until the underlying judgment is paid in full. Despite proof of this settlement and a ledger sheet showing a record of timely monthly payments as the court ordered to “satisfy” the judgment against Mr. Jamgotchian, the Commission’s October 7, 2019, letter denying Mr. Jamgotchian’s license application stated that Mr. Jamgotchian “has not provided written documentation of satisfaction of the judgment” against him “required by Sec. 12(3) of 810 KAR 3:020.” Determining that this letter was a “final order”

issued by the Racing Commission, Mr. Jamgotchian – as an “aggrieved applicant” – sought timely judicial review of this decision by appealing same to the Franklin Circuit Court pursuant to KRS 230.330.

#### JUDICIAL REVIEW – THE RESULT

After some preliminary matters were resolved, the parties were ordered by the Judge (Thomas Wingate) to submit briefs on the one issue certified by the Court: “whether a judgment for a debt owed [by Mr. Jamgotchian to Coolmore] constitutes financial [ir]responsibility as contemplated by administrative regulation.” (See Court’s Order of November 19, 2019, attached hereto as an exhibit).

810 KAR 3:020, Section 12 states in its entirety:

“Section 12. Financial Responsibility.

- (1) A licensee shall maintain financial responsibility during the period for which the license is issued.
- (2) A licensee’s failure to satisfy a final judgment rendered against him or her by a Kentucky court, or a domesticated judgment from another jurisdiction, for goods, supplies, services, or fees used in the course of any occupation for which a license is required by this administrative regulation shall constitute a failure to meet the financial responsibility requirements of KRS 230.310.
- (3) If the licensee fails to show just cause for his failure or her failure to satisfy the judgment, then his or her license may be suspended or revoked until the licensee provides written documentation of satisfaction of the judgment.
- (4) An applicant for a license may be required to submit evidence of financial responsibility to the commission if a judgment has been rendered against him or her.”

Before the Circuit Court, the Commission argued that the above-cited regulation applied to the Coolmore/Jamgotchian debt/judgment even though horse breeders (like Coolmore) are not required to obtain licenses to engage in their profession, pursuant to KRS 230.310(1) and 810 KAR 3:020, Section (2). Since Mr. Jamgotchian was interacting with Coolmore ostensibly to purchase stud fees that would finance matings that would produce foals that would eventually race in Mr. Jamgotchian’s name at racetracks in Kentucky, the Coolmore debt/judgment was incurred in the course of an occupation (as an owner) “for which a license is required.” This, the Commission argued, brought this allegedly unsatisfied judgment within the financial responsibility regulation and justified the denial of licensure.

Mr. Jamgotchian argued the opposite: that since horse breeders like Coolmore are *not* required to obtain Commission-issued licenses in Kentucky, that the debt Mr. Jamgotchian owed to Coolmore was *not* an indicia of “financial irresponsibility” pursuant to the plain, unambiguous wording contained in 810 KAR 3:020, Section 12(2).

On January 24, 2020, the Franklin Circuit Court entered an “Opinion and Order” finding that Mr. Jamgotchian’s debt to Coolmore did not constitute financial irresponsibility as referred to in 810 KAR 3:020, section 12(2). The Court stated: “A license is not required [in Kentucky] to breed horses and the Court disagrees with the Commission that the judgment [against Mr. Jamgotchian] fits this regulation because it would require a prospective assumption that the horses bred with the stud fees resulted in thoroughbred horses with the intent to race those horses in the Commonwealth.” (Order, p. 4; see full text of this decision attached hereto as an exhibit).

The Court ordered “the Commission to reconsider Petitioner’s [Jamgotchian’s] application [for an owner’s license.] *Id.* The Commission did not appeal this decision. After some further steps required of Mr. Jamgotchian by the Commission were complied with, he was issued an owner’s license for the current year (2020).

#### RAMIFICATIONS OF THE AMENDMENTS

In a clear attempt to reverse the outcome of this case, the Commission is proposing three substantial amendments to the current “financial responsibility” regulation. “Financial responsibility” would be (1) re-defined as the failure to satisfy any judgment from any “administrative, state, or federal court for goods, supplies, services or fees” that are (2) related “in *any* way to the business of horse racing.” (emphasis added). (3) “Anyone” in the world would have the authority to “bring to the commission’s attention” [read: file a complaint and a request to take action] “a licensee’s failure to meet the financial responsibility requirements” of the new regulation. Presumably, that “any person” could include a member of the Racing Commission and/or its staff of regulators.

The immediate and obvious effect of these amendments, if adopted, would nullify the decision of the Franklin Circuit Court and empower the Commission to summarily revoke Jerry Jamgotchian’s current owner’s license and to deny him such licensure next year and beyond until the last monthly installment of the Coolmore judgment has been paid in full.

The broader implications for the Commission and for all licensees in Kentucky is that the Commission would become a vast collection agency with new responsibilities to enforce no one can predict how many civil judgments from anywhere in the world --- not just between licensees – but between licensees and anyone who claims “in any way” that they are “related to the business of horse racing.” This new status is not defined by any language in the proposed amendments or in the text of the “Regulatory Impact Analysis” which vaguely states that “such judgments can be related to any part of horse racing, even if it is not a licensed occupation.” (Analysis attached to amendments, p. 29, par. 2(a)).

It might be surmised that this lack of a definition was intentional so its use could never be circumscribed by a reviewing court. The possible scenarios for these new debt-collection duties the Commission is taking on are as vast and limitless as the Pacific Ocean. No lawyer (or even lay citizen) worth her/his license would be so constrained as to not be able to come up with a plausible way to claim some minimal “relationship with the business of horse racing” sufficient to compel the engagement of the Commission staff to assist that person to collect a debt or to enforce a money judgment against a licensee. Since horse racing is a publicly-regulated enterprise in this state, any taxpayer could claim standing to assert their “right” to make the Racing Commission act on that person’s behalf to collect money owed by anyone of the more than 22,000 people in this state that hold racing licenses. And even if the Commission is able to beat back these claims as “unsubstantiated” or that what they are trying to collect from the licensee doesn’t really relate to a “horse racing business,” at what exorbitant expense of precious time and resources will these “victories” be purchased? What if these people, disgruntled with this outcome, hire lawyers and sue the Commission over such decisions and then appeal further any adverse judicial outcomes?

The question must be asked: “Does this Racing Commission really have the time and resources to provide for the vast expansion of its duties as contemplated by these amended regulations?” I would suggest that in these uncertain economic times, the legislature might take a dim view of any request by the Commission for additional funding to pay for these new collection endeavors that would either have to be undertaken or defended against if the Commission believes a claim doesn’t qualify – which would be challenging to say the least given the very broad purview of “any activity related to the business of horse racing.” If this seems outlandish to state, take a look at the awkwardly-worded “Impact Analysis” that states unequivocally that these amendments “will protect more businesses in the horse racing industry from defaults.” (p. 29, 2(b)). There is no proof for this bald assertion and exactly how is such a


vast and limitless new responsibility going to be confined in any way between licensees and the entire outside world when there is no specific definition of what is truly a “horse racing-related business.” There are so many questions with so many completely unknown impactful consequences that it constitutes a huge, blind gamble by this Commission just to get around one circuit opinion it didn’t agree with pertaining to the license of *one person*. In reality, hasn’t the current, more-narrowly drawn regulation on financial responsibility that pertains exclusively to unsatisfied judgments between licensees ONLY worked pretty well down through the years?

CONCLUSION

Based on the forgoing reasons, I urge the Racing Commission to reconsider and to reject the proposed amendments to the current “financial responsibility” regulation. The amendments constitute a vast expansion of the Commission’s authority into areas far beyond its legislatively-mandated duties to provide “forceful control” of *horse-racing* in the Commonwealth of Kentucky,” to “regulate and maintain *horse-racing* [in Kentucky] . . . of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled *horse-racing* practices,” and “to maintain the appearance as well as the fact of complete honesty and integrity of *horse-racing* in the Commonwealth.” KRS 230.215(2) (all emphasis added).

To adopt these amendments would be to add to the Commission’s already awesome and full-time oversight and security responsibilities outlined above the additional duties of a collection agency.

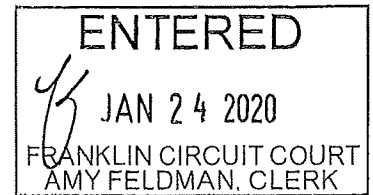
Respectfully submitted,

  
ROBERT L. HELERINGER

Date: September 24, 2020.

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II

CIVIL ACTION No. 19-CI-01041



JERRY JAMGOTCHIAN

PETITIONER

vs.

KENTUCKY HORSE RACING COMMISSION

RESPONDENT

OPINION AND ORDER

This matter is before the Court upon Petitioner's *Petition for Judicial Review*. Upon review of the parties' briefs and papers, and after being sufficiently advised, this Court hereby finds that Petitioner has not failed to maintain financial responsibility pursuant to 810 KAR 3:020, Section 12.

STATEMENT OF FACTS

Petitioner, Jerry Jamgotchian, applied for a license, as an "owner," with Respondent, the Kentucky Horse Racing Commission ("the Commission"), on September 7, 2019. The Commission denied Petitioner's application in a letter dated October 7, 2019, for failure to maintain financial responsibility. The Commission cited a domesticated California judgment ("the judgment") against Petitioner in the amount of \$538,154 plus interest and found that Petitioner has not "provide[d] written documentation of satisfaction of the judgment." 810 KAR 3:020, Section 12(3). Additionally, the letter stated that pursuant to 810 KAR 3:020, Section 15(2) the denial "shall be reported...to the ARCI...by the Division of Licensing to ensure that other racing jurisdictions shall be advised of the license suspension, revocation, or denial." The Commission concluded the denial letter by

informing Petitioner of his appeal rights under KRS 230.320 and Chapter 13B, and specified that if an appeal is requested, the matter will be referred to a hearing officer.

Instead of proceeding with an administrative appeal, Petitioner filed a *Petition for Judicial Review* with this Court on October 10, 2019. The Commission filed a *Motion to Dismiss* arguing that Petitioner failed to exhaust his administrative remedies and that service was improper. Petitioner responded seeking a stay. On November 14, 2019, the Court entered an Order granting, in part, Petitioner's request for a stay and denying the Commission's *Motion to Dismiss* finding that proceeding with the administrative remedies in this matter would be futile because of the threat to report the license denial to other jurisdictions. The Court directed the parties to submit briefs on the matter of whether a judgment for a debt owed constitutes failure to comply with "financial responsibility," as contemplated by 810 KAR 3:020, Section 12.

### ANALYSIS

The Commission asks the Court to reconsider whether this Court has jurisdiction and whether this action has been properly commenced and offers two (2) reasons why the Court should dismiss this matter. First, the Commission asserts that Petitioner's process and service of process were insufficient. The Court disagrees and finds any discrepancies have been cured. Second, the Commission asks the Court to reconsider its November 14, 2019, holding that a license denial renders the administrative process futile and directs the Court to 810 KAR 3:020 Section 15(2). 810 KAR 3:020 Section 15(2) provides:

a license suspension, revocation, or denial shall be reported in writing to the applicant by the chief steward or presiding judge, and to the ARCI by the Division of Licensing, to ensure that other racing jurisdictions shall be advised of the license suspension, revocation, or denial.



810 KAR 3:020, Section 15(2). The Commission believes that the reporting is prescribed by regulation and the effect of the reporting has no impact in other jurisdictions while an appeal is pending. The Court agrees with Respondents that 810 KAR 3:020, Section 15(2) directs the Commission to report the denial to the ARCI. However, the Commission's main argument is that this Court does not have subject matter jurisdiction to hear this appeal. The Court disagrees and will not reconsider this issue as the Court's November 14, 2019, Order specifically held that this matter fits the limited exception to the requirement that administrative remedies be exhausted if such exhaustion would be futile.

The crux of this matter is whether Petitioner has maintained financial responsibility under 810 KAR 3:020, Section 12 because of the judgment. The Court finds that Petitioner has maintained financial responsibility. The Commission denied Petitioner's application because of the judgment issued by the Ireland Court that was then domesticated in California and eventually the Fayette County Circuit Court. The Commission argues that Petitioner's application was properly denied because he has failed to satisfy the judgment in its entirety and the debt arose from services used in the course of an occupation as a thoroughbred owner. *See Id.* at Section 12(3); 810 KAR 3:020, Section 15(1)(I).

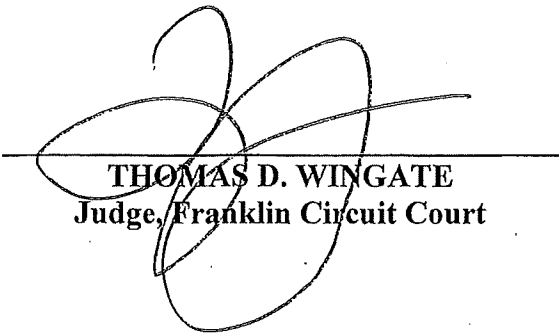
The Commission may deny an application for failing to maintain financial responsibility, which includes "failure to satisfy a final judgment...for goods, supplies, services, or fees used in the course of any occupation for which a license is required..." 810 KAR 3:020, Section 12(2). The Commission believes that because the judgment is for unpaid stud fees and the stud fees were likely used to breed thoroughbred race horses with the intent of racing the horses in the Commonwealth, the nature of the judgment fits the language used in the regulation. Petitioner asserts that the judgment does not fit the purpose

of the regulation because a license is not required from the Commission to breed horses. The Court agrees with Petitioner.

The regulation specifically permits the Commission to deny a license application for “failure to satisfy a final judgment...for goods, supplies, services, or fees used in the course of any occupation for which a license is required...” *Id.* A license is not required to breed horses and the Court disagrees with the Commission that the judgment fits this regulation because it would require a prospective assumption that the horses bred with the stud fees resulted in thoroughbred horses with the intent to race the horses in the Commonwealth. Anyways, Petitioner is presently paying the judgment in monthly installments. Although 810 KAR 3:020, Section 12(3) requires a licensee to show satisfaction of the judgment, because the Court finds that the judgment is not for goods, supplies, services, or fees used in the course of any occupation for which a license is required, Petitioner does not need to show satisfaction of the judgment under 810 KAR 3:020, Section 12(3). Thus, the Court **ORDERS** the Commission to reconsider Petitioner’s application.

This order is final and appealable and there is no just cause for delay.

**SO ORDERED**, this 22 day of January, 2020.



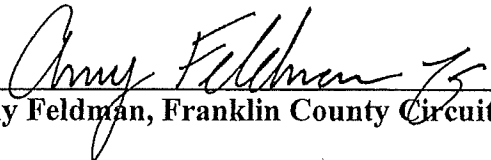
**THOMAS D. WINGATE**  
Judge, Franklin Circuit Court

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Order was mailed this 24<sup>th</sup> day of January, 2020, to the following:

**Hon. John L. Forgy**  
Kentucky Horse Racing Commission  
4063 Iron Works Parkway, Building B  
Lexington, Kentucky 40511

**Hon. Robert L. Heleringer**  
7982 New LaGrange Road, Suite 1  
Louisville, Kentucky 40222

  
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Amy Feldman, Franklin County Circuit Court Clerk