

**Nappy v Quiet Woman Farm**

2008 NY Slip Op 31088(U)

April 4, 2008

Supreme Court, Nassau County

Docket Number: 0541-05/

Judge: Michele M. Woodard

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

-----X  
JOHN F. NAPPY,

Plaintiff,

-against-

QUIET WOMAN FARM, HEATHER LARSON,  
BARBARA LARSON

Defendants.

**MICHELE M. WOODARD,  
J.S.C.**  
TRIAL/IAS Part 16  
Index No.: 20541/05

**DECISION AFTER TRIAL**

-----X  
This action was commenced by Order to Show Cause to challenge the validity of the Defendant's lien (Defendants' Exhibit C) pursuant to Lien Law §201-a.

**Preliminary Statement**

Plaintiff, a "gentleman horse breeder," seeks damages for breach of contract against the Defendants' horse breeder and farm for negligence and failure to provide care and treatment to his two horses and for fraudulent misrepresentation of the quality of the Defendant's business, breach of fiduciary duty and replevin.

The Defendants who maintained both horses at one time and thereafter, the foal only, counter claim for the costs of the expenses incurred for the care and feeding as well as boarding of the Plaintiff's thoroughbred mare and its foal from March 12, 2005 and for fees for services rendered to enforce its claim under Lien Law §183.

At trial, Plaintiff represented himself and testified on his behalf and called the Defendants Barbara Larson, the account manager, and Heather Larson, the general manager as his witnesses.

The Defendants testified on their own behalf.

No expert witnesses were called by either side.

**Plaintiff's Claims**

Mr. Nappy agrees that there was an oral agreement to have his mare, who was in foal boarded with the Defendant Quiet Woman Farm for a boarding fee of \$16.00 per day, and \$5.00

[\* 2 ] ✓  
a day for the foal when it was born. Once weaned, the foal would be billed and charged \$16.00/per day separately. The farm's records indicate the foal was born in May 2005 and weaned on September 25, 2005. The Plaintiff disagrees that the \$16.00/per day fee per horse was properly increased to \$21.00 per day when the Defendants' business relocated on or about July/August 2005. Mr. Nappy bases his contention that the fee increase was improper on his claim that he was never notified of the change in the fee in a timely manner. He further testified that he was prevented from removing his horses to avoid the higher fee due to the Defendants' conduct. Lastly, with respect to breach of a fiduciary duty, Mr. Nappy testified that he was given inaccurate bills which he says he was forced to pay over his objection.

With respect to his claims of fraud, Mr. Nappy contends that the Defendants failed to provide proper care of the mare in that she failed to foal in the season following her stay at the farm, that she left the farm with a thyroid condition that was abnormal and that the mare's condition was generally poor.

He contends that his 25 years in the horse breeding business qualified him to determine "whether a mare was in good physical condition." However, Mr. Nappy did not provide the Court with any testimony regarding his training or experience with regard to veterinary medicine or animal husbandry. No veterinary records were submitted to support his claim that the mare's condition deteriorated as a result of her stay on the Defendants' farm. There could be many reasons why the mare did not have a successful breeding season until late in the 2006 breeding season, as he claimed. No evidence was provided to eliminate non negligent causes for the failed breeding attempt.

The Plaintiff contends that he was damaged by a loss of more than \$75,000.00. He testified that he spent \$2,800.00 on entrance fees that he forfeited because the Defendant either withheld his horses or did not properly prepare the horses for the recurring seasons. He presented no documentation to support his claim. He said he paid \$5,000.00 for the mare and valued the foal at \$35,000.00.

The Plaintiff relies on several invoices to support his position that the Defendants' bills were inaccurate and/or fraudulent. (Plaintiff's Ex.5) He also submitted a bank document to support his claim that one payment of \$2,300.00 was made by certified check (Plaintiff Ex.1) but

no proof that a check for \$1,300.00, noted with a stop payment stamp, was ever replaced.

### Defendants' Claims

The Defendants concede that in March 2005, the Plaintiff's mare, which was due to foal in June 2005, was received by it for boarding and breeding purposes at \$16.00 per day. It is undisputed that the mare foaled in May 2005. Heather and Barbara Larson testified that on relocating the farm in July 2005, the owners of the boarded horses were notified of an increase in fees. She also testified that billing was not her responsibility. She provided no record of the official notice claimed to have been sent. Heather Larson provided a statement of charges from March 2005 through December 2005 (Defendants' Ex. H). Board totaled \$7,796.00. Payments totaled \$2,345.00. Specifically, the entries showed payments as March \$600.00, April \$184.00, July \$850.00 and September \$711.00. No payments were included after September 2005. Two entries, of \$1,300.00 and \$2,300.00 for October did not reduce the amount of the cumulative payment received, indicating that these payments were not received or credited. Defendants testified that neither of these was received. The balance of \$5,361.00 represents the difference between board charged and the amounts the Defendant concedes the Plaintiff paid. One invoice (Plaintiff Ex. 9) dated November 9, 2005, charged as follows:

			<u>Billed 11/09/05</u>
August	31days @ \$21.00/day		\$651.00
September	30 days @ \$21.00/day		\$630.00
October	31 days @ \$21.00/day		\$651.00
October (Filly)	31 days @ \$21.00/day		\$651.00
November	30 days @ \$21.00/day		\$630.00
November (Filly)	30 days @ \$21.00/day		\$630.00

This exhibit demonstrates that the Defendants did not start charging separately for both horses

until October 2005.

The Defendants concede that they did not ship the horses to Kentucky in October 2005 and advised the Plaintiff verbally that they would not do so until the Plaintiff's bill was paid in full which raised the issue as to whether the Plaintiff was in arrears as of October 1, 2005.

The Defendants submitted Exhibit H at trial in support of its position that the Plaintiff was in arrears as of October 2005 and was justified in retaining the horses as of that date. Exhibit H states specifically that there was an increase in fees as of July 2005, however, Exhibit H is undated and apparently prepared for trial to prove the board charges for March 2005 through December 2005. It does not appear to be a bill actually sent to the Plaintiff. The entry for June 2005 appears to be calculated at a rate of \$21.00 per day for both horses and the same rate was apparently used for July, August and September 2005. For the months of October, November and December, it appears that the Plaintiff was charged \$21.00 per day for each of the two horses.

The Defendants contend that the foal was weaned from its mother as of September 2005, which permitted them to charge the full rate for the foal thereafter. Assuming the rate was properly increased under the contract to \$21.00 per day, the amount charged on Exhibit H for June through September was accurately calculated to establish that from June through the end of September 2005, the Plaintiff owed \$2,562.00. Defendant's Exhibit H further indicates that the payments made by Plaintiff in March, April, July and September totaled \$2,345.00. The Plaintiff did not make payment in May for which there is no dispute as to the proper rate. He made no payment in June, which involves a dispute as to the rate.

With respect to the claim of improper care of the horses, the Defendants submitted a signed statement from a veterinarian indicating that he found the horses in good condition based upon an examination carried out in January 2, 2006 (Defendant Ex. 1). Additionally, the billed invoices indicated that trims, medicine and supplements were allegedly provided to both horses while in the Defendants' care.

## Discussion

Despite the failure of the mare to successfully breed while in Defendants' care, the Plaintiff has not provided sufficient evidence to contradict the veterinarian's certificate of good health. Hence, the Plaintiff claims that the Defendants failed to provide proper care for the horses is not supported by the record. Additionally, Plaintiff has not provided competent or sufficient evidence to support his claim of monetary damages.

From a review of all of the invoices, it appears that the Defendants' billing process leaves something to be desired, that Defendants attempted to correct the bills and that there was no fraud or breach of contract, or breach of fiduciary duty involved. (Defendants Ex. G)

As to Defendants' counterclaim, based upon the varying invoices, the Court finds that the appropriate board charge, based upon the oral agreement, was \$16.00 per day for the mare and \$5.00 per day for the foal until it was weaned and that the charge after weaning would be \$16.00 per day. The Court also finds that the Defendants unilaterally increased the fee without proper notice to the Plaintiff. The foal was weaned in September prior to the October 20, 2005 billing. Therefore, as of October 1, 2005, the Defendant could, and did, bill for the foal separately, the same as the adult mare. Therefore, after that date, the appropriate board rate was \$16.00 per day for each horse. The mare left the farm on December 2006. It is undisputed that Plaintiff did not make any payments after November 2005 and is responsible for those board charges. Using these figures, the calculations are as follows:

Based upon Defendants' Ex. J and K, the Court reduces the per diem rate from \$21.00 per day to \$16.00 per day for failure to properly notify the Plaintiff of the increase and to give him a fair opportunity to remove the horses. The Court finds that the appropriate board rate is the base rate of \$16.00 per day is as follows:

March to December 2005	\$6,786.00
January to December 2006	\$5,840.00
January to December 2007	<u>\$5,840.00</u>
Total	\$18,466.00

The Plaintiff is credited with five payments totaling \$4,645.00.

Section 201-a of the Lien Laws expressly provides:

If the lienor shall establish the validity of the lien, in whole or in part, the judgment shall fix the amount thereof, and shall provide that the sale may proceed upon the expiration of five days after service of a copy of the judgment together with notice of entry thereof upon the owner or such person, unless the property is redeemed prior thereto pursuant to section two hundred three of this article.

Accordingly, Defendants are entitled to an Order fixing the amount of the lien at \$13,821.00 through December 31, 2007. The sale may proceed and the Defendants are entitled to a judgment for the difference between \$13,821.00 and the proceeds of the sale plus \$16.00 per day for every day the filly remained in the Defendants' care after December 31, 2007.

In summary, based on the credible testimony, the Plaintiff is not entitled to damages against the Defendants.

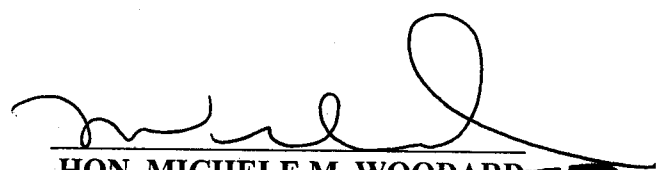
Based on the foregoing, their counter claim entitles the Defendants to enforce their lien against the Plaintiff only as to board charges. The stay previously issued in this case is vacated.

Lastly, the Court in its discretion declines to grant either punitive damages or sanctions against the Plaintiff under these circumstances.

Settle Judgment on notice.

DATED: April 4, 2008  
Mineola, N.Y.

ENTER:

  
HON. MICHELE M. WOODARD

**ENTERED**

APR 09 2008

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**