| **Anderson v Hill** |
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| 2003 NY Slip Op 30192(U) |
| October 15, 2003 |
| Supreme Court, New York County |
| Docket Number: 112883/02 |
| Judge: Paula J. Omansky |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: PAULA J. OMANSKY, Justice

PART 47

Anderson R

- v -

Hill W-T

INDEX NO. 0112883-02

MOTION DATE 9/10/03

MOTION SEQ. NO. 05

MOTION CAL. NO.

The following papers, numbered 1 to ______ were read on this motion to/for ______

| | PAPERS NUMBERED |
|---|---|
| Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... | |
| Answering Affidavits — Exhibits | |
| Replying Affidavits | |

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

is decided in accordance with the accompanying memorandum decision

SCANNED OCT 23 2003

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 10/15/03

J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 47
------------------------------------------X

RONALD ANDERSON and ANGEL CORDERO

Plaintiffs,

Index No. 112883/02

**DECISION AND ORDER**

-against-

W. THEODORE HILL and DAVID HICKS

Defendants.
------------------------------------------X

**PAULA J. OMANSKY, J.:**

In this action to vacate and annul the "single jockey rule" and for declarative and injunctive relief, plaintiffs Ronald Anderson and Angel Cordero, professional jockey agents, move, pursuant to CPLR 2221, for reargument and reconsideration of this Court's prior decision and order dated June 3, 2003 (the "June 2003 order").

FACTS

Defendants are two of the three stewards charged with overseeing thoroughbred horse-racing. Plaintiffs are two jockey-agents who seek to represent more than one "journeyman jockey" but are prevented from doing so **by** rules.

A "Conditions Book" stating the rules for each racing session is published annually. The Conditions Book which is the subject of this action provides that "[n]o jockey agent shall represent more than one journeyman jockey" (the "Single-Jockey Rule").

According to Carmine Donofrio, a steward serving at a racetrack (and a former defendant in this action before he settled with plaintiffs), the Single-Jockey Rule is a New York Racing

Association ("NYRA")[1] practice and not a steward "rule." Plaintiffs also maintain, inter alia that this rule was not promulgated in accordance with the State Administrative Procedure Act ("SAPA") and is beyond the scope of authority given to the Stewards by the Board and by State law.

In the June 2003 order, this court dismissed the second, third, fourth and fifth causes of action in the amended complaint. These claims alleged fraudulent misrepresentation as well as sought a declaratory judgment that the single-jockey rule violates the commerce clause, equal protection clause, and plaintiffs' constitutional right to earn a living. In addition, this court held that plaintiff failed to join the Board as a necessary party and dismissed without prejudice, plaintiffs' first cause of action, which sought a declaratory judgment that defendants did not promulgate the single-jockey rule and that they did not have authority to enforce such a rule. The court ruled that plaintiffs may commence a new action or an Article 78 proceeding against any other relevant party, to determine the validity of the single-jockey rule within the frame work of the State Constitution and enabling legislation.

**DISCUSSION**

A motion for leave to reargue, pursuant to CPLR 2221, is

[1]The NYRA is a private not-for-profit association that owns three race tracks in this State: Belmont, Aqueduct and Saratoga. The New York Racing and Wagering Board has granted a franchise to the NYRA (Racing Pari-Mutual Wagering and Breeding Law §§ 202, 208 and 224).

addressed to the sound discretion of the court and may only be granted upon a showing that the court overlooked or misapprehended the facts or the law, or, for some other reason, mistakenly arrived at its earlier decision (William P. Pahl Equip. Corp. v Kassis, 182 AD2d 22, 27 [1st Dept], lv dismissed in part, denied in part 80 NY2d 1005 [1992], rearg denied 81 NY2d 782 [1993]). Reargument is not designed to afford the unsuccessful party a second opportunity to argue issues previously decided, or to present arguments different from those originally asserted (id.).

Plaintiffs maintain the this court did not consider the stipulation of settlement signed by Carmine Donofrio dated September 12, 2002, who stated that the single-jockey rule is not a rule of the stewards. This court did in fact take note of Donofrio's September 2002 stipulation and takes further judicial notice that the parties are unable to state who originated the single-jockey rule and cannot prove whether the rule originated with the Board, the NYRA or some other heretofore unnamed entity.

Unlike many states which have only enacted statutes prohibiting gambling, New York had gone a step further. New York's State Constitution adopts a clear prohibition against all gambling except as enumerated in the constitution, itself. Horse racing is one of the exceptions listed. New York's enabling statutes delineate the rights and responsibilities of those entities charged with regulating horse racing in this state.

In the prior June 2003 order this court correctly described New York's regulatory scheme finding that the Stewards exercise a

supervisory function, have the responsibility for determining all of the discretionary decisions that must be made on a day-to-day basis at the track, and "are empowered to resolve all objections as to the running of the race, and their judgment as to the exercise of their discretion is final" ( see June 2003 order at 12 [citations omitted]). This court also correctly found that the Board extended authority to the Stewards to do "as they think proper, to make and, if necessary, to vary all arrangements for the conduct of the [race] meeting" (9 NYCRR 4022.8), and to "regulate and control the conduct of all officials and of owners, trainers, jockeys, grooms and other persons attendant on horses" (9 NYCRR 4022.11). In addition, the court correctly held that section 4022.21 of the State regulations also granted the Stewards broad discretionary powers and provided

> [i]f any case occurs which is not or which is alleged not to be provided for this Article, it shall be determined by the stewards in such manner as they think just and conformable to the usages of the turf; and the stewards may impose such punishment and take such other action in the matter as they may deem to be within the intent of this Article, including reference to the commission.

(9 NYCRR 4022.21).

As the court previously held in the June 2003 order, the Single-Jockey Rule falls under the provisions of section 4022.21, the broad discretionary powers regulation. Accordingly,

> [u]nder the present regulatory scheme, the defendants have both a legal right and a duty to enforce the Single-Jockey Rule. If plaintiffs wish to limit the scope of the Stewards' authority they must attack the legality and scope of the discretionary powers regulation (9 NYCRR 4022.21) directly .... . This requires that the New York State Racing and Wagering Board be named as a party

to the litigation.

(see June 2003 order, at 13 [citations and footnotes omitted]).

That the Stewards may not have initiated the single-jockey rule is not dispositive since such a policy is presently being followed by Stewards and by local New York racetracks. Although this court held the broad discretionary powers presently granted to Stewards would permit them to issue such a single-jockey rule, this court also held that it could not reach the issue of the validity of the broad discretionary regulation as a result of plaintiffs' failure to name all necessary parties.

The prohibition against gambling in the State Constitution cannot be modified without amendment. The legislature, and the entities it creates, must abide by the constitutional stricture. In terms of the promulgation of rules governing racetracks, the Court of Appeals has interpreted the role of the legislature finding that State Constitution does not permit State legislators to relinquish their legislative power over gambling to private corporations (Fink v Cole, 302 NY 216, 225 [1951]). Moreover, the Court of Appeals has that the Board does not have unfettered right to issue promulgate rules (Cordero v Corbisiero, 80 NY2d 771, 772-773 [1992]).

As to the remaining claims, plaintiffs have failed to show that this court improperly engaged in fact-finding. Moreover, plaintiffs have failed to cite any fact or authority which would require this court to vacate or modify any of the other holdings in the June 2003 order. This court correctly determined that the

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stewards are not personally liable for the negligent or wrongful exercise of their duties which involve the exercise of discretion. The stated facts also do not support a claim that the stewards tried to mislead plaintiffs or commit a fraud upon agents representing jockeys in races held in New York.

Although Federal Circuit courts have held that racetrack associations are engaged in interstate commerce, present Federal law does not prohibit New York from issuing a single-jockey rule in races held within the borders of this State. As this court previously held, the Federal Constitution does not limit the state's right to regulate gambling within its borders. In addition, this court correctly analyzed the interplay between federal gambling legislation and state law and properly held that the single-jockey rule does not violated plaintiff's federal Constitutional rights.

The question of whether any State agency such as the Board is entitled under New York law to promulgate a single-jockey rule must be determined in accordance with the State Constitution and the various state enabling statutes related to the regulation of the horse racing industry. Such an analysis requires that all appropriate State and local agencies be made a party to the action or proceeding where such review is sought.

Accordingly, it is

[* 8] . . . .

ORDERED that plaintiffs' motion to reargue is denied.

DATED: October&, 2003 **ENTER :**

**PAULA J. OMANSKY**
**J.S.C.**