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2018 APR -2 P 3:15

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INDIANA
HORSE RACING COMM.

March 28, 2018

Lea Ellingwood
Deputy General Counsel
Indiana Horse Racing Commission
1302 N. Meridian Street, Suite 175
Indianapolis, IN 46202

RE: Indiana Horse Racing Commission Staff vs. Bobby Brower
Administrative Complaint No. 216005

Dear Ms. Ellingwood:

Enclosed please find a copy of Respondent, Bobby Brower's, Exceptions to the Recommended Order Denying His Second Motion for Stay of Proceedings and Order Denying Motion to Continue Hearing that I have prepared and filed of record in connection with the above stated Administrative Complaint. I enclose a copy of the same for your review and so that your records are complete.

Yours sincerely,


Peter J. Sacopulos

PJS:alm
Enclosure

STATE OF INDIANA
INDIANA HORSE RACING COMMISSION
2018 TERM

2018 APR -2 P 3:15

Re: Bobby Brower
7281 S 400 W
Muncie, In 47302

ADMINISTRATIVE COMPLAINT NO.
216005

INDIANA
HORSE RACING COMM.

RESPONDENT, BOBBY BROWER'S, EXCEPTIONS TO THE RECOMMENDED ORDER DENYING HIS SECOND MOTION FOR STAY OF PROCEEDINGS AND ORDER DENYING MOTION TO CONTINUE HEARING

Respondent, Bobby Brower (hereinafter "Brower"), by counsel, Peter J. Sacopulos, pursuant to and in compliance with ALJ Pylitt's Order of March 21, 2018, timely submits and files his written exceptions to the Recommended Order Denying His Second Motion for Stay of Proceedings and Order Denying Motion to Continue Hearing and states as follows:

I. The Recommended Order of March 21, 2018, Was Issued Subsequent to Respondent, Bobby Brower, Filing a Verified Petition for Judicial Review That is Pending Before the Madison Circuit Court 6. Upon Brower's Filing of his Verified Petition for Judicial Review, Jurisdiction of this Matter Shifted from Administrative Law Judge Pylitt/the Indiana Horse Racing Commission to the Indiana Trial Court. The ALJ's Recommended Order of March 21, 2018, Was Rendered/Issued Without Authority or Authorization.

Respondent, Brower, files his Exceptions to the Recommended Order of March 21, 2018, reserving his objection relative to jurisdiction, and for the reason that having been improperly defaulted by this ALJ and this Commission, is concerned that this ALJ and this Commission's actions, despite their lack of jurisdiction to proceed with hearings and rulings, may result in additional actions taken against him and, in that connection, additional prejudice and bias toward him. Therefore, Brower files these Exceptions asserting that ALJ Pylitt had no jurisdiction or authority to enter the same reserving, and in no way waiving, his right to argue and assert his position with regard to the ALJ and the Indiana Horse Racing Commission's lack of jurisdiction in this matter while he has pending a Verified Petition for Judicial Review before an Indiana trial court.

Brower further objects to the ALJ's Recommended Order for the reason that its effect is to frustrate and defeat Brower's motion to have him disqualified. Integrity, fairness, and equality all demand that Brower receive a final determination as to his Motion to Disqualify Administrative Law Judge that is pending, by way of his Verified Petition for Judicial Review, before the Madison Circuit Court 6 in advance of the hearing/trial presently scheduled for April 24th and 25th, 2018. The IHRC's failure and/or refusal to rule on Brower's Objections to Findings of Fact, Conclusions of Law and Recommended Order Denying His Motion to Disqualify Administrative Law Judge has, pursuant to I.C. 4-21.5-3-9(d), resulted in Brower timely seeking review by way of his pending Verified Petition for Judicial Review.

II. Exceptions to the “Relevant Procedural History” Section of the Recommended Order Denying Second Motion to Stay of Proceeding and Order Denying Motion to Continue Hearing.

Respondent, Brower, agrees with the Relevant Procedural History set forth in the first three (3) rhetorical paragraphs of this section and, specifically, that procedural history that purports to cover the period of November 4, 2016, to March 7, 2017.

Brower agrees that he timely filed a Verified Petition for Judicial Review with the Madison Circuit Court 6 on April 4, 2017. However, the Relevant Procedural History fails to include that the IHRC filed a Motion to Dismiss Brower’s Verified Petition for Judicial Review and that the same was DENIED. A true and exact copy of the Honorable Mark Dudley’s Order of July 28, 2017, **DENYING** the IHRC’s Motion to Dismiss is attached hereto, made a part hereof, and marked as Exhibit “A.” It was only after Brower was successful in opposing the IHRC’s Motion to Dismiss, that the “Agreed Entry” was reached and entered.

Brower agrees that pursuant to the Agreed Entry of October 17, 2017, this matter was: “...remanded to the IHRC...” Brower disagrees and takes exception with the ALJ and the IHRC/IHRC Staff’s position that ALJ Pylitt was properly appointed, upon remand, and that he has authority to sit in judgment of this cause. This is because this matter was remanded by the trial court to the Indiana Horse Racing Commission, not to ALJ Pylitt. Despite having been remanded to the IHRC, pursuant to I.C. 4-21.5-3-9(a), that requires appointment by the ultimate authority, there was no appointment of ALJ Pylitt upon remand. Instead, opposing counsel, an employee for the Indiana Horse Racing Commission Staff, simply requested that the former ALJ re-engage in the process. In fact, ALJ Pylitt states this in his Relevant Procedural History when he states that he was “requested by counsel for the IHRC” to re-engage.

I.C. 4-21.5-3-9(a) requires the ultimate authority, the Indiana Horse Racing Commission, not opposing counsel, to appoint an ALJ. The trial court Order, via the October 17, 2017, Agreed Entry, remands the matter to the IHRC and not to ALJ Pylitt. As such, the IHRC was required to appoint an ALJ. This has not been done and, as such, Brower has and continues to challenge ALJ Pylitt and the IHRC Staff’s position that he has been properly appointed and has authority over this matter.

Brower also takes exception to the Relevant Procedural History in that it inaccurately and incorrectly suggests that the time expired between the alleged incident of August 18, 2016, and the currently scheduled hearing was/is the result of his actions. That is not the case.

The delay that has resulted in Brower’s exclusion from Indiana racing and his ability to earn a living was/is the result of the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff’s improper seeking and entry of a default judgment after Brower had timely filed an Answer denying the material allegations set forth in the Administrative Complaint. This resulted in Brower incurring not only exclusion from Indiana racing (and because of reciprocity, racing in other jurisdictions) but considerable expense in filing and pursuing a successful Verified Petition for Judicial Review. For almost “two years”, as stated in the Recommended Order that is the subject of these exceptions, and specifically on page three (3) at line two (2),

Brower has sought a hearing on the merits to be conducted by an impartial and fair administrative law judge. His efforts, thus far, are continuing and ongoing.

Brower further takes exception with the relevant procedural history that suggests, incorrectly, that there are not “unusual circumstances” that meet the requirements of a stay. Certainly, there are. Brower has pending a Verified Petition for Judicial Review to remove the very administrative law judge that recommended, incorrectly and improperly, his default and issued a career-ending penalty, that having been fifteen (15) years and a \$40,000 fine, without any testimony or evidence.

It is further an “unusual circumstance” that this ALJ recommended Brower be defaulted when, in the history of Indiana recorded case law, civil and administrative, no party defendant/respondent/licensee has been defaulted when he/she/or it timely filed a responsive pleading. Additionally, it is unusual that an ALJ not properly appointed, continues to sit in judgment and make rulings when there is pending a motion to disqualify him and said motion is pending before an Indiana trial court in the form of a Verified Petition for Judicial Review. It is not only unusual, it is improper not to stay the proceedings until there is a determination of such a petition.

Brower further takes exception to this ALJ’s position/opinion in the Relevant Procedural History that implies Brower’s delay of thirty-five (35) days in filing a motion to disqualify delayed the process. It did not. In fact, the issue of the ALJ’s disqualification was not a proper issue for review or discussion during the November 29, 2017, Pre-Hearing Conference. Even assuming, arguendo, that Brower immediately filed his Motion to Disqualify Administrative Law Judge on the date of that hearing, November 29, 2017, there would not have been adequate time for the IHRC Staff to respond, Brower to reply, the ALJ to issue a Recommended Order, Brower to file his Exceptions and request for review, the IHRC to issue Notice of Opportunity to Present Briefs, and Brower and the IHRC Staff to prepare and file briefs, all in advance of a Commission meeting that occurred one (1) week following the Prehearing Conference of November 29, 2017.¹ Therefore, the ALJ’s opinion that Brower’s January 4, 2018, filing of his Motion to Disqualify Administrative Law Judge somehow delayed the proceedings, is not only incorrect, it is further evidence of this ALJ’s bias and prejudice towards Bobby Brower and further evidence that this ALJ should be disqualified.

Brower further takes exception to the ALJ’s Relevant Procedural History and specifically the ALJ’s statement: “...a review of the Minutes of the IHRC December 6, 2017 meeting, as posted on its website, indicates that no objection to ALJ Pylitt continuing to serve as the ALJ was raised by Brower during that meeting...” This statement offered, apparently, to suggest waiver, is misleading and further evidence of the continued and ongoing prejudice and bias shown by this ALJ as to Respondent, Brower. This is because of the following:

- (1) This assumes, incorrectly, that Respondent, Brower, and/or his counsel were permitted to address the IHRC during its December 6, 2017, meeting. That is not the

¹ The December 6, 2017, meeting of the Indiana Horse Racing Commission was the most recent and last meeting held by the IHRC as of this date. Further, as of this date, the IHRC has not yet scheduled a meeting for or in 2018.

case. In fact, there is no opportunity for a Respondent to discuss aspects of his or her pending matter that is not an agenda matter. Procedurally, if the item is not on the agenda, it may not be addressed.

(2) As set forth, *supra*, even had Brower filed a motion to disqualify ALJ Pylitt on November 29, 2017, immediately following the Pre-Hearing Conference, there would not have been adequate time to place the item on the agenda for the December 6, 2017, meeting of the IHRC.

(3) A review of I.C. 4-21.5-3-9(d) reflects that the initial review and determination does not reside with the ultimate authority but with the ALJ. Therefore, I.C. 4-21.5-3-9(d), would preclude Brower or any other licensee/respondent from filing a motion to disqualify an ALJ directly with the Indiana Horse Racing Commission. The same above argument applies to and is reflective of the bias and prejudice Brower has experienced relative to the review and determination of his Motion to Stay Proceedings.

Brower agrees that ALJ Pylitt recommended that he (ALJ Pylitt) not be disqualified. Brower also agrees that he (Brower) filed his written exceptions in accordance with ALJ Pylitt's Order of January 29, 2018, on February 11, 2018.

Brower, however, takes exception to the ALJ's incorrect statement that: "...it does not appear that a Petition for Review of ruling on Disqualification was filed in a timely manner, and the ALJ's Recommended Order recommending the denial of Brower's Motion to Disqualify remains pending before the IHRC..." That statement is incorrect, inaccurate, and misstates the record. Further, this ALJ ignores and omits, including in the Relevant Procedural History, his own Order of January 29, 2018, that allows Brower **fifteen (15) days** to file his exceptions. A true and exact copy of ALJ Pylitt's Order of January 29, 2018, is attached hereto, made a part hereof, and marked as Exhibit "B." Brower takes exception in this regard for the following specific reasons, all of which evidence the existing and ongoing prejudice and bias this ALJ has demonstrated toward this licensee:

(1) On January 29, 2018, ALJ Pylitt issued an Order that specifically states: **"...either party may petition the Indiana Horse Racing Commission as the ultimate authority, in writing, for review of this Recommended Order within 15 days after notice of the ruling is served, or by no later than February 13, 2018...."** See Exhibit "B."

(2) The time allowed Brower to file his exceptions is not "recommended" rather it is ordered. As such, Brower had fifteen (15) days from January 29, 2018, to file his written exceptions to the Findings of Fact, Conclusions of Law, and Recommended Order Denying Bobby Brower's Motion to Disqualify Bernard Pylitt as Administrative Law Judge of January 29, 2018. Brower timely did so on February 11, 2018. As such, the ALJ's suggestion that Brower's filing was/is not timely is incorrect, inaccurate, and misstates the record.

(3) I.C. 4-21.5-3-9(d) allows a Respondent to file written exceptions within ten (10) days. However, ALJ Pylitt, by way of his Order of January 29, 2018, specifically ordered that Brower have: "...fifteen (15) days after notice of the ruling is served, or by no later than February 13, 2018...." See Exhibit "B." No request for a Nunc Pro Tunc Order has ever been made by the IHRC Staff and, to date, the IHRC Staff has not asserted that Brower's response was not/is not timely. To the contrary, this suggestion is made by the very ALJ that Mr. Brower has moved to have disqualified. His suggestion crosses the line from that of an independent trier of fact to an advocate and is inappropriate in addition to being inaccurate.

(4) Further, I.C. 4-21.5-3-3(c)(2) states: "An order is effective when it is issued as a final order under this chapter, except to the extent that: ... (2) a later date is set by an agency in its order...." Therefore, even assuming, arguendo, that Brower should have had ten (10) days, his filing was timely because he is justified in relying upon an Order by the ALJ giving him fifteen (15) days and because of the rules/regulations set forth in I.C. 4-21.5-3-3.

(5) Additionally, it is the long-settled practice in this state that parties and counsel are entitled to rely on orders issued by judges.

(6) Further, Brower takes exception to this ALJ's reference to an Order/Ruling in the matter involving Dr. Ross Russell. The same is/are irrelevant relative to this ALJ's Order of January 29, 2018.

(7) Additionally, ALJ Pylitt's omission from the Relevant Procedural History of his own Order allowing Brower fifteen (15) days to file his written exceptions to the Findings of Fact, Conclusions of Law, and Recommended Order Denying Bobby Brower's Motion to Disqualify Bernard Pylitt as Administrative Law Judge of January 29, 2018 is both significant and serious. It is so because the Order allows Brower fifteen (15) days to file his exceptions and because Brower timely filed the same. For this ALJ to issue an Order allowing the Respondent fifteen (15) days to so respond and then omit, ignore, and exclude that very Order, thereby suggesting a different timeline, is further example and evidence of his bias and prejudice against Brower and reason that he should be disqualified from serving as ALJ in this matter.

(8) Brower further takes exception to this statement for the reason that I.C. 4-21.5-3-9(d) clearly states that should the ultimate authority not act on a respondent's/licensee's petition to review a ruling on a motion to disqualify within thirty (30) days, then the respondent's/licensee's petition to review a ruling on a motion to disqualify is ripe for judicial review. Respondent, Brower, has timely filed his Verified Petition for Judicial Review, having done so on March 19, 2018. Brower's Objections to ALJ Pylitt's Findings of Fact, Conclusions of Law and Recommended Order Denying His Motion to Disqualify Administrative Law Judge does not "remain pending before the IHRC" as incorrectly stated by the ALJ in his Recommended Order. In fact, it is pending before the Madison Circuit Court 6. A true and exact copy of Brower's timely filed

Verified Petition for Judicial Review and Verified Motion for Stay are attached hereto, made a part hereof, and marked as Exhibits “C” and “D.”

II. Summary of Brower’s Argument

Brower further takes exception with ALJ Pylitt’s incorrect position that he has: “...failed to offer any explanation or reason how or why he would be prejudiced....” A review of the record of proceedings in Mr. Brower’s case, including the improper default judgment recommended by this ALJ that resulted in his improper exclusion from Indiana racing for an entire season, and Mr. Brower’s exceptions to the Relevant Procedural History set forth, *supra*, offer a multitude of explanations and reasons why he has been and continues to be the subject of bias and prejudice by this ALJ, explanation and reason why this ALJ should be disqualified, and explanation and reason why Mr. Brower’s Motion for Stay of Proceedings, pending a decision by the ultimate authority on his motion to disqualify this ALJ, should be granted.

Respondent, Brower, further takes exception to ALJ Pylitt’s “summary” of his argument for the reason that Brower’s Motion to Continue Hearing does provide for and set forth an unusual circumstance. That unusual circumstance is Brower’s pending motion to disqualify the very administrative law judge that has denied the motions he has filed, to date, and that has incorrectly and improperly recommended he be defaulted after having timely filed a responsive pleading and that further recommended a career-ending penalty be imposed that consisted of a fifteen (15) year suspension and a \$40,000 fine absent any testimony and/or any evidence. All of that is unusual—very unusual. It also constitutes meritorious grounds for the continuance sought by Brower that has been denied and evidences further and additional evidence of bias and prejudice against Respondent, Brower.

IV. IHRC Staff’s Response and Opposition

Brower agrees that this section of the ALJ’s Recommended Order provides a summary of the Staff’s response. Brower disagrees with and takes exception with the Staff’s position.

V. Brower’s Reply to IHRC Staff’s Opposition to Second Motion to Stay

Brower takes exception with the ALJ’s statement that his timely filed Verified Petition for Judicial Review and Petition for Stay that is pending before the Madison Circuit Court 6 (see Exhibits C and D): does not render moot Brower’s Second Motion to Stay.”

Pursuant to I.C. 4-21.5-3-9(d), the IHRC failed or refused to timely rule on Brower’s Objections to Findings of Fact, Conclusions of Law and Recommended Order Denying His Motion to Disqualify Administrative Law Judge resulting in Brower’s Motion to Disqualify Administrative Law Judge being ripe for judicial review. The timely filing of Brower’s Verified Petition for Judicial Review places jurisdiction with the Indiana trial court. As such, Brower’s Second Motion for Stay is moot for the reason that the ALJ is without jurisdiction or authority to rule on the same.

Brower also takes exception with ALJ Pylitt's statement and suggestion that absent a ruling by the trial court, he does have jurisdiction and authority to rule on the Motion to Stay and Motion to Continue Hearing. ALJ Pylitt does not.

VI. Relevant IHRC Regulation Regarding Granting Stay

Brower agrees that 71 IAC 10-2-10(a) (not 710 IAC 10-2-10(a)) addresses a licensee's right to pursue a stay of proceedings. Further, said section/regulation speaks for itself.

VII. Recommended Order Denying Brower's Motion to Stay

Brower takes exception with the ALJ's statement that he (Brower) has offered no factual basis which mandates his (Pylitt) disqualification. In fact, Brower has done so. A review of the record in this case, including the Honorable Mark Dudley's Order of July 28, 2017, (See Exhibit "A") as well as the arguments and bases set forth herein, presents both evidence and bases for a stay of these proceedings until such time as the trial court rules on Brower's pending Verified Petition for Judicial Review.

Brower further takes exception with ALJ Pylitt's outrageous and incorrect statement that he: "...has not been disciplined..." Brower, indeed, has been disciplined. That discipline includes exclusion from Indiana racing and all other racing programs from March 13, 2017, until the Indiana trial court ruled that ALJ Pylitt and the IHRC incorrectly recommended/defaulted Brower and that Brower is entitled to a hearing on the merits. Further, 71 IAC 10-2-10(a) (incorrectly cited in the Recommended Order as 710 IAC 10-2-10(a)) does not limit a licensee's right to stay as suggested by this ALJ.

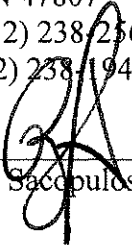
VIII. Order Denying Motion to Continue April 24, 2018 Hearing

As this is an Order, as opposed to a Recommended Order, Respondent, Brower, offers no exception but does respectfully disagree with the same.

WHEREFORE, Respondent, Bobby Brower, having reserved his right to contest authority and jurisdiction based on his pending Verified Petition for Judicial Review to disqualify ALJ Pylitt, respectfully prays the Indiana Horse Racing Commission reject the Recommended Order, that the Indiana Horse Racing Commission enter an Order staying all proceedings relative to Mr. Brower until such time as the Indiana trial court and specifically the Madison Circuit Court 6, rules on Respondent, Brower's, pending Verified Petition for Judicial Review and Petition for Stay, and for all other just and proper relief in the premises.

Respectfully submitted,

SACOPULOS, JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, IN 47807
Telephone: (812) 238-2565
Facsimile: (812) 238-1945


By: 
Peter J. Sacopulos, #14403-84

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by email transmission on March 29, 2018 and posted via U.S. Certified Mail, postage prepaid, on the 28th day of March, 2018:

Attorney Lea Ellingwood
General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202
lellingwood@hrc.in.gov

Bernard L. Pylitt
Administrative Law Judge
Katz Korin Cunningham PC
334 North Senate Avenue
Indianapolis, IN 46204
Bylitt@kkclegal.com


Peter J. Sacopulos



STATE OF INDIANA
COUNTY OF MADISON

SS:

2018 APR -2 P 3:15
2017 TERM

IN THE MADISON CIRCUIT COURT
DIVISION 6

BOBBY BROWER
Plaintiff

INDIANA
HORSE RACING COMM.

CAUSE NO. 48C06-1703-MI-279

VS.

INDIANA HORSE RACING COMMISSION,
INDIANA HORSE RACING COMMISSION
STAFF

Defendants

ORDER DENYING DEFENDANTS' MOTION TO DISMISS

The parties appeared in person and by counsel on June 16, 2017, for a hearing on Defendants, Indiana Horse Racing Commission and Indiana Horse Racing Commission Staff's (collectively "IHRC"), Motion to Dismiss. The parties fully briefed the issue.

The issue is whether this court has jurisdiction to hear plaintiff, Bobby Brower's ("Brower"), Petition for Judicial Review. Brower is a horse trainer licensed by the State of Indiana and subject to administrative oversight by IHRC. On November 4, 2016, the IHRC filed an administrative complaint pursuant to 71 IAC 10-3-20 against Brower alleging he mistreated a horse. Brower received the administrative complaint on November 16, 2016. 71 IAC 10-3-20 requires a licensee to request a hearing within twenty (20) days if he wishes to contest the administrative complaint. The language of 71 IAC 10-3-20(d) reads:

(d) Not later than the twentieth day after the date on which the executive director delivers or sends the administrative complaint, the person charged may make a written request for a hearing or may remit the amount of the administrative penalty to the commission. Failure to request a hearing or to remit the amount of the administrative penalty within the period prescribed by this subsection results in a waiver of a right to a hearing on the administrative penalty as well as any right to judicial review. If the person charged requests a hearing, the hearing shall be conducted in the same manner as other hearings conducted by the commission pursuant to this article.

The administrative code covering the IHRC does not provide a specific form for making a written request for a hearing.

48C06-1703-MI-000279
ODMTD
Order Denying Motion to Dismiss
1688209



Brower, through his attorney, filed an answer on November 29, 2016, pursuant to 71 IAC 10-3-21. This filing is within twenty (20) days of Brower's receipt of the administrative complaint. 71 IAC 10-3-21 is titled "Settlement Procedures". Brower followed the requirements of §21 and not §20. If the IHRC filed an administrative complaint pursuant to 71 IAC 10-3-21, then the licensee shall file an answer within twenty (20) days of service of the complaint. Following the filing of an answer, the parties can enter into a settlement agreement. If a settlement agreement is not reached, then an administrative complaint may be filed under 71 IAC 10-3-20.

The twenty (20) day window expired on December 6, 2016, and Brower filed a written request for hearing on December 7, 2016. Pursuant to the IHRC's administrative procedures, it filed a Notice of Proposed Default against Brower on December 16, 2016, because he failed to file a written request for hearing in the allotted time. Brower filed his objection to the Notice of Proposed Default on December 21, 2016. The assigned administrative law judge on January 3, 2017, recommended to the IHRC that it find Brower in default. Brower filed his objection to the administrative law judge's recommendation on January 12, 2017. The IHRC voted on March 7, 2017, and issued its final order finding Brower in default on March 14, 2017. Brower filed this case seeking judicial review of a final agency action on March 31, 2017.

I.C. 4-21.5-3-24 governs the process engaged in by the parties. The statute in full reads:

- (a) At any stage of a proceeding, if a party fails to:
- (1) satisfy the requirements of section 7(a) [IC 4-21.5-3-7(a)] of this chapter;
 - (2) file a responsive pleading required by statute or rule;
 - (3) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or
 - (4) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;

the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

- (b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed

default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 [IC 4-21.5-3-23] of this chapter to resolve any issue of fact.

I.C. 4-21.5-3-24 requires one of four triggers prior to an agency seeking a default judgment. Subsection (a)(1) covers personnel actions in the State's Civil Service System and is inapplicable here. Subsection (a)(2) authorizes an agency to seek a default when a party fails to file a responsive pleading. This is the subsection at issue in this case. Subsections (a)(3) and (a)(4) are not implicated by the facts of this case.

The IHRC defines a "pleading" as:

(a) Pleadings filed with the commission include the following:

- (1) Appeals
- (2) Applications
- (3) Answers
- (4) Complaints
- (5) Exceptions
- (6) Replies
- (7) Motions


Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

71 IAC 10-3-3. The IHRC does not define a request for a hearing. The IHRC does differentiate between an answer and a request for hearing. *Id.* It does recognize that one is a pleading and the other is not. The court's analysis can stop at this point because the IHRC's action contravenes I.C. 4-21.5-3-24(a). Brower never failed to file a "responsive pleading required by statute or rule" and as such, the IHRC cannot meet its burden that its procedures conform to the statutory mandate.

In further support of the court's conclusion are the IHRC's own rules. Even if the court was persuaded that a request for hearing is a required pleading, Brower's answer

clearly disputed the IHRC's allegations. The IHRC tells its licensees "regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it was filed." 71 IAC 10-3-3(a). While Brower's document is titled, "Answer" its substance told the IHRC that he wished to contest the proposed fine and suspension. The IHRC must follow its own rules and accord Brower's "Answer" its true status as a timely request for a hearing. The court finds that Brower timely responded to IHRC's complaint. The parties are to contact the court to set a pretrial conference date to address the remaining issues of Brower's request to stay IHRC's suspension and his request to remand the case to the IHRC.

All of which is so ordered, this 28th day of July, 2017.



The Honorable Mark Dudley, Judge
Madison Circuit Court No. 6



Copies to:

Peter Sacopulos
John Shanks
Robin Babbitt

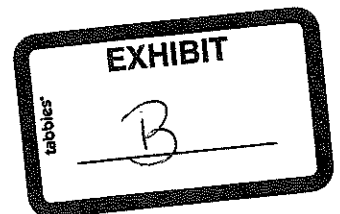
**BEFORE AN ADMINISTRATIVE LAW JUDGE
APPOINTED BY THE INDIANA HORSE RACING COMMISSION**

INDIANA HORSE RACING)	
COMMISSION STAFF,)	
)	
Petitioner,)	Administrative Complaint No. 216005
)	
v.)	
)	
BOBBY BROWER,)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER DENYING BOBBY BROWER'S
MOTION TO DISQUALIFY BERNARD PYLITT
AS ADMINISTRATIVE LAW JUDGE**

On January 4, 2018, counsel for Bobby Brower ("Brower") emailed his Motion to Disqualify Administrative Law Judge Pylitt pursuant to I.C. 4-21.5-3-10. Brower argues that ALJ Pylitt is prejudiced and bias against Brower pursuant to IC 4-21.5-3-10, was not properly appointed to hear the matter remanded by the Madison County Court, and therefore must be disqualified.

On January 17, 2018, the Commission Staff filed its Opposition to the Motion to Disqualify. The Commission Staff argues that Brower has the burden of proof but failed to allege or provide any basis in fact of law to support his allegations of bias or prejudice required by the statute mandating the disqualification of ALJ Pylitt. IHRC Staff concludes that the "law presumes that a judge is unbiased and unprejudiced in the matters which come before the judge". *Smith v. State*, 477 N. E. 2d 857, 864 (Ind. 1985).



Additionally, IHRC Staff argues that Brower failed to state how or why ALJ Pylitt showed bias or prejudice. Brower only claims that bias and prejudice are shown by the outcome in ALJ Pylitt's previous Recommended Order Granting Default Judgment.

On January 26, 2018, Brower filed his Reply to IHRC Staff's Opposition to his Motion to Disqualify ALJ Pylitt with unsupported statements that ALJ Pylitt cannot remain neutral in handling the matter given the fact that he failed to follow IHRC's Rules.

Brower correctly acknowledged in the second paragraph of his Reply that ALJ Pylitt issued an Order "recommending" that IHRC Staff's Motion for Default Judgment be granted thereby recognizing that an ALJ can only make a Recommended Order given the fact that the IHRC is the ultimate authority. Brower erroneously argues that ALJ Pylitt somehow caused Brower to be excluded from the 2017 racing season ignoring the fact that it was the IHRC that suspended Brower; not the ALJ.

Brower erroneously argues that the Madison County Circuit Judge found that "ALJ Pylitt failed or refused to follow 71 IAC 10-3-3 (a)". A careful review of Judge Dudley's Order Denying Motions to Dismiss, issued July 28, 2017, attached the Brower's original Motion to Disqualify as Exhibit "A", never once suggested that ALJ Pylitt "failed or refused to follow" any regulation or statute. Rather, Judge Dudley's Order concluded that the "IHRC must follow its own rules" with no mention of the recommendation by ALJ Pylitt.

Brower's unverified Reply concludes that he "personally feels and believes that ALJ Pylitt is biased" without any specific basis for his conclusion. Significantly, ALJ Pylitt and Brower have never met or spoke.

Brower's Reply offered no additional fact to meet his burden of showing bias or prejudice requiring disqualification.

RELEVANT PROCEDURAL HISTORY

On November 4, 2016, Administrative Complaint 216005 was issued by the Commission's Executive Director against Brower as the result of an alleged incident that allegedly occurred on August 18, 2016 involving a horse he allegedly trained named B ABland.

Bernard Pylitt was lawfully appointed to serve as the Administrative Law Judge to handle the above referenced matter on December 16, 2016 by Thomas Weatherwax, then Chair of the Indiana Horse Racing Commission.

ALJ Pylitt had limited prior involvement and simply rendered a Notice of Proposed Default on December 16, 2016, followed by a Recommended Order Granting the IHRC Staff's Motion for Default Judgment on December 30, 2016, pursuant to IC 4-21.5-3-24 (b), without any discussion about the merits of the case.

The Indiana Horse Racing Commission after hearing arguments of counsel unanimously approved the Recommended Order on March 7, 2017.

Brower filed a Petition for Judicial Review in the Madison County Circuit Court Division 6 on April 4, 2017 under Cause Number 48C06-1703-ML-279 challenging the Commission's Decision.

Indiana Horse Racing Commission and IHRC Staff filed a Motion to Dismiss in the Madison County matter which was denied on July 28, 2017. Pursuant to an Agreed Entry approved by the Court on October 17, 2017, the matter was remanded back to the Indiana Horse Racing Commission for further proceedings related to the Administrative Complaint.

On November 16, 2017, Bernard L. Pylitt, was requested by counsel for IHRC Staff to conduct a Prehearing Conference and schedule deadlines and a hearing on the Administrative

Complaint having previously been assigned on December 16, 2016 to serve as Administrative Law Judge to handle this matter.

In attempting to find a mutually agreeable date to reschedule the Prehearing Conference, Mr. Sacopulos, counsel for Brower, emailed ALJ Pylitt on November 20, 2017, with copy to counsel for the IHRC Staff, stating, in part:

It is our position that you are not the ALJ in this matter. Pursuant to the Agreed Judgment entered in the Madison Circuit Court 6 dated October 17, 2017, this matter was remanded to the IHRC for a hearing on the merits. To date, I have not received any letter of appointment from Director Smith, as required. If there is an Order appointing you as referenced in the Order of November 16, 2017, I have not been provided or served with a copy of the same. If there is such an Order, I respectfully request a copy of the same. At this point, the IHRC has not appointed an ALJ in this case.

Furthermore, please be advised that my client, Bobby Brower, should you be appointed/re-appointed, intends to file a motion to disqualify you from serving as ALJ in this matter. That motion would be filed, pursuant to I.C. 4-21.5-3-10.

In accordance with I.C. 4-21.5-3-18, and after consulting with counsel, ALJ Pylitt sent written Notice rescheduling the previously noticed Telephonic Prehearing Conference. Lea Ellingwood appeared during the Telephonic Prehearing Conference on Wednesday, November 29, 2017 at 4:00 p.m. on behalf of the IHRC Staff. Brower appeared by his counsel, Peter Sacopulos and Greg Carter.

When asked by the ALJ during the Telephonic Prehearing Conference to provide any specific reason or evidence to support his claim that the ALJ is prejudiced or biased which would require disqualification, counsel provided none. Counsel for Brower further argued that ALJ Pylitt does not have jurisdiction to hear this matter since the Agreed Entry in the Madison County judicial review matter resulted in the matter being remanded to the Indiana Horse Racing Commission as the ultimate authority, and they have not assigned ALJ Pylitt since the remand as required by I.C. 4-21.5-5-15.

Counsel for IHRC Staff argued that ALJ Pylitt has jurisdiction to hear this matter since he was duly authorized and lawfully appointed to serve as ALJ on December 16, 2016 by the Commission's Chair. Counsel further argued that said appointment has not been revoked or modified in any fashion, including but not limited to the referenced Agreed Entry in the Madison County Circuit Court case.

ALJ Pylitt's only previous involvement was to render a Notice of Proposed Default on December 16, 2016, followed by a Recommended Order Granting the IHRC Staff's Motion for Default Judgment on December 30, 2016, based upon IC 4-21.5-3-24 (b), without any mention about the merits of the case. ALJ Pylitt had no involvement or participation at any stage during in the Madison County Circuit Court. ALJ Pylitt and Brower have never met or spoken.

Given ALJ Pylitt's limited involvement, nothing in the record, nor any prior ruling by ALJ Pylitt demonstrated any prejudice or bias against Brower, nor has ALJ Pylitt indicated any interest in the outcome of the proceeding requiring ALJ Pylitt to be disqualified pursuant to IC 4-21.5.3-10.

RELEVANT STATUTES

Indiana Code 4-21.5-3-10 (a) sets forth the applicable standard for disqualification of an ALJ in an administrative proceeding:

Sec. 10. (a) Any individual serving or designated to serve alone or with others as an administrative law judge is subject to disqualification for:

- (1) bias, prejudice, or interest in the outcome of the proceeding;
- (2) ...
- (3) ...
- (4) any cause for which a judge of a court may be disqualified.

Indiana Code 4-21.5-3-13 addresses the involvement of an administrative law judge in the pre-adjudicative stage, and provides in part:

- (a) ...
- (b) ...
- (c) ...
- (d) An individual may serve as an administrative law judge ... at successive stages of the same proceeding, unless a party demonstrates grounds for disqualification under section 10 of this chapter.

**REASONS FOR DETERMINATION AND RECOMMENDED ORDER
DENYING BROWER'S MOTION TO DISQUALIFY ALJ PYLITT**

Unlike Indiana Trial Rule 76, which allows for an automatic change of judge upon the timely filing of a motion requesting a change, an ALJ cannot be automatically removed. The party seeking disqualification must demonstrate that grounds exist under IC 4-21.5-3-10 (a) requiring disqualification. Brower has the burden of proof to demonstrate that ALJ Pylitt must be disqualified. There is simply no evidence offered by Brower that supports his belief that there is any bias or prejudice on the part of ALJ Pylitt against Brower.

FINDINGS OF FACT

From the information and pleadings submitted by Brower, and in the record, the ALJ finds the following facts:

1. Administrative Complaint 216005 was issued against Brower on November 4, 2016 as a result of an alleged incident involving a horse named B ABland that allegedly occurred on August 18, 2016.
2. On December 16, 2016 ALJ Pylitt was lawfully appointed by then Chairman Weatherwax to serve as ALJ handling the Administrative Complaint against Brower.

3. ALJ Pylitt rendered a Notice of Proposed Default on December 16, 2016, followed by a Recommended Order Granting the IHRC Staff's Motion for Default Judgment on December 30, 2016, pursuant to IC 4-21.5-3-24 (b), without any mention about the merits of the case.
4. The Indiana Horse Racing Commission unanimously approved the Recommended Order of ALJ Pylitt on March 7, 2017.
5. Brower filed a Petition for Judicial Review in the Madison County Circuit Court Division 6 on April 4, 2017 under Cause Number 48C06-1703-ML-279 challenging the decision of the Indiana Horse Racing Commission.
6. Indiana Horse Racing Commission and IHRC Staff filed a Motion to Dismiss which were denied on July 28, 2017.
7. Brower erroneously argues in paragraph 28 of his Motion to Disqualify that Madison County Judge Mark Dudley's Order Denying Defendants Motions to Dismiss, attached to his Motion as Exhibit A, found that ALJ Pylitt "incorrectly and inappropriately failed to follow 'the agency's own rules' ".
8. Nowhere in the July 28 Order does Judge Dudley find that ALJ Pylitt "incorrectly and inappropriately failed to follow 'the agency's own rules' ". Judge Dudley concluded that the IHRC must follow its own rules.
9. Pursuant to an Agreed Entry approved by the Court on October 17, 2017, the matter was remanded back to the Indiana Horse Racing Commission for further proceedings related to the Administrative Complaint.
10. ALJ Pylitt had no involvement or participation in the Madison County Circuit Court matter.
11. On November 16, 2017, ALJ Pylitt was requested by counsel for the IHRC Staff to conduct a Prehearing Conference to establish deadlines and schedule a hearing on the merits of this Administrative Complaint.
12. ALJ Pylitt conducted a Telephonic Prehearing Conference on November 29, 2017 and after consulting with counsel, and their calendars, scheduled discovery deadlines as well as a two-day hearing beginning on April 24, 2018.
13. Any Finding of Fact more properly a Conclusion of Law shall be treated as such.

CONCLUSIONS OF LAW

1. ALJ Pylitt was lawfully and properly appointed by the Chair of the Indiana Horse Racing Commission to serve as the Administrative Law Judge to handle Brower's Administrative Complaint.

2. That appointment has not been modified, withdrawn, or revoked.

3. ALJ Pylitt is not the ultimate authority over this matter.

4. Brower's Motion to Disqualify ALJ Pylitt must be evaluated pursuant to I.C. 4-21.5-3-10.

5. Brower has the burden of proof to demonstrate prejudice and/or bias to support his request that the ALJ be disqualified.

6. Brower failed to present any evidence to support his allegation that ALJ Pylitt is prejudiced or biased against Brower, or has any interest in the outcome of the proceeding as required by I.C. 4-21.5-3-10.

7. I.C. 4-21.5-3-13(c) provides that the disqualification of an administrative law judge is not required on the grounds that an administrative law judge made a determination of probable cause or any other preliminary determination in a proceeding.

8. I.C. 4-21.5-3-13 (d) authorizes an administrative law judge to preside at successive stages of the same proceeding.

9. Any Conclusion of Law more properly a Finding of Fact shall be treated as such.

ULTIMATE FINDING OF FACT

Nothing in the record demonstrates any prejudice or bias on the part of ALJ Pylitt against Brower, or any interest in the outcome of the proceeding against Brower requiring that he be

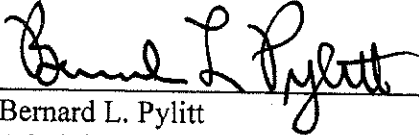
disqualified pursuant to I.C. 4-21.5.3-10. Accordingly, Brower has failed to meet his burden of proof.

RECOMMENDED ORDER

Therefore, ALJ Pylitt recommends that Brower's Motion to Disqualify ALJ Pylitt from presiding over the Administrative Complaint pursuant to I.C. 4-21.5-3-10 be DENIED.

Pursuant to I.C. 4-21.5-3-29(d), either party may petition the Indiana Horse Racing Commission as the ultimate authority, in writing, for review of this Recommended Order within 15 days after notice of the ruling is served, or by no later than February 13, 2018.

IT IS SO RECOMMENDED THIS 29th DAY OF JANUARY 2018.


Bernard L. Pylitt
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served via first-class United States mail, postage prepaid, and via email this 29th day of January, 2018 to the following:

Peter J. Sacopulos
Sacopulos, Johnson & Sacopulos
676 Ohio Street
Terre Haute, IN 47807
Email: Pete_sacopulos@sacopulos.com

Lea Ellingwood
Indiana Horse Racing Commission Staff
1302 North Meridian, Suite 175
Indianapolis, IN 46202
Email: lellingwood@hrc.in.gov


Bernard L. Pylitt

Katz Korin Cunningham PC
334 North Senate Avenue
Indianapolis, IN 46204
Office: (317)464-1100 Fax: (317)464-1111
Email: bpylitt@kkclegal.com

that led to the failure of the Indiana Horse Racing Commission to comply with I.C. 4-21.5-3-9(d), were/are:

- a. Bobby Brower, 7281 S County Road 400 W, Muncie, IN 47302, and
- b. Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff, 1302 N. Meridian Street, Suite 175, Indianapolis, IN 46202.

6. Pursuant to Indiana Code 4-21.5-5 *et seq.*, Petitioner, Bobby Brower, is entitled to the judicial review sought. Petitioner has standing to obtain judicial review pursuant to I.C. 4-21.5-5 *et seq.* This is because he petitioned the Indiana Horse Racing Commission on February 12, 2018, for review of the ruling issued by Administrative Law Judge Pylitt on January 29, 2018, and the Indiana Horse Racing Commission has failed to review that ruling within the thirty (30) day time period prescribed in I.C. 4-21.5-3-9(d).

7. Petitioner has suffered immediate and irreparable harm due to the Indiana Horse Racing Commission's failure to review ALJ Pylitt's Ruling of January 29, 2018 and no adequate remedy exists at law.

8. Petitioner has also, in compliance with I.C. 4-21.5-3-13, timely requested a certified copy of the Administrative/Agency record for judicial review. A true and exact copy of counsel for Brower's correspondence, dated March 15, 2018, to Lea Ellingwood, General Counsel of the Indiana Horse Racing Commission requesting the same, is attached hereto, made a part hereof, and marked as Exhibit "A."

9. The requested certified copy of the administrative record has, as of this date, not been provided. Petitioner will, upon receipt, timely file said certified administrative record. Petitioner has also timely filed this Verified Petition for Judicial Review within thirty (30) days of the deadline for the Indiana Horse Racing Commission to review ALJ Pylitt's Ruling of January 29, 2018.

10. The original action brought against the Petitioner by the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff, is in the form of an Administrative Complaint, which was filed November 14, 2016, a true and exact copy of which is attached hereto, made a part hereof and marked as Exhibit "B."

11. On January 5, 2018, Petitioner/Respondent, Bobby Brower, filed a Motion to Disqualify Administrative Law Judge pursuant to I.C. 4-21.5-3-10, a true and exact copy of which is attached hereto, made a part hereof, and marked as Exhibit "C."

12. On January 5, 2018, ALJ Pylitt issued email correspondence, which he indicated would serve as his Order, allowing the Indiana Horse Racing Commission Staff, to and including January 19, 2018, to reply to Brower's Motion to Disqualify Administrative Law Judge and, thereafter, Brower, to and including January 26, 2018, to reply to the IHRC Staff's response. A true and exact copy of that email/order is attached hereto, made a part hereof, and marked as Exhibit "D."

13. On January 17, 2018, the IHRC Staff filed its Opposition to Respondent, Bobby Brower's, Motion to Disqualify Administrative Law Judge. A true and exact copy of that opposition is attached hereto, made a part hereof, and marked as Exhibit "E."

14. On January 26, 2018, Brower timely filed his Reply to the IHRC's Opposition to his Motion to Disqualify Administrative Law Judge. A true and exact copy of that Reply is attached hereto, made a part hereof, and marked as Exhibit "F."

15. On January 29, 2018, ALJ Pylitt issued his Findings of Fact, Conclusions of Law, and Recommended Order Denying Bobby Brower's Motion to Disqualify Bernard Pylitt as Administrative Law Judge wherein he recommended denying that he be disqualified as ALJ in this matter and allowing Bobby Brower fifteen (15) days in which to petition the Indiana Horse Racing Commission for review of the Recommended Order. A true and exact copy of ALJ Pylitt's Recommended Order is attached hereto, made a part hereof, and marked as Exhibit "G".

16. On February 12, 2018, Petitioner, Bobby Brower, filed his Objections to Findings of Fact, Conclusions of Law, and Recommended Order Denying His Motion to Disqualify Administrative Law Judge. A true and exact copy of his Objections is attached hereto, made a part hereof, and marked as Exhibit "H."

17. Pursuant to I.C. 4-21.5-3-9(d), which states, in pertinent part:

"...If the administrative law judge ruling on the disqualification issue is not the ultimate authority for the agency, the party petitioning for disqualification may petition the ultimate authority for review of the ruling...the ultimate authority shall conduct proceedings...to review the petition and affirm, modify, or dissolve the ruling within thirty (30) days after the petition is filed. A determination by the ultimate authority under this subsection is a final order subject to judicial review under IC 4-21.5-5...."

Bobby Brower's, Objections to Findings of Fact, Conclusions of Law, and Recommended Order Denying His Motion to Disqualify Administrative Law Judge, is ripe and subject to judicial review.

18. The IHRC has not ruled on Bobby Brower's, Objections to Findings of Fact, Conclusions of Law, and Recommended Order Denying His Motion to Disqualify Administrative Law Judge filed of record on February 12, 2018, and more than thirty (30) days have passed. Pursuant to I.C. 4-21.5-3-9(d), Petitioner, Bobby Brower, now petitions for judicial review of his Objections to Findings of Fact, Conclusions of Law, and Recommended Order Denying His Motion to Disqualify Administrative Law Judge.

19. Based on the above facts and supporting arguments and authority, the Petitioner is entitled to judicial review and has shown he has suffered immediate and irreparable harm and that no adequate remedy exists at law.


20. Petitioner, Bobby Brower, has suffered and continues to suffer immediate and irreparable harm. He has been precluded from earning a living as a Standardbred trainer in Indiana by the Respondent and has further suffered such harm by way of the ALJ's incorrect and erroneous Recommended Order of Default Judgment against him which said Recommended Order was adopted/approved by the Indiana Horse Racing Commission despite Brower having timely filed an Answer. Brower remains unable to secure a license to participate in Indiana Standardbred racing and, as such, has and continues to suffer immediate, ongoing and irreparable harm.

21. By failing to rule on an appeal of a meritorious Motion to Disqualify, the Indiana Horse Racing Commission has forced Brower to have his case proceed with a biased judge which is in derogation of his due process rights and in derogation of the AOPA and Indiana statutory law.

WHEREFORE, the Petitioner, Bobby Brower, prays that this Court grant his Petition for Judicial Review, that this Court enter an Order disqualifying Leonard Pylitt as Administrative Law Judge and remanding this matter to the Indiana Horse Racing Commission for hearing before a replacement/alternative Administrative Law Judge to be appointed by the Indiana Horse Racing Commission and for all other just and proper relief in the premises.

VERIFICATION

I affirm under the penalty of perjury that the foregoing allegations are true and accurate to the best of my knowledge and belief.


 Bobby Brower

Respectfully Submitted,

SACOPULOS, JOHNSON & SACOPULOS
 676 Ohio Street
 Terre Haute, IN 47807
 Telephone: (812) 238-2565
 Facsimile: (812) 238-1945

By: /s/ Peter J. Sacopulos
 Peter J. Sacopulos, #14403-84

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by first class U.S. Certified Mail, postage prepaid the 19th day of March, 2018:

Office of Attorney General
ATTN: Curtis Hill
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770

Indiana Horse Racing Commission
ATTN: Michael Smith, Executive Director
1302 N. Meridian Street, Suite 175
Indianapolis, IN 46202

Lea Ellingwood
General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202

Bernard Pylitt
Administrative Law Judge
KATZ KORIN CUNNINGHAM
The Emelie Building
334 North Senate Avenue
Indianapolis, IN 46204-1708

/s/ Peter J. Sacopulos
Peter J. Sacopulos

SACOPULOS, JOHNSON & SACOPULOS
LAWYERS
876 OHIO STREET
TERRE HAUTE, INDIANA 47807

GUS SACOPULOS
R. STEVEN JOHNSON
PETER J. SACOPULOS
MICHAEL J. SACOPULOS
OF COUNSEL
PETER G. YELKOVAC
GREGORY S. CARTER

TELEPHONE
(812) 238-2565
FACSIMILE
(812) 238-1945

March 15, 2018

Delivered via Certified Mail

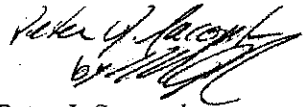
Lea Ellingwood
General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202

RE: IHRC v. Bobby Brower
Administrative Complaint No. 216005

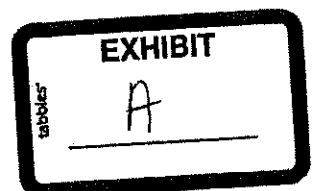
Dear Lea:

As you are aware, I am legal counsel for Bobby Brower. My client, pursuant to 71 IAC 4-21.5-5-2, hereby notifies the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff of his intent to seek judicial review of the Indiana Horse Racing Commission's failure to rule on his Objections to Findings of Fact, Conclusions of Law, and Recommended Order Denying His Motion to Disqualify Administrative Law Judge within the thirty (30) days given by I.C. 4-21.5-3-9(d), and respectfully requests the Indiana Horse Racing Commission provide a certified copy of the administrative proceedings/record.

Yours sincerely,


Peter J. Sacopulos

PJS:alm



INDIANA HORSE RACING COMMISSION
ADMINISTRATIVE COMPLAINT

RE: Bobby Brower
7281 S 400 W
Muncie, IN 47302

ADMINISTRATIVE COMPLAINT NO.:

216005

2016 NOV 14 A 10:08

AUTHORITY

71 IAC 10-3-20 provides that the Commission has delegated to the Executive Director the authority to prepare and issue reports recommending the assessment of an administrative penalty, including fines and other proposed sanctions. Specifically, 71 IAC 10-3-20(b) states:

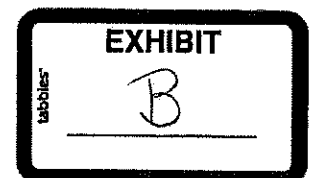
The commission delegates to the executive director the authority to prepare and issue administrative complaints pursuant to the Act. If, after examination of a possible violation and the facts relating to that possible violation, the executive director determines that a violation has occurred, the executive director shall issue an administrative complaint that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed, the amount to be assessed, and any other proposed sanction, including suspension, or revocation. Furthermore, when the judges have issued a ruling that a violation has occurred, the executive director may issue an administrative complaint identifying the underlying ruling that serves as the basis for the administrative complaint, the fact that an administrative penalty is to be imposed, the additional amount to be assessed, and any other proposed sanction including additional suspension or revocation. The amount of the penalty may not exceed five thousand dollars (\$5,000) for each violation. Each day or occurrence that a violation continues may be considered a separate violation. In determining the administrative penalty, the executive director shall consider the seriousness of the violation.

NOTICE: The person who is the subject of this Administrative Complaint has twenty (20) days after the issuance of this report to make a written request for a hearing pursuant to 71 IAC 10-3-20(d). The remainder of that section outlines how that report is to be served and how a person against whom penalties and other sanctions are assessed may contest the recommendation of the Executive Director. See generally, 71 IAC 10 *et seq.*, and I.C. 4-21.5-3 *et seq.*

Additionally, if the person who is the subject of this Administrative Complaint, no later than ten (10) days after the issuance of this Administrative Complaint, delivers or has delivered to the Executive Director of the Commission materials that should be considered in mitigation of the proposed penalty, then the Executive Director may, in his discretion, either withdraw the Administrative Complaint issued, modify or amend it as he sees fit, or allow the report to stand as originally issued. In the absence of specific notice to the contrary, the person who is the subject of this Administrative Complaint is to assume that the report will stand as originally issued.

REVIEW OF INFORMATION

1. The Indiana Horse Racing Commission Pari-Mutuel Rules for Standardbred Racing (71 IAC, *et seq.*) and any relevant provisions of the Indiana Pari-Mutuel Wagering on Horse Racing Act found at IC 4-31-1, *et seq.*



2. The 2016 Indiana Horse Racing Commission ("IHRC") owner/trainer/driver license application form signed and submitted by Bobby Brower on March 15, 2016. (Attached and incorporated as Exhibit 1).
3. The Association of Racing Commissioners International ("ARCI") Comprehensive Ruling Report of Bobby Brower and United States Trotting Association ("USTA") Pathway All Ruling Report of Bobby Brower. (Attached and incorporated as Exhibit 2).
4. Bobby Brower's 2016 probationary license. (Attached and incorporated as Exhibit 3).

FINDINGS OF FACT

1. Bobby Brower was duly licensed in 2016 by the IHRC as a Standardbred owner/trainer/driver and was at all times relevant subject to the jurisdiction of the IHRC.
2. As a licensee, Brower is subject to IHRC rules and regulations.
3. As a licensee, Brower is required to be knowledgeable of all IHRC rules and regulations.
4. The IHRC may impose sanctions for the reasons enumerated at 71 IAC 5-1-14(b) and IC 4-31-6-6. Of relevance to Brower are the following:
 - a. 71 IAC 5-1-14(b)(4), IC 4-31-6-6(b)(4): "The person has violated or attempted to violate a provision of this article, these rules, or a law or rule with respect to horse racing in a jurisdiction."
 - b. 71 IAC 5-1-14(b)(9), IC 4-31-6-6(b)(9): "The person has abandoned, mistreated, abused, neglected, or engaged in an act of cruelty to a horse."
 - c. 71 IAC 5-1-14(b)(10), IC 4-31-6-6(b)(10): "The person has engaged in conduct that is against the best interest of horse racing or compromises the integrity of operations at a track or satellite facility."
 - d. 71 IAC 5-1-14(b)(16), IC 4-31-6-6(b)(15): "The person has interfered with or obstructed a member of the commission, a commission employee, or a racing official while performing official dutie[s]."
5. Brower violated 71 IAC 5-1-14(b)(9) and IC 4-31-6-6(b)(9) by mistreating, abusing and engaging in acts of cruelty toward the horse "B ABland" when he trained and beat "B ABland" to the point the horse suffered injury and shortly thereafter collapsed from exhaustion on or about August 18, 2016.
6. Brower violated 71 IAC 5-1-14(b)(9) and IC 4-31-6-6(b)(9) by mistreating, abusing and engaging in acts of cruelty toward the horse "B ABland" when he whipped, kicked, and beat "B ABland" after "B ABland" collapsed on or about August 18, 2016.
7. Brower violated 71 IAC 5-1-14(b)(10) and IC 4-31-6-6(b)(10) by engaging in conduct that is against the best interest of horse racing when he trained and beat "B ABland" to

the point the horse suffered injury and shortly thereafter collapsed from exhaustion on or about August 18, 2016.

8. Brower violated 71 IAC 5-1-14(b)(10) and IC 4-31-6-6(b)(10) by engaging in conduct that is against the best interest of horse racing when he whipped, kicked, and beat "B ABland" after "B ABland" collapsed on or about August 18, 2016.
9. Brower violated 71 IAC 5-1-14(b)(16) and IC 4-31-6-6(b)(15) by interfering with or obstructing a commission employee while performing his official duties when he or his agent directly or indirectly threatened potential witnesses against him in this matter.
10. Brower violated 71 IAC 5-3-3(a)(5), which charges licensed trainers with the responsibility of the proper identity, custody, care, health, condition, and safety of horses in his or her charge when he failed to care for the health, condition and safety of the horse "B ABland".
11. Brower violated 71 IAC 5-3-3(a)(27), which requires licensed trainers to guard and protect all horses in his or her care when he beat and abused "B ABland" and caused injury to said horse.
12. Brower violated 71 IAC 5-3-3(a)(18), which requires he ensure the fitness of a horse to perform creditably when he beat and abused "B ABland" to and caused injury to said horse.

Commission staff reserves its right to amend this complaint as its investigation continues.

RECOMMENDED PENALTY

WHEREAS Commission regulation 71 IAC 2-11-1 specifically states:

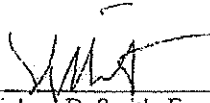
"In assessing penalties, the Commission shall consider the severity of the violation . . .";

WHEREAS the Findings of Fact clearly demonstrate that additional penalties should be imposed; and

WHEREAS the Findings of Fact clearly demonstrative that Brower has engaged in conduct that is not in the best interest of racing in Indiana *and* compromises the integrity of operations at a race track;

IT IS HEREBY RECOMMENDED that pursuant to the provisions of 71 IAC 10-3-20, Brower:

- a. Be suspended and remain ineligible for licensure for a period of fifteen (15) years; and
- b. Be fined the sum of \$40,000.



Michael D. Smith, Executive Director
Indiana Horse Racing Commission

Date: 11-4-16

cc: IHRC Judges
Terry Richwine

INDIANA HORSE RACING COMMISSION
1302 North Meridian Street, Suite 172
Indianapolis, IN 46202
Tel: 317-233-3119
Fax: 317-233-4470



State Form 46651 (R21/2-15)
Approved by State Board of Accounts, 2015

INDIANA HORSE RACING COMMISSION

Trainer License Application

For use if you are seeking a Trainer License.
Please check appropriate boxes below.

OFFICE USE ONLY

License Year:	2016
Now or Renewal:	Renewal
Date:	3/15/16
Total Fees:	60
Payment:	CK 708
Clerk:	KO P.P. ESO
Reviewed by:	
IHRC License Number:	970363

License Type & Breed			
<input checked="" type="checkbox"/> Trainer (\$35)	<input checked="" type="checkbox"/> Standardbred		
<input checked="" type="checkbox"/> Trainer/Driver (\$60)	<input type="checkbox"/> Thoroughbred		
<input checked="" type="checkbox"/> Owner/Trainer (\$60)	<input type="checkbox"/> Quarter Horse		
<input checked="" type="checkbox"/> Owner/Trainer/Driver (\$60)			

Failing to completely respond to all application questions may result in a pending or rejected application. If question not relevant, please indicate N/A.

- Name of applicant: Brower Bobby Allen
Last First Middle Maiden
- Have you been known by another name? If yes, please list no
- Are you married? Yes No
(If yes, please give full name of spouse on this subject, including maiden name.)
- Permanent address: 7281 S CR 400W
Muncie IN 47302
City State/Province ZIP/Country
- Local address: _____
(Only complete this question if Permanent Address differs from Local)
- Telephone numbers: 317-908-1479
Home Number Cell Number Business Number Fax Number
- Person to be notified in case of emergency: Debbie Garland Telephone: (317) 987-3204
- Are you a U.S. Citizen? Yes No - What country are you from? _____
Immigration registration number (if applicable) A- _____
- List latest dates fingerprinted* and what states printed you: 6/15 Ohio
* Fingerprints may be necessary. Contact the Licensing Office for requirements.
- Social Security Number: _____ Gender: M Height: 5'9 Weight: 210 Color Hair: Br Color Eyes: BL Birth Date (mm/dd/yy): 8/18/62 Age: 53
Social Security Number is being requested to pursue statutory responsibilities and is voluntary.
- USTA Number: 2336m3 USTA Exp. Date (mm/dd/yy): 12-31-16

Trainer Designation: G L CD
 Driver Designation: A P

*(USTA question above pertains to Standardbred licenses only.
Please check designation to the right.)



12. Give the following information relative to your current employer. If self-employed, so indicate:

SELF

Employment Dates	Name of Employer	Address (Street, City, State, ZIP)

13. Have you been previously licensed by any other racing jurisdiction (excluding Indiana)? If yes, please, give the following information on current and most recent license(s):

	Date (month/day)	Type (occupation)	State/Province/Country	License Number
(a)	1-1-16	OTR	Ohio	4427
(b)				

14. If married, has your spouse been previously licensed by another racing jurisdiction? If yes, give the following information on his/her current and most recent license(s). If not married, please check box: Not Married

	Date (month/day)	Type (occupation)	State/Province/Country	License Number
(a)				
(b)				

15. a) Yes No Have you ever been **SUSPENDED** for more than five (5) days?
 b) Yes No Have you ever been **FINED** over \$100?
 c) Yes No Has your racing license (or your spouse's) ever been **DENIED** or **REVOKED**?
 d) Yes No Do you (or your spouse) have **PENDING** racing violations?
 e) Yes No Have you or your spouse ever been **RULED OFF** or **BARRED** from a race track?

If any question in 15 a, b, c, d, or e was answered as **YES**, you *must* provide the following for each incident:

	Date (month/day)	State	Track	Specific Violation
(1)	11/4/15	IN	Hoos.	Methuacarbamol High
(2)	10/1/14	IN	11	Colbacet WARNING
	5/24/14	IN	11	TRIPLE MARIJUANA

16. a) Yes No Have you (or your spouse) ever been **ARRESTED**? You must answer YES, even if charges were dropped or dismissed.
 b) Yes No Are you (or your spouse) currently on **PAROLE** or **PROBATION**?
 c) Yes No Are there **CRIMINAL** charges currently pending against you?

If any question in 16 a, b or c was answered as **YES**, you *must* provide the following for each incident:

	Date of Arrest	State	Arresting Agency	Offense	Outcome/Sentence
(1)	2011	IN	State	Boothman	Dropped
(2)					
(3)					

If additional space is needed in relation to any of the questions above, please use a separate sheet of paper and submit it with this form.

17. IHRC Rules Require Worker's Compensation Act Compliance

Licensed employers shall carry worker's compensation insurance covering their employees as required by 71 IACS-1-10. Please note the employment affidavit within this application waiver. If you are not sure whether you need worker's compensation insurance coverage, please contact your insurance agent, the Worker's Compensation Board in the state where your business is domiciled, or the Indiana Worker's Compensation Board at 317-232-3808.

18. Employment and Employing Help

Trainers operating within restricted areas of licensed racetracks shall ensure that they (and their employees) are licensed. A Trainer shall ensure that each owner for whom he or she trains applies for a license. A horse in a trainer's care shall not start in a race unless the Owner has a license on file with the commission. It shall be a trainer's responsibility to maintain with the commission up-to-date names of owners, current employees, and others having access to the trainer's assigned premises. Such information shall be given by completing questions 18 a & b and question 19 a, b, c and d. This application shall contain all information considered pertinent by the commission. Changes in ownership of horses, new or discharged grooms, additions and/or deletions of horses noted on this form must be reported to the licensing office using the proper roster update form or application change form, whichever is applicable.

a. Assistant Trainer: _____ Telephone: () _____

Tim Brightson
 Jim Wilkerson
 Tim Wilson
 Johnny Kirkwood
 Tyler Phillips

b. Please list your Stable Employees below:

Employee(s) Name	HRCC License Number	Job Title	Doran Robot Number
Kelly Hatter		Groom	
Walter White		"	
Jeremy Bybee		"	

19. Statement of Ownership

All names below must read as they are registered with the USTA or as shown on Jockey Club or AQHA papers. NO owner may be licensed as a horse OWNER unless s/he, during the period of licensure is the owner or lessee of record of a properly registered racehorse(s); or has an interest as a part owner or lessee of a properly registered racehorse.

a. Statement of Ownership (horses the applicant currently OWNS within the USTA/AQHA/Jockey Club)

Horse(s) Name	Age	Owner(s)	% Owned	Breed TB/QH/SB
Rockin Stein	4	Bobbi Brown Debbie Galen	50%	SB

b. Are any horses above leased? Yes No If yes, please list below:

Horse(s) Name	Lessor (current owner of horse)

c. Horses you TRAIN for an outside client (horses not owned by you, but trained by you)

Horse(s) Name	Age	Owner(s)	% Owned	Breed TB/QH/SB
Pearl	6	Bartley Counts	100	SB

d. If you listed a Stable Name or Ownership Entity (a partnership, corporation, etc.) as owner of a horse above, please tell us about the individual persons under that name holding any interest in those horses. Please check with each state in which you plan to race, to determine if they require a separate Stable or Entity registration form be filed, in addition to this application.

Horse(s) Name	Owner(s)	% Owned

20. Please indicate the following: (If both (a) and (b) below are applicable to you, please provide all information requested.)

- (a) I will stable on the grounds.....Barn(s) Number _____ Stall Assignment(s) Number _____
 (b) I will be shipping in from: (complete box below)

Race Setters Farm 3682E 150S Anderson IN 46017
 Name of Facility & Property Owner Street Address City State ZIP

If additional space is needed in relation to any of the questions above, please use a separate sheet of paper and submit it with this form.

Indiana Horse Racing Commission Affidavit

I understand that participation in racing in Indiana is a privilege, not a right, that the license issued pursuant to this Application is subject to conditions precedent as set out in the applicable Indiana Rules and Regulations, and that my failure to comply therewith, including but not limited to misstatements or omissions in the foregoing application, shall be grounds for immediate revocation or suspension of such license. By acceptance of said license, I agree to abide by the statutes of the State of Indiana relating to racing, the applicable Indiana Rules and Regulations and rulings or decisions of the Judges/Stewards with the knowledge that rulings or decisions of the Judges/Stewards shall remain in force until reversed or modified by the Indiana Horse Racing Commission.

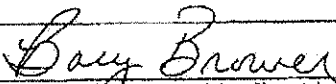
I hereby acknowledge that I will be subject to the searches, either in my presence or absence, provided for in Indiana Code 4-31-13, as amended, and the Indiana Rules and Regulations that authorize personal inspections, inspection of any personal property, and inspections of premises and property related to my participation in a race meeting by persons authorized by the Indiana Horse Racing Commission. I also acknowledge that I may be requested to provide a breath or urine sample in accordance with Indiana Code 4-31-8, as amended, and the applicable Indiana Rules and Regulations. I further acknowledge that the Indiana Horse Racing Commission may seize any article or substance which is found in my possession or control or in a location under my control which may be forbidden or is against the applicable Indiana Rules and Regulations. I hereby waive all claims and remedies - with the exception of those provided for by the Indiana Administrative Orders and Procedures Act (contained at Indiana Code 4-21.5-1, et seq.), and the applicable Indiana Horse Racing Commission Rules arising therefrom - against the Indiana Horse Racing Commission and its members, employees and agents and the racing association on whose premises the search and/or seizure is made and the officials, employees and agents of such association.

I agree to waive confidentiality related to an animal's veterinary medical records as outlined in I.C. 25-38.1-4-5.5(d), I.C. 5-14-3-4, and any other pertinent rule or law regulating horse racing and veterinary records in Indiana as it applies to a disciplinary action before the Commission.

Worker's Compensation Coverage Requirement: I am participating in pari-mutuel racing in the state of Indiana. I am currently licensed or have submitted an application for licensure to the Indiana Horse Racing Commission ("IHRC"). I acknowledge that both Indiana state law (I.C. 22-3-5-1) and IHRC regulations (71 IAC 5-1-10) require that employers provide worker's compensation for employees. I attest that I have worker's compensation coverage for my employees and will provide to the IHRC a Certificate of Coverage that identifies the IHRC as the Certificate Holder. I further attest that if I currently do not have employee(s) but hire employee(s) at some point during the licensing period, I will purchase worker's compensation coverage for the entirety of their employment and provide proof of coverage to the IHRC. I understand that within 24 hours of the discharge of a licensed worker or employee, I will provide written notification to the IHRC and surrender the worker or employee's photo I.D. badge.

Employment Verification: I am currently licensed or have submitted an application for a license to the Indiana Horse Racing Commission ("IHRC"). I have completed the Employment Eligibility Verification Form ("Form I-9") required by the Immigration Reform and Control Act ("IRCA") for each of my employees required to be licensed by the IHRC. I agree to complete a Form I-9 for each new employee I hire during this calendar year who is required to be licensed by the IHRC. I agree to make available for review the redacted Form I-9 for each of my employees required to be licensed by the IHRC to the IHRC upon request. Within 24 hours of the discharge of a licensed worker or employee, I will provide written notification to the IHRC and surrender the worker or employee's photo I.D. badge. I understand that failure to abide by the terms of this affidavit or the IRCA may result in the initiation of a disciplinary action against me by the Indiana Horse Racing Commission.

I hereby certify that I have read the foregoing Application & Affidavit and affirm that every statement contained therein is true and correct and completely set forth. I do hereby authorize the Indiana Horse Racing Commission, the Indiana State Police, the Indiana State Department of Revenue and the Federal Bureau of Investigations to investigate and verify all information contained in this Application.

 Signature of Applicant *	2/2/16 Date	_____ E-Mail Address
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Standardbred Racing Indiana Horse Racing Commission c/o Hoosier Park, 4500 Dan Patch Circle Anderson, IN 46013 P: 765-609-4855 F: 765-683-2568	~OR~	Thoroughbred/Quarter Horse Racing Indiana Horse Racing Commission c/o Indiana Grand, 4425 N200 W Shelbyville, IN 46176 P: 317-713-3350 F: 317-713-3355
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UCRIVE



Licensee Search

Licensee: BOBBY A BROWER

Reports on BOBBY A BROWER
 Comprehensive Ruling Report
 Comprehensive Licensee Report



Identification Information

Date of Birth	Federal ID/SSN	Country	Sex
8/18/1962	8799	USA	M
8/18/1962		USA	Unknown

Name Information

Name Type	Prefix	First Name	Middle Name	Last Name	Suffix
Current Legal Name		BOBBY	A	BROWER	
Previous Legal		BOBBY	A	BROWER	
Other		BOBBY		BROWER	
Other		BOBBY	ALLEN	BROWER	

Address Information

Address Type	Street Address	City	State	Zip Code
Mailing	7281 S CR 400 W	MUNCIE	IN	47302

Phone Information

Phone Number Type	Phone Number
Home	7653931625
Mobile	3179081479

License Information

License Number	License Type	Issued Date	Expiration Date	Licensing Commission
659981	Owner/Trainer/Driver	7/24/2016	12/31/2016	Kentucky Racing Commission
970363	Owner/Trainer/Driver	3/15/2016	12/31/2016	Indiana Racing Commission
48799	Owner/Trainer	9/6/2015	12/31/2015	Illinois Racing Board
635555	Owner/Trainer/Driver	8/9/2015	12/31/2015	Kentucky Racing Commission
970363	Owner/Trainer/Driver	3/17/2015	12/31/2015	Indiana Racing Commission
455071	Owner/Trainer/Driver	8/10/2014	12/31/2014	Kentucky Racing Commission
970363	Owner/Trainer/Driver	3/18/2014	12/31/2014	Indiana Racing Commission
48799	Owner/Trainer	9/18/2013	12/31/2013	Illinois Racing Board
970363	Owner/Trainer/Driver	3/19/2013	12/31/2013	Indiana Racing Commission
22230	Owner/Trainer	1/6/2012	12/31/2013	Delaware Harness Racing Commission
970363	Owner/Trainer/Driver	3/13/2012	12/31/2012	Indiana Racing Commission
48799	Owner/Trainer/Driver	3/3/2012	12/31/2012	Illinois Racing Board
970363	Owner/Trainer/Driver	3/15/2011	12/31/2011	Indiana Racing Commission

404028799	Owner/Trainer/Driver	7/17/2010	12/31/2010	Illinois Racing Board
5287992	Trainer	6/4/2010	12/31/2010	New Jersey Racing Commission
970363	Owner/Trainer/Driver	3/12/2010	12/31/2010	Indiana Racing Commission
404028799	Trainer	11/14/2009	12/31/2009	Illinois Racing Board
970363	Owner/Trainer/Driver	3/10/2009	12/31/2009	Indiana Racing Commission
404028799	Owner/Trainer/Driver	6/21/2008	12/31/2008	Illinois Racing Board
	Owner/Trainer/Driver	4/8/2007	12/31/2007	Illinois Racing Board
970363	Owner/Trainer/Driver	3/23/2007	12/31/2007	Indiana Racing Commission
	Owner/Trainer/Driver	3/31/2006	12/31/2006	Indiana Racing Commission
*N*1775955	Owner/Trainer/Driver	12/1/2005	12/31/2006	Illinois Racing Board
970363	Owner/Trainer/Driver	4/9/2005	12/31/2005	Indiana Racing Commission
*N*1494590	Owner	5/1/2004	12/31/2004	Ohio Racing Commission
*N*1494591	Unknown	5/1/2004	12/31/2004	Ohio Racing Commission
970363	Owner/Trainer/Driver	3/4/2004	12/31/2004	Indiana Racing Commission
*N*1428605	Owner/Trainer/Driver	12/7/2003	12/31/2004	Illinois Racing Board
*N*1399070	Owner	7/24/2003	12/31/2003	Ohio Racing Commission
*N*1399071	Unknown	7/24/2003	12/31/2003	Ohio Racing Commission
*N*1356749	Owner/Trainer/Driver	3/27/2003	12/31/2003	Illinois Racing Board
970363	Owner/Trainer/Driver	3/13/2003	12/31/2003	Indiana Racing Commission
*N*1250360	Owner	10/22/2002	12/31/2002	Ohio Racing Commission
*N*1250361	Unknown	10/22/2002	12/31/2002	Ohio Racing Commission
970363	Owner/Trainer/Driver	6/10/2002	12/31/2002	Indiana Racing Commission
	Owner/Trainer/Driver	3/16/2001	12/31/2001	Indiana Racing Commission
*N*761629	Owner/Trainer/Driver	7/20/2000	12/31/2000	Illinois Racing Board
970363	Unknown	4/6/1999	12/31/1999	Indiana Racing Commission
	Owner/Trainer/Driver	4/26/1998	12/31/1998	Indiana Racing Commission
	Owner/Trainer/Driver	4/23/1997	12/31/1997	Indiana Racing Commission
*N*80927	Owner/Trainer/Driver	1/1/1995	12/31/1995	Illinois Racing Board

Fingerprint Information

Processing Commission	Date Taken	Status	Notes	RCI Card Submitted Date
Illinois Racing Board	4/8/2007	Unknown		
New Jersey Racing Commission	6/5/2010	Unknown		
Racing Commissioners International	7/26/2010	Unknown	RCI Multi-Jurisdiction Card	7/26/2010
Racing Commissioners International	4/1/2008	Unknown	RCI Multi-Jurisdiction Card	4/1/2008

Ruling Number	Ruling Type	Ruling Date	Fine	Fine Paid?	Suspension Start	Suspension End
16071	Medication/Drug Violation - Animal (Associated Ruling)	6/14/2016		Not Submitted		
16070	Medication/Drug Violation - Animal (Associated Ruling)	6/14/2016	750	No		
16002	Medication/Drug Violation - Animal	1/5/2016	1000	No		
14129	Warning Letter	12/9/2014		Not Submitted		
14083	Misuse of Whip	9/17/2014	100	No		
14076	Medication/Drug Violation - Animal	9/9/2014		Not Submitted	10/19/2014	11/17/2014
13191	Employment Violation	10/24/2013	250	Not Submitted		
13147	Warning Letter	9/11/2013	0	Not Submitted		
13061	Conduct Detrimental to Racing	6/4/2013	300	Yes		
12191	Race Office/Track Rule Violation	9/22/2012	100	Yes		
12000	Reinstatement to Good Standing in State	1/12/2012	0	Not Submitted		
11013	License Denied, Rescinded, Revoked, Suspended, Withdrawn or Exclusion	4/13/2011	0	Not Submitted	4/13/2011	1/12/2012
10191	Race Office/Track Rule Violation	10/30/2010	50			

10011	Race Office/Track Rule Violation	4/14/2010	50	Not Submitted		
29190	Unknown	10/19/2009	300	Not Submitted		
29163	Careless/Unsafe/Improper Riding or Driving	9/23/2009	300	Not Submitted		
28047	Unknown	6/19/2008	100	Not Submitted		
24428	Disorderly Conduct	10/23/2004	1000	Not Submitted	10/2/2004	4/9/2005
24403	Disorderly Conduct	10/2/2004		Not Submitted		
24183	Misuse of Whip	3/21/2004	50	Not Submitted		
042018	Unknown	1/11/2004	200	Not Submitted		
23105	Misuse of Whip	7/23/2003	100	Not Submitted		
23104	Misuse of Whip	7/23/2003	100	Not Submitted		
23103	Unknown	7/23/2003	50	Not Submitted		
23035	Careless/Unsafe/Improper Riding or Driving	4/26/2003	50	Not Submitted		
*N*10057537	Reinstatement to Good Standing in State	9/18/2002		Not Submitted		
22106	License Denied, Rescinded, Revoked, Suspended, Withdrawn or Exclusion	6/30/2002		Not Submitted	6/29/2002	6/30/2002
22106	License Denied, Rescinded, Revoked, Suspended, Withdrawn or Exclusion	6/30/2002		Not Submitted		
*N*10053530	Unknown	6/18/2002		Not Submitted	6/17/2002	9/17/2002
*N*10053512	Failure to Report or Appear	6/17/2002		Not Submitted	6/17/2002	
21128	License Denied, Rescinded, Revoked, Suspended, Withdrawn or Exclusion	6/7/2001	2000	Not Submitted	4/8/2001	6/7/2002
21128	Possession of Medication/Drugs/Contraband/Injectable (s)/Needle/Syringe	6/7/2001	2000	Not Submitted	4/8/2001	6/7/2002
21030	Medication/Drug Violation - Animal	4/9/2001		Not Submitted	4/8/2001	1/1/2050
983496	Careless/Unsafe/Improper Riding or Driving	11/6/1998	100	Not Submitted		
54611	License Denied, Rescinded, Revoked, Suspended, Withdrawn or Exclusion	11/19/1997		Not Submitted		
972352	License Denied, Rescinded, Revoked, Suspended, Withdrawn or Exclusion	10/20/1997		Not Submitted	10/20/1997	
972302	Careless/Unsafe/Improper Riding or Driving	9/21/1997	120	Not Submitted		
963420	Careless/Unsafe/Improper Riding or Driving	10/14/1996	100	Not Submitted		
953366	Unknown	9/4/1995		Not Submitted	9/3/1995	10/2/1995
943488	Careless/Unsafe/Improper Riding or Driving	12/20/1994	100	Not Submitted		
933225	Careless/Unsafe/Improper Riding or Driving	3/9/1993	100	Not Submitted		
933184	Unknown	2/7/1993	100	Not Submitted		
54186	Careless/Unsafe/Improper Riding or Driving	8/2/1991		Not Submitted		
90303	Reinstatement to Good Standing in State	1/26/1990		Not Submitted		

Applicable Reports

Comprehensive Ruling Report
Comprehensive Licensee Report

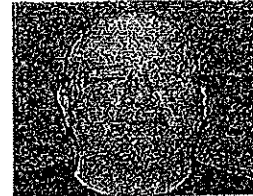
[Licensees](#) [Rulings](#) [Horse Tracking](#) [Bulletin Board](#) [Preferences](#) [Log Off](#)

Comprehensive Ruling Report

Rulings Against: BOBBY A BROWER

Legal Name: BOBBY A BROWER

Birth Date: 8/18/1982



44 Total Ruling(s) Listed

5 Advisory Multiple Medication Violation Point(s) Including 0 Official Multiple Medication Violation Point(s)

"Multiple medication violation points and point totals are for advisory and informational purposes only to indicate the existence of regulatory medication violation determinations made by racing regulatory entities in order to notify officials of possible aggravating factors that should be reviewed by officials prior to taking regulatory action. Confirmation of violations should be made directly with the racing regulatory entity responsible."

Ruling #: 1

Ruling Number:	16071	Date:	6/14/2016
Issued By:	Indiana Racing Commission	Facility:	Hoosier Park
Ruling Type:	Medication/Drug Violation - Animal (Associated Ruling)		
Division:	Horse	Breed:	Harness
Effective Date:	6/14/2016	Race Date:	4/7/2016
Infraction Date:	4/7/2016	Infraction Facility:	Indiana Grand
Race Number:	10	Animal Name:	THE DATE ROCKER
Under Appeal:	False	Appeal Date:	N/A
Drug:	Pemoline		
Drug:	Pemoline		
Fine Amount:	\$ 0	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None
Actions:			

Alpha Ruling: 16071 Action Type: Initial Ruling Issue Date: 6/14/2016

Action Text:

Sample #E201258 collected on 4/7/16 from the horse THE DATE ROCKER was found to contain Levamisole, and Pemoline. Mr. Brower as trainer is in violation of the IHRC medication rules and the trainer responsibility rule. There were mitigating circumstances involving the positive test results for Levamisole and Pemoline. The horse was treated by a licensed veterinarian with a medication that failed to list Levamisole and Pemoline as ingredients. All purse money (\$3730.00) earned on 4/7/16 must be returned and redistributed. THE DATE ROCKER finished first disqualified placed tenth.

No. 9 NEW IMAGE finished second placed first No. 1 TOPVILEE CAMARO finished third placed second No. 5 REAL REVENGE finished fourth placed third No. 7 MYSTICAL BEACH finished fifth placed fourth No. 4 SHARKNADO finished sixth placed fifth No. 3 RAPID RUFUS finished seventh placed sixth No. 8 BRIARSANDBRANCHES finished eighth placed seventh No. 2 LITTLE TIGER SCALE finished ninth placed eighth No. 10 MAX BET finished tenth placed ninth No. 6 THE DATE ROCKER finished first placed



Ruling #: 2

Ruling Number:	16070	Date:	6/14/2016
Issued By:	Indiana Racing Commission	Facility:	Hoosier Park
Ruling Type:	Medication/Drug Violation - Animal (Associated Ruling)		
Division:	Horse	Breed:	Harness
Effective Date:	6/14/2016	Race Date:	4/1/2016
Infraction Date:	4/1/2016	Infraction Facility:	Hoosier Park
Race Number:	6	Animal Name:	KEYSTONE WANDA
Under Appeal:	False	Appeal Date:	N/A
Drug:	Pemoline		
Drug:	Pemoline		
Fine Amount:	\$ 750	Fine Paid:	No
Suspension Start:	None	Suspension End:	None
Actions:			

Alpha Ruling:	16070	Action Type:	Initial Ruling	Issue Date:	6/14/2016
Action Text:					

Sample #E201216 collected on 4/1/16 from the horse KEYSTONE WANDA was found to contain Levamisole, Pemoline, and Flunixin. Flunixin was found at a level above the allowable limit. Tested 24.4 ng/ml - limit 20 ng/ml. Mr. Brower as trainer is in violation of the IHRC medication rules and the trainer responsibility rule. There were mitigating circumstances involving the positive test results for Levamisole and Pemoline. The horse was treated by a licensed veterinarian with a medication that failed to list Levamisole and Pemoline as ingredients. All purse money (\$4,250.00) earned on 4/1/16 must be returned and redistributed. KEYSTONE WANDA finished first disqualified placed tenth.

No. 6 TIMMYLNN finished second placed first No. 1 T C SCANDAL finished third placed second No. 2 PONDA WORLD finished fourth placed third No. 10 TOTAL LEE finished fifth placed fourth No. 9 SISTERS KEEPER finished sixth placed fifth No. 8 BS TYRICHES finished seventh placed sixth No. 5 LOVETHEWAYYOULOOK finished eighth placed seventh No. 7 BLUES QUEEN finished ninth placed eighth No. 4 E R TAYLOR finished tenth placed ninth No. 3 KEYSTONE WANDA finished first placed tenth

Ruling #: 3

Ruling Number:	16002	Date:	1/5/2016
Issued By:	Indiana Racing Commission	Facility:	Hoosier Park
Ruling Type:	Medication/Drug Violation - Animal		
Division:	Horse	Breed:	Harness
Effective Date:	1/5/2016	Race Date:	11/4/2015
Infraction Date:	11/4/2015	Infraction Facility:	Hoosier Park
Race Number:	10	Animal Name:	B FLOREAL
Under Appeal:	False	Appeal Date:	N/A
Drug:	Methocarbamol		
Fine Amount:	\$ 1000	Fine Paid:	No
Suspension Start:	None	Suspension End:	None

Infraction Date: 9/16/2014	Infraction Facility: Hoosier Park
Race Number: 13	Animal Name: ABC Banker
Under Appeal: False	Appeal Date: N/A
Fine Amount: \$ 100	Fine Paid: No
Suspension Start: None	Suspension End: None

Actions:

Alpha Ruling: 14083	Action Type: Initial Ruling	Issue Date: 9/17/2014
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Action Text:
Whipping other than wrist action.

Ruling #: 6

Ruling Number: 14076	Date: 9/9/2014
Issued By: Indiana Racing Commission	Facility: Hoosier Park
Ruling Type: Medication/Drug Violation - Animal	
Division: Horse	Breed: Harness
Effective Date: 9/9/2014	Race Date: 5/2/2014
Infraction Date: 5/2/2014	Infraction Facility: Hoosier Park
Race Number: 1	Animal Name: Nightly News
Under Appeal: False	Appeal Date: N/A
Drug: Tripeleennamine	
Fine Amount: \$ 0	Fine Paid: Not Submitted
Suspension Start: 10/19/2014	Suspension End: 11/17/2014

Actions:

Alpha Ruling: 14076	Action Type: Initial Ruling	Issue Date: 9/9/2014
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Action Text:

Pursuant to 71 IAC 10-2-1(b) and 10-2-4 and I.C. 4-21.5, Bobby Brower hereby waives his right to twelve (12) hours notice of a Hearing and waives his right to a hearing and in connection with the following incident: Three reports from LGC Science Inc. to the Indiana Horse Racing Commission indicated the following:

1. Sample No. 0043317 from "Nightly News", which raced in the first (1st) race on May 2, 2014 at Hoosier Park was found to contain tripeleennamine in violation of Commission Rules.
2. Sample No. 0043353 from "After Jesse", which raced in the sixth (6th) race on May 6, 2014 at Hoosier Park was found to contain tripeleennamine in violation of Commission Rules.
3. Sample No. 0043372 from "Miss Sand Cruiser", which raced in the eleventh (11th) race on May 7, 2014 at Hoosier Park was found to contain tripeleennamine in violation of Commission Rules.

Split testing was declined on all three samples.

Bobby Brower acknowledges and agrees that the following penalties will be imposed by the Judges, Stewards, or other Official:

1. One Thousand Dollar (\$1,000) fine.
2. Thirty (30) day suspension to be served from October 19, 2014 through and including November 17, 2014.
3. Disqualification of the Brower horses identified above and redistribution of the purse monies from the following races:
 - a. First Race on May 2, 2014 at Hoosier Park.
 - b. Sixth Race on May 6, 2014 at Hoosier Park.
 - c. Eleventh Race on May 7, 2014 at Hoosier Park.

REDISTRIBUTION

Race 1-May 2-Winners purse: \$2,250.00
 Nightly News finished 1st placed last
 Rya Dawk Mya finished 2nd placed 1st
 Lil Willie J finished 3rd placed 2nd
 E.R. Jail Break finished 4th placed 3rd
 Earls Glidding Two finished 5th placed 4th
 Little Angies Girl finished 6th placed 5th

Race 6-May 6-Winners purse: \$4,500.00
 After Jesse finished 1st placed last
 Socialdelight finished 2nd placed 1st
 Banker For All finished 3rd placed 2nd
 Seven Points Jesse finished 4th placed 3rd
 Swan's Mistress finished 5th placed 4th
 Swan's Princess finished 6th placed 5th

Race 11-May 7-Winners purse: \$3,450.00
 Miss Sand Cruiser finished 1st placed last
 Velocity Sonja finished 2nd placed 1st
 Wild Wanda finished 3rd placed 2nd
 E R Rhonda finished 4th placed 3rd
 Next Flight Up finished 5th placed 4th
 Queens Shiningstar finished 6th placed 5th

Ruling #: 7

Ruling Number:	13191	Date:	10/24/2013
Issued By:	Indiana Racing Commission	Facility:	Hoosier Park
Ruling Type:	Employment Violation		
Division:	Horse	Breed:	Harness
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 250	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None
Actions:			

Alpha Ruling: 13191 Action Type: Initial Ruling Issue Date: 10/24/2013
 Action Text:
 Employing an unlicensed person on the secured backstretch of Hoosier Park.

Ruling #: 8

Ruling Number:	13147	Date:	9/11/2013
Issued By:	Indiana Racing Commission	Facility:	Hoosier Park
Ruling Type:	Warning Letter		

Division:	Horse	Breed:	Harness
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 0	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None

Actions:

Alpha Ruling: 13147	Action Type: Initial Ruling	Issue Date: 9/11/2013
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Action Text:

Hereby given 1st warning regarding phenylbutazone levels exceeding those allowed by the Indiana Horse Racing Commission in the blood sample taken from the horse Eden Shooter following the fourth (4th) race on 08/14/2013. (phenylbutazone level 4.8 micrograms/ml.)

Ruling #: 9

Ruling Number:	13061	Date:	6/4/2013
Issued By:	Indiana Racing Commission	Facility:	Hoosier Park
Ruling Type:	Conduct Detrimental to Racing		
Division:	Horse	Breed:	Harness
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 300	Fine Paid:	Yes
Suspension Start:	None	Suspension End:	None

Actions:

Alpha Ruling: 13061	Action Type: Initial Ruling	Issue Date: 6/4/2013
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Action Text:

Failure to restrain horse in a proper manner following a brake and after the race by jerking the horses head from side to side.

Ruling #: 10

Ruling Number:	12191	Date:	9/22/2012
Issued By:	Indiana Racing Commission	Facility:	Indiana Downs
Ruling Type:	Race Office/Track Rule Violation		
Division:	Horse	Breed:	Harness
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A

Fine Amount: \$ 100 Fine Paid: Yes
 Suspension Start: None Suspension End: None
 Actions:

Alpha Ruling: 12191 Action Type: Initial Ruling Issue Date: 9/22/2012
 Action Text:
 Failure to have proper health papers resulting in a scratch.

Ruling #: 11

Ruling Number: 12000 Date: 1/12/2012
 Issued By: Indiana Racing Commission Facility: Indiana Horse Racing Commission
 Ruling Type: Reinstatement to Good Standing in State
 Division: Horse Breed: Harness
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 0 Fine Paid: Not Submitted
 Suspension Start: None Suspension End: None
 Actions:

Alpha Ruling: 12000 Action Type: Initial Ruling Issue Date: 1/12/2012
 Action Text:
 The Indiana Horse Racing Commission summary suspension on Bobby Brower has been lifted. Furthermore, Mr. Brower is hereby eligible to apply for a license.

Ruling #: 12

Ruling Number: 11013 Date: 4/13/2011
 Issued By: Indiana Racing Commission Facility: Hoosier Park
 Ruling Type: License Denied, Rescinded, Revoked, Suspended, Withdrawn or Exclusion
 Division: Horse Breed: Harness
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 0 Fine Paid: Not Submitted
 Suspension Start: 4/13/2011 Suspension End: 1/12/2012
 Actions:

Fifty dollars (\$50). Late driver change.

Ruling #: 15

Ruling Number:	29190	Date:	10/19/2009
Issued By:	Indiana Racing Commission	Facility:	Indiana Downs
Ruling Type:	Unknown		
Division:	Horse	Breed:	Harness
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 300	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None

Actions:

Alpha Ruling: 29190 Action Type: Initial Ruling Issue Date: 10/19/2009

Action Text:

FINED THREE HUNDRED DOLLARS (\$300). FAILURE TO STAY AT STABLE GATE FOR PROPER PAPER WORK CHECK IN AND LEAVING STABLE GATE WITHOUT BEING PROPERLY CHECKED OUT.

Ruling #: 16

Ruling Number:	29163	Date:	9/23/2009
Issued By:	Indiana Racing Commission	Facility:	Indiana Downs
Ruling Type:	Careless/Unsafe/Improper Riding or Driving		
Division:	Horse	Breed:	Harness
Effective Date:	9/23/2009	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	Indiana Downs
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 300	Fine Paid:	No
Suspension Start:	None	Suspension End:	None

Actions:

Alpha Ruling: 29163 Action Type: Initial Ruling Issue Date: 9/23/2009

Action Text:

Three hundred dollars (\$300). Change course after selecting a position in the homestretch causing interference.

Ruling #: 17

Ruling Number:	28047	Date:	6/19/2008
Issued By:	Indiana Racing Commission	Facility:	Hoosier Park
Ruling Type:	Unknown		

Division:	Horse	Breed:	Harness
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 100	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None

Actions:

Alpha Ruling: 28047 Action Type: Initial Ruling Issue Date: 6/19/2008
 Action Text:
 One hundred dollars (\$100). Going to the inside after the start and interfering with a trailing horse.

Ruling #: 18

Ruling Number:	24428	Date:	10/23/2004
Issued By:	Indiana Racing Commission	Facility:	Unknown
Ruling Type:	Disorderly Conduct		
Division:	Unknown	Breed:	Unknown
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 1000	Fine Paid:	Not Submitted
Suspension Start:	10/2/2004	Suspension End:	4/9/2005

Actions:

Alpha Ruling: 24428 Action Type: Initial Ruling Issue Date: 10/23/2004
 Action Text:
 HEREBY ASSESSED A CIVIL PENALTY OF \$1000.00, AND SUSPENDED FOR 60 DAYS. FOLLOWING A HEARING HELD ON 10/22/04, THE JUDGES FIND BOBBY BROWER IN VIOLATION OF AN ABUSIVE VERBAL AND PHYSICAL ALTERCATION AGAINST OTHER LICENSEES IN A SECURED AREA (PADDOCK) ON 09/30/04.THEREFORE, MR. BROWER IS HEREBY ASSESSED A \$1000.00 CIVIL PENALTY AND SUSPENDED FOR 60 DAYS, THE MAXIMUM PENALTY THE JUDGES ARE ALLOWED TO ASSESS UNDER THE INDIANA PARI MUTUEL STATUTES. MR. BROWER WILL BE CREDITED WITH 21 DAYS TIME SERVED WHILE UNDER A SUMMARY SUSPENSION PRIOR TO HIS HEARING. THE SUSPENSION SHALL BE 10/02/04 - 11/30/04. FURTHERMORE THIS MATTER IS REFERRED TO THE INDIANA HORSE RACING COMMISSION FOR ANY OTHER ACTION THEY DEEM APPROPRIATE. THE JUDGES ALSO ORDER BOBBY BROWER TO PROVIDE PROOF OF A SUCCESSFUL COMPLETION OF AN ANGER MANAGEMENT PROGRAM AT A FACILITY ACCEPTABLE TO THE INDIANA HORSE RACING COMMISSION PRIOR TO APPLICATION AND CONSIDERATION OF A FUTURE IHRC OCCUPATIONAL LICENSE. ANY FUTURE APPLICATION FOR LICENSURE MUST BE MADE IN PERSON TO THE EXECUTIVE DIRECTOR OF THIS COMMISSION. THIS SUSPENSION SHALL INCLUDE ALL TRACKS AND SATELLITE FACILITIES LICENSING BY THE INDIANA HORSE RACING COMMISSION.

Ruling #: 19

Ruling Number:	24403	Date:	10/2/2004
Issued By:		Facility:	Unknown

Indiana Racing
Commission

Ruling Type: Disorderly Conduct

Division: Unknown Breed: Unknown

Effective Date: N/A Race Date: N/A

Infraction Date: N/A Infraction Facility: N/A

Race Number: N/A Animal Name: N/A

Under Appeal: False Appeal Date: N/A

Fine Amount: \$ 0 Fine Paid: Not Submitted

Suspension Start: None Suspension End: None

Actions:

Alpha Ruling: 24403 Action Type: Initial Ruling Issue Date: 10/2/2004

Action Text:

IS HEREBY SUMMARY SUSPENDED FOR AN ABUSIVE VERBAL AND PHYSICAL ALTERCATION WITH OTHER IHRC LICENSEES AND DISTURBING THE PEACE IN A SECURED AREA (PADDOCK). IF THE JUDGES DETERMINE THAT A LICENSEE'S ACTIONS CONSTITUTE AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY, OR WELFARE, OR ARE NOT IN THE BEST INTEREST OF RACING, OR COMPROMISE THE INTEGRITY OF OPERATIONS AT A TRACK OR SATELLITE FACILITY, THE JUDGES MAY SUMMRILY SUSPEND THE LICENSE PENDING A HEARING PURSUANT TO THE PROVISIONS OF IC 4-21.5-4. A LICENSEE WHOSE LICENSE HAS BEEN SUMMARILY SUSPENDED BY THE JUDGES IS ENTITLED TO A HEARING FOLLOWING A WRITTEN REQUEST BY THE LICENSEE. THE JUDGES SHALL CONDUCT A HEARING ON THE SUMMARY SUSPENSION IN THE SAME MANNER AS OTHER DISCIPLINARY HEARINGS. AT A HEARING ON A SUMMARY SUSPENSION, THE SOLE ISSUE IS WHETHER THE LICENSEE'S LICENSE SHOULD REMAIN SUSPENDED PENDING A FINAL DISCIPLINARY HEARING AND RULING.

Ruling #: 20

Ruling Number: 24183 Date: 8/21/2004

Issued By: Indiana Racing Commission Facility: Unknown

Ruling Type: Misuse of Whip

Division: Unknown Breed: Unknown

Effective Date: N/A Race Date: N/A

Infraction Date: N/A Infraction Facility: N/A

Race Number: N/A Animal Name: N/A

Under Appeal: False Appeal Date: N/A

Fine Amount: \$ 50 Fine Paid: Not Submitted

Suspension Start: None Suspension End: None

Actions:

Alpha Ruling: 24183 Action Type: Initial Ruling Issue Date: 8/21/2004

Action Text:

HEREBY ASSESSED A CIVIL PENALTY OF \$50. ALLOWING WHIP HAND TO PASS BEHIND THE SHOULDER.

Ruling #: 21

Ruling Number: 042018 Date: 1/11/2004

Issued By:	Illinois Racing Board	Facility:	Balmoral Park
Ruling Type:	Unknown		
Division:	Unknown	Breed:	Unknown
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 200	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None
Actions:			

Alpha Ruling: 042018 Action Type: Initial Ruling Issue Date: 1/11/2004

Action Text:

BOBBY BROWER IS HEREBY ASSESSED A CIVIL PENALTY OF \$200 FOR FAILURE TO HAVE VALVO LYNN IN THE ASSIGNED STALL BY THE PRESCRIBED TIME FOR THE 2ND RACE DECEMBER 30 2003. I.R.B. RULE SECTION 436.05(A)B)C)

Ruling #: 22

Ruling Number:	23105	Date:	7/23/2003
Issued By:	Indiana Racing Commission	Facility:	Unknown
Ruling Type:	Misuse of Whip		
Division:	Unknown	Breed:	Unknown
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 100	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None
Actions:			

Alpha Ruling: 23105 Action Type: Initial Ruling Issue Date: 7/23/2003

Action Text:

HEREBY ASSESSED A CIVIL PENALTY OF ONE HUNDRED DOLLARS (\$100). INDISCRIMINATE USE OF WHIP.

Ruling #: 23

Ruling Number:	23104	Date:	7/23/2003
Issued By:	Indiana Racing Commission	Facility:	Unknown
Ruling Type:	Misuse of Whip		
Division:	Unknown	Breed:	Unknown
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A

Fine Amount: \$ 100 Fine Paid: Not Submitted
 Suspension Start: None Suspension End: None
 Actions:

Alpha Ruling: 23104 Action Type: Initial Ruling Issue Date: 7/23/2003
 Action Text:
 HEREBY ASSESSED A CIVIL PENALTY OF ONE HUNDRED DOLLARS (\$100). EXCESSIVE USE OF WHIP.

Ruling #: 24

Ruling Number: 23103 Date: 7/23/2003
 Issued By: Indiana Racing Commission Facility: Unknown
 Ruling Type: Unknown
 Division: Unknown Breed: Unknown
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 50 Fine Paid: Not Submitted
 Suspension Start: None Suspension End: None
 Actions:

Alpha Ruling: 23103 Action Type: Initial Ruling Issue Date: 7/23/2003
 Action Text:
 HEREBY ASSESSED A CIVIL PENALTY OF FIFTY DOLLARS (\$50). FEET OUT OF STIRRUPS.

Ruling #: 25

Ruling Number: 23035 Date: 4/26/2003
 Issued By: Indiana Racing Commission Facility: Hoosier Park
 Ruling Type: Careless/Unsafe/Improper Riding or Driving
 Division: Unknown Breed: Unknown
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 50 Fine Paid: Not Submitted
 Suspension Start: None Suspension End: None
 Actions:

Alpha Ruling: 23035 Action Type: Initial Ruling Issue Date: 4/26/2003
 Action Text:
 HEREBY ASSESSED A CIVIL PENALTY OF \$50 FAILURE TO COME UP INTO POSITION.

Ruling #: 26

Ruling Number: *N*10057537 Date: 9/18/2002
 Issued By: Kentucky Racing Commission Facility: Unknown
 Ruling Type: Reinstatement to Good Standing in State
 Division: Unknown Breed: Unknown
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 0 Fine Paid: Not Submitted
 Suspension Start: None Suspension End: None
 Actions:

Alpha Ruling: *N*10057537 Action Type: Initial Ruling Issue Date: 9/18/2002
 Action Text:
 RESTORED TO GOOD STANDING -- FULFILLED SUSPENSION.

Ruling #: 27

Ruling Number: 22106 Date: 6/30/2002
 Issued By: Indiana Racing Commission Facility: Hoosier Park
 Ruling Type: License Denied, Rescinded, Revoked, Suspended, Withdrawn or Exclusion
 Division: Horse Breed: Harness
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 0 Fine Paid: Not Submitted
 Suspension Start: 6/29/2002 Suspension End: 6/30/2002
 Actions:

Alpha Ruling: 22106 Action Type: Initial Ruling Issue Date: 6/30/2002
 Action Text:
 INDIANA HORSE RACING COMMISSION OCCUPATIONAL LICENSE IS HEREBY SUSPENDED IN RECIPROCITY TO KENTUCKY RACING COMMISSION HARNESS DIVISION RULING DATED 06/18/02.

Ruling #: 28

Ruling Number: 22106 Date: 6/30/2002
 Issued By: Indiana Racing Commission Facility: Hoosier Park

Ruling Type: License Denied,
Rescinded,
Revoked,
Suspended,
Withdrawn or
Exclusion

Division: Unknown Breed: Unknown
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 0 Fine Paid: Not Submitted
 Suspension Start: None Suspension End: None
 Actions:

Alpha Ruling: 22106 Action Type: Initial Ruling Issue Date: 6/30/2002
 Action Text:
 INDIANA HORSE RACING COMMISSION OCCUPATIONAL LICENSE IS HEREBY SUSPENDED IN
 RECIPROCITY TO KENTUCKY RACING COMMISSION HARNES DIVISION RULING DATED 06/18/02.

Ruling #: 29

Ruling Number: *N*10053530 Date: 6/18/2002
 Issued By: Kentucky Racing Commission Facility: Unknown

Ruling Type: Unknown

Division: Unknown Breed: Unknown
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 0 Fine Paid: Not Submitted
 Suspension Start: 6/17/2002 Suspension End: 9/17/2002
 Actions:

Alpha Ruling: *N*10053530 Action Type: Initial Ruling Issue Date: 6/18/2002
 Action Text:
 BEING ON PROPERTY DURING LIVE RACING WHILE BEING UNDER SUSPENSION IN INDIANA.

Ruling #: 30

Ruling Number: *N*10053512 Date: 6/17/2002
 Issued By: Kentucky Racing Commission Facility: Unknown

Ruling Type: Failure to Report or
Appear

Division: Unknown Breed: Unknown
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A

Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 0 Fine Paid: Not Submitted
 Suspension Start: 6/17/2002 Suspension End: None
 Actions:

Alpha Ruling: *N*10053512 Action Type: Initial Ruling Issue Date: 6/17/2002
 Action Text:
 INDEFINITE SUSPENSION -- FAILURE TO APPEAR FOR A HEARING.

Ruling #: 31

Ruling Number: 21128 Date: 6/7/2001
 Issued By: Indiana Racing Commission Facility: Hoosier Park
 Ruling Type: License Denied,
 Rescinded,
 Revoked,
 Suspended,
 Withdrawn or
 Exclusion
 Division: Unknown Breed: Unknown
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 2000 Fine Paid: Not Submitted
 Suspension Start: 4/8/2001 Suspension End: 6/7/2002
 Actions:

Alpha Ruling: 21128 Action Type: Initial Ruling Issue Date: 6/7/2001
 Action Text:
 SUSPENDED FOR ONE YEAR AND TWO MONTHS (426 DAYS) AND FINED TWO THOUSAND DOLLARS (\$2000.00). FOR POSSESSION OF CONTRABAND INCLUDING NUMEROUS INJECTABLES, NEEDLES AND SYRINGES. PRELIMINARY REPORT #PR 21001 IS WITHDRAWN AND SUMMARY SUSPENSION (RULING #21030) IS WITHDRAWN IN FAVOR OF SETTLEMENT AGREEMENT DATED JUNE 6, 2001.

Ruling #: 32

Ruling Number: 21128 Date: 6/7/2001
 Issued By: Indiana Racing Commission Facility: Hoosier Park
 Ruling Type: Possession of
 Medication/Drugs/Contraband/Injectable
 (s)/Needle/Syringe
 Division: Unknown Breed: Unknown
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A

Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 100	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None

Actions:

Alpha Ruling: 983496	Action Type: Initial Ruling	Issue Date: 11/6/1998
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Action Text:
INTERFERENCE.

Ruling #: 35

Ruling Number:	54611	Date:	11/19/1997
Issued By:	Florida Division of Parl-Mutuel Wagering	Facility:	Unknown
Ruling Type:	License Denied, Rescinded, Revoked, Suspended, Withdrawn or Exclusion		
Division:	Unknown	Breed:	Unknown
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 0	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None

Actions:

Alpha Ruling: 54611	Action Type: Initial Ruling	Issue Date: 11/19/1997
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Action Text:
Ruling Number : 00000000 Involvement : CONTACT INVESTIGATIONS BEFORE LICENSING|SUBJECT HAS BEEN SUSPENDED INDEFINITELY IN ANOTHER JURISDICTION.

Ruling #: 36

Ruling Number:	972352	Date:	10/20/1997
Issued By:	Illinois Racing Board	Facility:	Unknown
Ruling Type:	License Denied, Rescinded, Revoked, Suspended, Withdrawn or Exclusion		
Division:	Unknown	Breed:	Unknown
Effective Date:	N/A	Race Date:	N/A

Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 0 Fine Paid: Not Submitted
 Suspension Start: 10/20/1997 Suspension End: None
 Actions:

Alpha Ruling: 972352 Action Type: Initial Ruling Issue Date: 10/20/1997
 Action Text:
 RE: 9-21 - SUSPENDED PENDING PAYMENT OF FINE.

Ruling #: 37

Ruling Number: 972302 Date: 9/21/1997
 Issued By: Illinois Racing Board Facility: Unknown
 Ruling Type: Careless/Unsafe/Improper
 Riding or Driving
 Division: Unknown Breed: Unknown
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 120 Fine Paid: Not Submitted
 Suspension Start: None Suspension End: None
 Actions:

Alpha Ruling: 972302 Action Type: Initial Ruling Issue Date: 9/21/1997
 Action Text:
 INTERFERENCE.

Ruling #: 38

Ruling Number: 963420 Date: 10/14/1996
 Issued By: Illinois Racing Board Facility: Fairmount Park
 Ruling Type: Careless/Unsafe/Improper
 Riding or Driving
 Division: Unknown Breed: Unknown
 Effective Date: N/A Race Date: N/A
 Infraction Date: N/A Infraction Facility: N/A
 Race Number: N/A Animal Name: N/A
 Under Appeal: False Appeal Date: N/A
 Fine Amount: \$ 100 Fine Paid: Not Submitted
 Suspension Start: None Suspension End: None
 Actions:

Alpha Ruling: 963420 Action Type: Initial Ruling Issue Date: 10/14/1996
 Action Text:

INTERFERENCE.

Ruling #: 39

Ruling Number:	953366	Date:	9/4/1995
Issued By:	Illinois Racing Board	Facility:	Fairmount Park
Ruling Type:	Unknown		
Division:	Unknown	Breed:	Unknown
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 0	Fine Paid:	Not Submitted
Suspension Start:	9/3/1995	Suspension End:	10/2/1995

Actions:

Alpha Ruling: 953366

Action Type: Initial Ruling

Issue Date: 9/4/1995

Action Text:

ADMITTEDLY PURCHASED ILLEGAL DRUGS AND/OR PRESCRIPTION DRUGS THRU THE MAIL.

Ruling #: 40

Ruling Number:	943488	Date:	12/20/1994
Issued By:	Illinois Racing Board	Facility:	Fairmount Park
Ruling Type:	Careless/Unsafe/Improper Riding or Driving		
Division:	Unknown	Breed:	Unknown
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 100	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None

Actions:

Alpha Ruling: 943488

Action Type: Initial Ruling

Issue Date: 12/20/1994

Action Text:

\$100 - INTERFERENCE.

Ruling #: 41

Ruling Number:	933225	Date:	3/9/1993
Issued By:	Illinois Racing Board	Facility:	Fairmount Park
Ruling Type:	Careless/Unsafe/Improper Riding or Driving		
Division:	Unknown	Breed:	Unknown
Effective Date:	N/A	Race Date:	N/A

Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 100	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None
Actions:			

Alpha Ruling: 933225	Action Type: Initial Ruling	Issue Date: 3/9/1993
Action Text:		
\$100 - INTERFERENCE.		

Ruling #: 42

Ruling Number:	933184	Date:	2/7/1993
Issued By:	Illinois Racing Board	Facility:	Fairmount Park
Ruling Type:	Unknown		
Division:	Unknown	Breed:	Unknown
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 100	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None
Actions:			

Alpha Ruling: 933184	Action Type: Initial Ruling	Issue Date: 2/7/1993
Action Text:		
\$100 - UNAUTHORIZED SCRATCH OF HORSE "IDEAL MARK" IN THE 11TH RACE ON 2-6.		

Ruling #: 43

Ruling Number:	54186	Date:	8/2/1991
Issued By:	Kentucky Racing Commission	Facility:	Yonkers Raceway
Ruling Type:	Careless/Unsafe/Improper Riding or Driving		
Division:	Unknown	Breed:	Unknown
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 0	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None
Actions:			

Alpha Ruling: 54186	Action Type: Initial Ruling	Issue Date: 8/2/1991
Action Text:		
5 DAYS - HOOKING WHEEL OF ANOTHER SULKY, CAUSING OTHER HORSES TO GO OFF STRIDE. (H)		

Ruling #: 44

Ruling Number:	90303	Date:	1/26/1990
Issued By:	Illinois Racing Board	Facility:	Fairmount Park
Ruling Type:	Reinstatement to Good Standing in State		
Division:	Unknown	Breed:	Unknown
Effective Date:	N/A	Race Date:	N/A
Infraction Date:	N/A	Infraction Facility:	N/A
Race Number:	N/A	Animal Name:	N/A
Under Appeal:	False	Appeal Date:	N/A
Fine Amount:	\$ 0	Fine Paid:	Not Submitted
Suspension Start:	None	Suspension End:	None
Actions:			

Alpha Ruling: 90303

Action Type: Initial Ruling

Issue Date: 1/26/1990

Action Text:

RESTORED TO GOOD STANDING. (H)

Harness Racing - USTA Pathway - United States Trotting Association : All Rulings Report Page 1 of 2

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Bobby A Brower

Name: Bobby A Brower Program Name:
 Permanent Address: 7201 S 400 W
 Muncie, IN
 US 47302
 Gender: Male Birth Date: 08/18/1962

Membership Data

Membership No: 233613 Initial Date: 01/1976
 Driver License: Full Expiration Date: 12/31/2016
 Trainer License: General Expiration Date: 12/31/2016

Fines and Suspensions - All Rulings between 01/01/1984 and 10/13/2016

NOTICE: The USTA reports output and other such information that is submitted by the judges/stewards and racing commissions. We are not responsible for the accuracy or timeliness of such information. You should contact the racing commission where this ruling was issued to determine the accuracy of the information.

The term "HAZOR" refers to a rule violation based upon the classification assigned by the USTA. This information also appears under the heading "PART TWO-HAZOR PENALTIES" in the USTA Healthy Race and Suspension Guide.

Infraction Date	Major?	Last Action Date	Type	Details	Penalty
04/07/2016	Y	06/14/2016	IR	Positive test- post race Horse: THE DATE ROCKER Pharmaceutical: Levamisole (Class 2), Penicillin (Class 1) Additional Details: 71 IAC 5-4-3 71 IAC 8-1-2(a) Sample #E201268 collected on 4/7/16 from the horse The Date Rocker was found to contain Levamisole & Penicillin. This is a violation of IHRC medication rules. All purse money earned on 4/7/16 must be returned and redistributed. Finished 1st-\$3737.00 to be returned. There were mitigating circumstances involved in this positive test. The horse was treated by a licensed veterinarian with a medication that failed to list Levamisole and Penicillin as ingredients.	Horse Disqualified, Purse Redistribution
04/01/2016	Y	06/14/2016	IR	Positive test- post race Horse: KEYSTONE WANDA Pharmaceutical: Flunixin (Class 4), Penicillin (Class 1), Levamisole (Class 2) Additional Details: 71 IAC 5-4-3 71 IAC 8-1-2(a) 71 IAC 8-1-4, 1(p)(B) Sample # E201218 collected on 4/1/16 from the horse Keystone Wanda was found to contain Levamisole, Penicillin & Flunixin. Flunixin was found at a level above the allowable limit. Tested 24.4 ng/ml - limit 20 ng/ml. Mr. Brower as trainer is in violation of IHRC medication rules and the trainer responsibility rule. There were mitigating circumstances involving the Levamisole and Penicillin. The horse was treated by a licensed veterinarian with a medication that failed to list Levamisole and Penicillin as ingredients. All purse money earned on 4/1/16 must be returned and redistributed. Finished 1st-\$4260.00 to be returned.	Fined: \$ 750 Horse Disqualified, Purse Redistribution
11/04/2016	Y	01/03/2016	IR	Positive test- post race Horse: B FLOREAL Pharmaceutical: Methocarbamol (Class 4) Additional Details: 71 IAC 5-3-2 71 IAC 8-1-4 2(1B) Sample #E102268 collected on 11/4/16 from the horse B Floreal was found to contain METHOCARBAMOL at a level above the allowable limit. Tested 2.4 ng/ml - limit 1 ng/ml. Split sample test was confirmed by TVHDL. Mr. Brower as trainer is in violation of IHRC medication rules and the trainer responsibility rule. All purse money earned on 11/4/16 must be returned and redistributed. Finished 1st - \$4000.00 to be redistributed.	Fined: \$ 1,000 Horse Disqualified, Purse Redistribution
10/01/2014	Y	12/09/2014	IR	Positive test- post race Horse: TRUTH IS BIG Pharmaceutical: Cobalt (Class 3) Additional Details: LGC Science Inc. reported to the Indiana Horse Racing Commission that serum sample 63869 given by the horse "Truth is Big" following the 4th race with at Hoosier Park on October 1, 2014. Trainer Bobby Brower was also notified of the violation of the IHRC medication rules. A split sample was requested and confirmed the original report. Therefore, the purse money of two thousand seven hundred fifty dollars (\$2750) is ordered returned, forfeited and redistributed in the following manner: Truth is Big finished 1st placed last, Ideal Pyrote finished 2nd placed 1st, Camilo finished 3rd placed 2nd, St. Louis Maggie Jean finished 4th placed 3rd, Cuba Malone finished 6th placed 4th, Ava Destruction finished 8th placed 5th.	Horse Disqualified, Purse Redistribution
09/18/2014	Y	09/17/2014	IR	Excessive or indiscriminate use of whip Additional Details: Whipping other than with action.	Fined: \$ 100
05/02/2014	Y	06/09/2014	IR	Positive test- post race Horse: NIGHTLY NEWS	Fld suspension - 30 days 10/19/2014 - 11/17/2014 Horse Disqualified, Purse Redistribution

				<p>Pharmaceuticals: Triphenylethylene (Class 3)</p> <p>Additional Details: Pursuant to 71 IAC 10-2-1(b) and 10-2-4 and I.C. 4-21-5, Bobby Brewer hereby waives his right to a 72-hour notice of a hearing and waives his right to a hearing and in connection with the following incident. Three reports from LCG Scientific Inc. to the Indiana Horse Racing Commission indicated the following: 1. Sample No. 0043317 from "NIGHTLY NEWS", which raced in the 110 race on May 7, 2014 at Hoosier Park was found to contain triphenylethylene in violation of Commission Rules. 2. Sample No. 0043350 from "AHR Justice", which raced in the 60 race on May 6, 2014 at Hoosier Park was found to contain triphenylethylene in violation of Commission Rules. 3. Sample No. 0043372 from "Miss Sand Cruiser", which raced in the 60 race on May 7, 2014 at Hoosier Park was found to contain triphenylethylene in violation of Commission Rules. Spot testing was declined on all three samples. Bobby Brewer acknowledges and agrees that the following penalties will be imposed:</p>	
10/23/2013	Y	10/24/2013	IR	Other	* Fined: \$ 250
				<p>Additional Details: Employing an unlicensed person on the secured backstretch of Hoosier Park.</p>	
09/14/2013	Y	09/11/2013	IR	Low or excess level of authorized medication (Bute/Lasix)	Warning Issued
				<p>Horse: EDEN SHOOTER</p> <p>Pharmaceuticals: Phenylbutazone (Class 4)</p> <p>Additional Details: Hereby given 1st warning regarding phenylbutazone levels exceeding those allowed by the Indiana Horse Racing Commission in the 100 race on May 16, 2013 from the horse Eden Shooter following the fourth (4th) race on 05/16/2013. (phenylbutazone level 4.8 mcg/ml)</p>	
05/28/2013		05/04/2013	IR	Failure to control horse	* Fined: \$ 300
				<p>Additional Details: Failure to restrain horse in a proper manner following a brake and after the race by jerking the horses head from side to side.</p>	
09/21/2012		09/22/2012	IR	No Vaccination / Coggins / Health Certificate	* Fined: \$ 100
				<p>Additional Details: Failure to have proper health papers resulting in a scratch.</p>	

Harness Racing - USTA Pathway - United States Trotting Association : All Rulings Report Page 1 of 2

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Bobby A Brower

Name: Bobby A Brower Program Name:
 Permanent Address: 7281 S 400 W
 Muncie, IN US 47302
 Gender: Male Birth Date: 06/18/1962

Membership Data

Membership No: 2036M3 Initial Date: 01/1976
 Driver License: Full Expiration Date: 1231/2018
 Trainer License: (General) Expiration Date: 1231/2018

Fines and Suspensions - All Rulings between 01/01/1984 and 10/13/2016

NOTICE: The USTA reports rulings and other such information that is submitted by the judges/trainers and racing commissions. We are not responsible for the accuracy or timeliness of such information. You should contact the racing commission where the ruling was issued to determine the accuracy of the information.

The term "MAJOR" refers to a violation based upon the classification assigned by the USTA. This information also appears under the heading "PART TWO-MAJOR PENALTIES" in the USTA Weekly Files and Suspension Bulletin.

Infraction Date	Major?	Last Action Date	Type	Details	Penalty
09/14/2013	Y	09/11/2013	IR	Low or excess level of authorized medication (Buta/Lasix) Horse: EODEN SHOOTER Pharmaceuticals: Phenylbutazone (Class 4) Additional Details: Horseby given 1st warning regarding phenylbutazone levels exceeding those allowed by the Indiana Horse Racing Commission in this blood sample taken from the leg of Eoden Shooter following the fourth (4th) race on 09/14/2013. (phenylbutazone level 4.8 micrograms/ml)	Warning issued
05/28/2013		06/04/2013	IR	Failure to control horse Additional Details: Failure to restrain horse in a proper manner following a brake and after the race by jerking the horses head from side to side.	Fined: \$ 300
09/21/2012		09/27/2012	IR	No Vaccination / Copplins / Health Certificate Additional Details: Failure to have proper health papers resulting in a scratch	Fined: \$ 100
04/13/2011		05/13/2012	RU	Other Additional Details: The Indiana Horse Racing Commission summary suspension on Bobby Brower has been lifted. Furthermore, Mr. Brower is hereby eligible to apply for a license.	Restored to good standing (RES) as of 05/13/2012
10/29/2010		10/30/2010	IR	Late driver change	Fined: \$ 50
04/10/2010		04/14/2010	IR	Late driver change	Fined: \$ 50
10/02/2009		10/18/2009	IR	Other Additional Details: FAILURE TO STAY AT STABLE GATE FOR PROPER PAPER WORK CHECK IN AND LEAVING STABLE GATE WITHOUT BEING PROPERLY CHECKED OUT.	Fined: \$ 300
09/19/2009		09/23/2009	IR	Changing course/causing interference	Fined: \$ 300
06/14/2009	Y	06/19/2009	IR	Offensive/profane language Additional Details: On 06/14/09 at the Woodbury County fair conducted at The Red Hill during the 1st race Mr. Brower did use inappropriate loud and profane language during the race directed at another licensee. 811 KAR 1:07B section 8(1) Fines not paid within 7 days may result in additional fines and or suspension.	Fined: \$ 300
09/22/2008		09/22/2008	IR	Failure to pay fine(s) Additional Details: Mr. Brower is hereby restored to good standing for payment of fines at The Red Hill.	Restored to good standing (RES) as of 09/22/2008

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Bobby A Brower

Name:	Bobby A Brower	Program Name:	
Permanent Address:	7281 S 400 W Ellettsville, IN US 47302		
Gender:	Male	Birth Date:	08/18/1982

Membership Data

Membership No:	2330M3	Initial Date:	01/19/76
Driver License:	Full	Expiration Date:	12/31/2016
Trainer License:	General	Expiration Date:	12/31/2016

Fines and Suspensions - All Rulings between 01/01/1984 and 10/13/2016

NOTICE: The USTA reports rulings and other such information that is submitted by the judges/stewards and racing commissioner. We are not responsible for the accuracy or timeliness of such information. You should contact the racing commission where the ruling was issued to determine the accuracy of the information.

The term "MAJOR" refers to a classification based upon the classification assigned by the USTA. This information also appears under the heading "PART TWO-MAJOR PENALTIES" in the USTA Weekly News and Suspension Bulletin.

Initiation Date	Major?	Last Action Date	Type	Details	Penalty
09/22/2008		09/22/2008	IR	Failure to pay fine(s) <i>Additional Details:</i> Mr. Brower is hereby suspended for failure to pay fines at The Red Mile (12008-RM41 \$100.00) 811 KAR 1:05 sec 2 (12)	• Indefinite suspension (IID) as of 09/22/2008
08/21/2008		08/22/2008	IR	Failure to be properly dressed <i>Additional Details:</i> On 08/21/2008 at The Red Mile Mr. Brower was on the track during warm up and morning hours without a safety vest. 811 KAR 1:076 sec 2 I Fines not paid within 7 days of the action date may result in higher fines and/or suspension	• Fined: \$ 100
09/16/2008		09/15/2008	IR	Changing course/causing interference	• Fined: \$ 100
10/02/2004	Y	10/23/2004	RU	Disturbing the peace <i>Additional Details:</i> Following a hearing the judges find violation of an abusive verbal and physical altercation against other licensees in a secured area (paddock) the violator fined \$1000 and suspended for 60 days. Will be traded with 21 days time served while under a summary suspension prior to his hearing. Must provide proof of a successful completion of anger management program. Any future application for license must be made in person to the Executive Director. Ruling #24428, Rule: 7-3-22(4)(9)(8)	• Fined: \$ 1,000 • Full suspension - 60 days: 10/02/2004 - 11/01/2004
08/08/2004		08/08/2004	IR	Excessive or indiscriminate use of whip <i>Additional Details:</i> Fined \$50 for excessive use of the whip while driving Scootin A J. Rule: 1:075 sec 12(1)	• Fined: \$ 50
12/30/2003		01/11/2004	IR	Horse into the paddock <i>Additional Details:</i> Fined \$200 for failure to have the horse Yalvo Lyrin in the assigned stall by the prescribed time for the 2nd race. IRB Rule: 436.05(A)(B)(C) Ruling #042018	• Fined: \$ 200
07/22/2003		07/22/2003	IR	Excessive or indiscriminate use of whip <i>Additional Details:</i> Fined \$100. Indiscriminate use of whip. Rule 71 IAC 7-3-13(C)	• Fined: \$ 100
07/22/2003		07/22/2003	IR	Excessive or indiscriminate use of whip <i>Additional Details:</i> Fined \$100. Excessive use of whip. Rule 71 IAC 7-3-13(C)(5)	• Fined: \$ 100
07/22/2003		07/22/2003	IR	Kneeling a horse <i>Additional Details:</i> Fined \$50. Feet out of stirrups. Rule 71 IAC 7-3-12	• Fined: \$ 50
04/24/2003		04/26/2003	IR	Failure to come up/late in position <i>Additional Details:</i> Fined \$50. Failure to come up into position. Rule: 71 IAC 7-2-7(7)	• Fined: \$ 50

Harness Racing - USTA Pathway - United States Trotting Association : All Rulings Report Page 1 of 2

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Bobby A Brower

Name:	Bobby A Brower	Program Name:	
Permitment Address:	7281 S 400 W Hamlet, IN US 47302	Birth Date:	08/18/1962
Gender:	Male		

Membership Data

Membership No:	2336013	Initial Date:	01/1975
Driver License:	Full	Expiration Date:	12/31/2016
Trainer License:	General	Expiration Date:	12/31/2016

Fines and Suspensions - All Rulings between 01/01/1984 and 10/13/2016

NOTICE: The USTA reports rulings and other such information that is submitted by the judges/trainers and racing commissions. We are not responsible for the accuracy or timeliness of such information. You should contact the racing commission where the ruling was issued to determine the accuracy of the information.

The term "MAJOR" refers to a suspension based upon the classification assigned by the USTA. This information also appears under the heading "PART TWO-MAJOR PENALTIES" in the USTA Weekly Fines and Suspension Bulletin.

Infraction Date	Major?	Last Action Date	Type	Details	Penalty
12/20/2002		12/21/2002	IR	<i>Excessive or Indiscriminate use of whip</i> Additional Details: Fined \$100. Indiscriminate use of whip. Judge's Ruling #22018 Rule 71 IAC 7-3-13(c)(1)	Fined: \$ 100
12/12/2002		12/13/2002	IR	<i>Excessive or Indiscriminate use of whip</i> Additional Details: Fined \$50. Both reins in one hand. Judge's Ruling #22004 Ru's 71 IAC 7-3-13(b)	Fined: \$ 50
09/18/2002		09/18/2002	IR	<i>Other</i> Additional Details: Having fulfilled his suspension, Mr. Brower is hereby restored to good standing.	Restored to good standing (RES) as of 09/18/2002
09/29/2002	Y	09/29/2002	IR	<i>Other</i> Additional Details: Indiana Horse Racing Commission Occupational License is hereby suspended in reciprocity to Kentucky Racing Commission Harms' Violation Ruling dated 01/16/2002.	Indefinite suspension (IID) as of 09/29/2002
09/17/2002	Y	09/17/2002	IR	<i>Failure to appear for a hearing</i> Additional Details: Mr. Brower failed to appear or be represented at a hearing set for 09/17/02 at 10:00AM in the Red Hall. Judge's office after notice was duly given and without good cause. 011 KAR 1:105 sec.7	
05/27/2002	Y	05/19/2002	IR	<i>Conduct detrimental to the best interest of horse racing</i> Additional Details: Mr. Brower is suspended for 90 days for being on (Red Hall) property during live racing while under suspension in the state of Indiana. 011 KAR 1:055, sec. 9	F of suspension - 90 days: 09/17/2002 - 09/17/2002
03/28/2002	Y	01/02/2003	RU	<i>USTA Membership Action</i> Additional Details: Resigned to good standing.	Denial (DEH) as of 01/02/2003
04/08/2001	Y	08/07/2001	RU	<i>Possession of hypodermic needles, syringes and/or injectable and/or other drugs</i> Additional Details: For possession of contraband including numerous injectables, needles and syringes. Preliminary report #PR21001 is withdrawn and summary suspension (ruling #21030) is withdrawn in favor of settlement agreement dated June 9, 2001. Suspended for 1 Year and 2 Months (420 days) and fined \$2000. Rule Violation(s) 71 IAC 5-1-14, 71 IAC 6-6-1, 71 IAC 6-7-1	Fined: \$ 2,000 Full suspension - 420 days: 04/08/2001 - 08/07/2002
04/15/2000		04/18/2000	IR	<i>Late driver change</i> Additional Details: Failure to name driver by scratch time. \$50 fine	Fined: \$ 50
08/28/1999	Y	09/13/1999	IR	<i>Offensive/profane language</i> Additional Details: Fined \$200. For being disrespectful to a racing commission official & using offensive & profane language in the post box area. 011 KAR 1:070 Sec 8, Sub (6)	Fined: \$ 200

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Bobby A Brower

Name:	Bobby A Brower	Program Name:	
Permanent Address:	7281 S 400 W Huntle, IN US 47302		
Gender:	Male	Birth Date:	08/18/1952

Membership Data

Membership No:	233613	Initial Date:	01/1976
Driver License:	Full	Expiration Date:	12/31/2018
Trainer License:	General	Expiration Date:	12/31/2018

Fines and Suspensions - All Rulings between 01/01/1984 and 10/13/2016

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 The term "MAJOR" refers to a suspension based upon the classification assigned by the USTA. This information also appears under the heading "PART TWO-MAJOR PENALTIES" in the USTA Weekly Fines and Suspension Bulletin.

Initiation Date	Major?	Last Action Date	Type	Details	Penalty
11/05/1996		11/08/1996	IR	Changing course/causing interference <i>Additional Details:</i> Bobby Brower is hereby assessed a civil penalty of \$100 for coming in with-out being clear and striking the leg of Dubba Cream causing interference before the 1/2 mile pole while driving "Crocus Buzzle" in the 1st race on November 5, 1996. IRB Rule 1316.10(0)	Fine: \$ 100
11/21/1997		11/24/1997	IR	Failure to come up/stay in position <i>Additional Details:</i> Mr. Brower is hereby assessed a civil penalty of \$50 for failing to come into position and/or stay in position on the gate while driving Shion Ridge in the 2nd race on 11/21/97. IRB rule 1316.10(0)(7)	Fine: \$ 50
10/20/1997		10/20/1997	IR	Failure to pay fine(s) <i>Additional Details:</i> Mr. Brower is suspended pending payment of a fine assessed him on 9/21/97 ruling #072302 IRB 1303 60	
09/19/1997		09/21/1997	IR	Changing course/causing interference <i>Additional Details:</i> Mr. Brower is assessed a civil penalty for interference to DEFIES EXPLANATION while driving SHION RIDGE in the 3rd race on 9/19/97. IRB 1316.10(1)	Fine: \$ 120
02/06/1997		02/09/1997	IR	Failure to drive when programmed <i>Additional Details:</i> Failure to drive (Aly Rose) when programmed to do so which resulted in a late driver change	Fine: \$ 25
10/12/1996		10/14/1996	IR	Changing course/causing interference <i>Additional Details:</i> Changed course in the harness race causing interference to (B G's Garfield) while driving (Aly Rose)	Fine: \$ 100
07/30/1996		07/30/1996	IR	Kicking a horse <i>Additional Details:</i> Right foot out at the string, kicking in the last 1/8th mile	
03/25/1995		03/26/1995	IR	Failure to drive when programmed <i>Additional Details:</i> Failure to drive (Justin C) as programmed resulting in a late scratch.	Fine: \$ 25
12/19/1994		12/20/1994	IR	Changing course/causing interference <i>Additional Details:</i> Interference to (Bulldog Eddie) while driving (Justin C).	Fine: \$ 100
04/30/1993		05/07/1993	IR	Failure to come up/stay in position <i>Additional Details:</i> Failure to come up and stay in position.	Fine: \$ 25

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Bobby A Brower

Name:	Bobby A Brower	Program Name:	
Permanent Address:	7281 S 400 W Munster, IN US 47302	Birth Date:	08/18/1962
Gender:	Male		

Membership Data

Membership No:	233613	Initial Date:	01/1975
Driver License:	PUJ	Expiration Date:	12/31/2018
Trainer License:	General	Expiration Date:	12/31/2018

Fines and Suspensions - All Rulings between 01/01/1984 and 10/13/2016

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The term "MAJOR" refers to a reoffense based upon the classification assigned by the USTA. This information also appears under the heading "PART TWO-MAJOR PENALTIES" in the USTA Weekly Fines and Suspension Bulletin.

Infraction Date	Major?	Last Action Date	Type	Details	Penalty
03/06/1993		03/06/1993	IR	Impeding the progress of another horse Additional Details: Came out late impeding progress in 2 unplaced	Fined: \$ 100
02/06/1993		02/07/1993	IR	Unauthorized withdrawal from race Additional Details: Unauthorized scratch from the 11th race on 2/6/93	Fined: \$ 100
02/26/1992		02/28/1992	IR	Driving in a half-in and half-out position Additional Details: Driving in half-in/half-out position	Fined: \$ 50
07/13/1991		05/02/1991	IR	Interference/ causing another horse to make a break Additional Details: 5 days BM, 8, 10, 13, 14 Hooked wheel of another sulky causing other horses to go off stride	Driving suspension - 7 days: 05/02/1991 - 08/11/1991
08/30/1990		08/03/1990	IR	Impeding the progress of another horse Additional Details: Impeding progress	Driving suspension - 2 days: 08/31/1990 - 09/01/1990
07/11/1990		07/13/1990	IR	Impeding the progress of another horse Additional Details: Impeding progress in 6 pl 6	Driving suspension - 2 days: 07/12/1990 - 07/13/1990
09/19/1988	Y	01/26/1990	RU	Judgment Additional Details: Restored to good standing in Illinois having satisfied judgment of 8/18/88	
07/18/1988		07/20/1988	IR	Excessive or indiscriminate use of whip Additional Details: WHIPPING HORSE AFTER THE FINISH	Fined: \$ 100
10/02/1987		10/03/1987	IR	Excessive or indiscriminate use of whip Additional Details: EXCESSIVE USE OF WHIP	Fined: \$ 50
09/01/1987		09/02/1987	IR	Changing course/causing interference Additional Details: BO-7 INTERFERENCE FIN 4 PL 7	

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Bobby A Brower

Name:	Bobby A Brower	Program Name:	
Permanent Address:	7281 S 400 W Blunck, IN US 47302		
Gender:	Male	Birth Date:	08/18/1982

Membership Data

Membership No:	283843	Initial Date:	01/1/96
Driver License:	Full	Expiration Date:	12/31/2016
Trainer License:	General	Expiration Date:	12/31/2016

Fines and Suspensions - All Rulings between 01/01/1984 and 10/13/2016

NOTE: The USTA reports rulings and other such information that is submitted by the judges, stewards and racing commissions. We are not responsible for the accuracy or timeliness of such information. You should contact the racing commission where the ruling was issued to determine the accuracy of the information.

The term "MAJOR" refers to a suspension based upon the classification assigned by the USTA. This information also appears under the heading "PART TWO-MAJOR PENALTIES" in the USTA Weekly Fines and Suspension Bulletin.

Infraction Date	Major?	Last Action Date	Type	Details	Penalty
08/11/1987		08/12/1987	IR	Excessive or indiscriminate use of whip Additional Details: EXCESSIVE USE OF WHIP	Fine: \$ 50
07/04/1987		07/05/1987	IR	Slow quarter/mil Additional Details: 7/5-7 RATING AN EXCESSIVELY SLOW 2ND QUARTER	
08/07/1986		08/08/1986	IR	Changing course/causing interference Additional Details: 8/6-11 COME OUT W/O CLEARANCE	
07/04/1986		07/05/1986	IR	Impeding the progress of another horse Additional Details: 7/5-7 IMPEDING PROGRESS	
05/24/1986		05/26/1986	IR	Excessive or indiscriminate use of whip Additional Details: 5/23-25 EXCESSIVE USE OF WHIP	
03/28/1986	Y	03/31/1986	IR	Improper conduct of language to an official Additional Details: IMPROPER LANGUAGE TO AN OFFICIAL	Fine: \$ 25
01/18/1986		01/19/1986	IR	Failure to come up/step in position Additional Details: 1/22-24 FAILURE TO COME UP INTO POSITION	



State of Indiana
Indiana Horse Racing Commission

Michael R. Pence, Governor

www.in.gov/hrc

2016 PROBATIONARY LICENSE

Name Bobby Brower IHRC License # 970363

This document is to advise you of the conditions placed upon your 2016 Indiana Horse Racing Commission license. Any non-compliance with the rules of the Commission or the repeat of a violation as indicated in your past record will result in a hearing as to why your license should not be revoked.

- 1. Integrity of Racing
- 2. Any human Drug and/or Alcohol violations.
- 3. Any Equine medication violations.
- 4. Any futher whipping violations
- 5. Failure to obey the instructions of Racing Officials *i.e.*, Stewards, Judges, Commission Vet, Racing Commission Representatives and/or Security.
- 6. Financial responsibility violations.
- 7. Violations regarding lack of effort, form reversal, inconsistency, etc.
- 8. Trainer responsibility violations including, stable employees, entries, ownership changes, etc.
- 9. Must turn in a completion of court probationary by _____
- 10. Must turn in a disposition from the court by _____
- 11. Must report any futher arrest to Commission Security.
- 12. Other: _____

Your signature acknowledges a clear understanding and acceptance that your 2016 IHRC license will be subject to periodic review. Also, your signature acknowledges acceptance of the conditions.

<u><i>Bobby Brower</i></u> Licensee	<u>3-15-16</u> Date
<u><i>Mark Maly</i></u> Security	<u>3/9/16</u> Date
<u><i>Keri A...</i></u> Judges/Stewards/Executive Director/Representative of Track/OTB	<u>3/9/2016</u> Date

Indiana Grand
4425 N 200 W
Skelbyville, IN 46176
Ph: 317/713-3350
Fax: 317/713-3355

Indiana Horse Racing Commission

Honsler Park
1500 Dan Patch
Anderson, IN
Ph: 765/609-
Fax: 765/609-

EXHIBIT
3

COPY

2018 JAN -5

STATE OF INDIANA
INDIANA HORSE RACING COMMISSION
2018 TERM

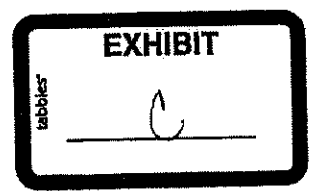
Re: Bobby Brower
7281 S. 400
Muncie, In 47302

ADMINISTRATIVE COMPLAINT NO.
216005

**RESPONDENT, BOBBY BROWER'S, MOTION TO DISQUALIFY ADMINISTRATIVE
LAW JUDGE**

Respondent, Bobby Brower, by counsel, Peter J. Sacopulos, pursuant to I.C. 4-21.5-3-10, moves to disqualify ALJ Bernard Pylitt. In support of this motion, Respondent states:

1. On November 14, 2016, the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff filed an Administrative Complaint against Respondent, Bobby Brower. Said Administrative Complaint was assigned Administrative Complaint number 216005.
2. On November 29, 2016, the undersigned counsel entered his Appearance on behalf of Respondent, Bobby Brower.
3. On November 29, 2016, Respondent, Bobby Brower, timely filed his Answer denying the allegations set forth in said Administrative Complaint.
4. On December 16, 2016, the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff filed a Motion for Default Order. That same day, Bernard Pylitt was purportedly assigned to serve as ALJ in this matter. That same day, an Administrative Law Judge, Bernard Pylitt, issued a Service of Proposed Default advising Mr. Brower that he had seven (7) days in which to file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon.
5. On December 21, 2016, Respondent, Bobby Brower, timely filed his Verified Objection and Motion Under IC 4-21.5-3-24(b) that the proposed/recommended default order issued by ALJ Pylitt not be imposed.
6. On December 27, 2016, the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff filed its Reply to Respondent's Verified Objection and Motion Under IC 4-21.5-3-24(b) that the proposed/recommended default order issued by the ALJ not be imposed.
7. On December 30, 2016, ALJ Pylitt issued a Recommended Order Granting



Default Judgment Against Bobby Brower. ALJ Pylitt, in issuing said recommended order, disregarded and improperly failed to consider that Bobby Brower had timely filed an Answer denying the allegations set forth in the Administrative Complaint and was, therefore, entitled to a hearing on the merits.

8. On January 12, 2017, Respondent, Bobby Brower, timely filed his Verified Objections to Findings of Fact and Recommended Order Granting Default Judgment.
9. On February 24, 2017, the Indiana Horse Racing Commission issued its Notice of Opportunity to Present Briefs and Oral Argument.
10. On March 3, 2017, Respondent, Bobby Brower, timely filed his Brief In Opposition of the ALJ's Proposed Findings of Fact and Recommended Order of December 30, 2016.
11. On March 3, 2017, the Indiana Horse Racing Commission Staff filed its Brief of Commission Staff in Support of Commission Affirmation of Findings of Fact, Conclusions of Law, and Recommended Order of Administrative Law Judge.
12. On March 7, 2017, a hearing and oral argument on Respondent, Bobby Brower's, Verified Objections to Findings of Fact and Recommended Order Granting Default Judgment of December 30, 2016, were conducted by/before the Indiana Horse Racing Commission. On this date, the Indiana Horse Racing Commission voted to accept the ALJ's Recommended Order and entered judgment in favor of its own staff and against Mr. Brower as follows:
 - a. Brower is assessed a \$40,000 fine; and
 - b. Brower shall be suspended and remain ineligible for licensure for a period of fifteen (15) years.
13. On March 31, 2017, Respondent timely filed his Verified Petition for Judicial Review of the Indiana Horse Racing Commission's Final Order of March 7, 2017. Said Verified Petition for Judicial Review was timely filed of record with the Madison Circuit Court 6 and assigned Cause Number 48C06-1703-MI-279.
14. The Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff for reasons unknown to the Respondent and in direct contradiction to the Indiana Inspector General's Report of September 2, 2011, retained private counsel, instead of assigning defense to its staff counsel or assigning the matter to the office of the Indiana Attorney General for representation in connection with Brower's Verified Petition for Judicial Review.
15. On May 11, 2017, the Indiana Horse Racing Commission/Indiana Horse Racing

Commission Staff filed its Response to Petition for Judicial Review.

16. On May 24, 2017, the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff filed its motion to dismiss Brower's Verified Petition for Judicial Review alleging the trial court lacked subject matter jurisdiction along with a memorandum of law in support of its motion. The Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff's motion filed of record on May 24, 2017, was/is entitled "Respondent's Motion to Dismiss" and the memorandum of law in support was/is entitled "Memorandum of Law in Support of Respondent's Motion to Dismiss and In Opposition to Stay Petition."
17. On June 14, 2017, Respondent/Petitioner, Bobby Brower, filed his Response to Respondent's Motion to Dismiss and Memorandum of Law in Support of Respondent's Motion to Dismiss and In Opposition to Stay Petition.
18. On June 15, 2017, Respondent/Petitioner, Bobby Brower, filed his Offer of Proof.
19. On June 16, 2017, hearing and oral argument was conducted on the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff's Motion to Dismiss before the Madison Circuit Court 6.
20. On July 28, 2017, the Honorable Mark Dudley, Judge of the Madison Circuit Court 6, **DENIED** the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff's Motion to Dimiss. A true and exact copy of said Order in favor of Mr. Brower and against the IHRC/IHRC Staff is attached hereto, made a part hereof, and marked as Exhibit "A."
21. The Honorable Mark Dudley, in his Order of July 28, 2017 (See Exhibit "A") admonished both Administrative Law Judge Pylitt and the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff in stating that: "the IHRC must follow its own rules" and ruled that Mr. Brower was improperly denied a hearing on the merits and further that Mr. Brower is so entitled to a hearing on the merits and the opportunity to be heard and defend the allegations against him.
22. To date, Mr. Brower has not been afforded the opportunity to be heard and defend himself on the merits.
23. I.C. 4-21.5-3-10 provides for the disqualification of an ALJ. Specifically, this provision of the AOPA states, in pertinent part:

"Sec. 10 . (a) Any individual serving or designated to serve alone or with others as an administrative law judge is subject to disqualification for:

- (1) bias, prejudice, or interest in the outcome of a proceeding;
- (2) failure to dispose of the subject of a proceeding in an orderly and reasonably prompt manner after a written request by a party;
- (3) unless waived or extended with the written consent of all parties or for good cause shown, failure to issue an order not later than ninety (90) days after the latest of:
 - (A) the filing of a motion to dismiss or a motion for summary judgment under section 23 of this chapter that is filed after June 30, 2011;
 - (B) the conclusion of a hearing that begins after June 30, 2011; or
 - (C) the completion of any schedule set for briefing or for submittal of proposed findings of fact and conclusions of law for a disposition under clauses (A) or (B); ?or
- (4) any cause for which a judge of a court may be disqualified.

Nothing in this subsection prohibits an individual who is an employee of an agency from serving as an administrative law judge....”

(See IC 4-21.5-3-10).

24. Bias is defined as prejudice in favor of or against one thing, person, or group compared with another in a way considered to be unfair. ALJ Pylitt has demonstrated bias in favor of the state agency, the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff, that selected and appointed him, as well as paid him, in defaulting the Respondent, Bobby Brower, in total and disregard of his timely filed response and request for hearing.
25. Prejudice is defined as harm or injury that results or may result from some action or judgment. The inappropriate and improper defaulting of Mr. Brower has resulted in just that; the prejudicing, harming, and injuring of Mr. Brower by the administrative law judge in recommending an order that was both inappropriate and improper. Mr. Brower has been harmed and injured. He has been harmed by being prohibited from making a living as a Standardbred trainer from March 3, 2017, to date. He has been further harmed and injured by his loss of income, loss of clientele, loss of future earnings, and the irreparable damage to his reputation as

a Standardbred trainer. ALJ Pylitt has demonstrated both bias and prejudice against Bobby Brower and in doing so has abused his discretion and violated IC 4-21.5-3-10(a)(1) and should be disqualified from serving as administrative law judge in this matter.

26. This is because ALJ Pylitt inappropriately recommended a default judgment be entered against Mr. Brower despite Mr. Brower having filed a timely request for hearing and a timely answer denying the allegations against him. ALJ Pylitt was obligated to set the matter for a hearing on the merits and proceed accordingly but did not do so. Instead, a default judgment was inappropriately recommended and subsequently entered forcing Bobby Brower to seek and obtain an Indiana trial court ruling that ALJ Pylitt failed to follow the IHRC/IHRC Staff agency rules and ordering that Bobby Brower is entitled to a hearing on the merits.
27. ALJ Pylitt further must be removed pursuant to IC 4-21.5-3-10(a)(4). IC 4-21.5-3-10(a)(4) states that an ALJ is subject to disqualification for: "any cause for which a judge of a court may be disqualified." (See I.C. 4-21.5-3-10(a)(4)). State court judges are required and the Indiana trial court rules mandate that a party that timely files a responsive pleading is entitled to a hearing. If a judge would have abused his/her discretion, as did ALJ Pylitt, and defaulted a party that had timely answered a Complaint, that Judge would be subject to disqualification.
28. ALJ Pylitt failed to accord Mr. Brower's answer its true meaning—that being a request for hearing. (See Madison Circuit Court 6 Judge Mark Dudley's Order of July 28, 2017/Exhibit "A"). ALJ Pylitt incorrectly and inappropriately failed to follow "the agency's own rules" as correctly stated by Judge Dudley. The ALJ failed to follow the agency's rules in that he inappropriately, incorrectly, and prejudicially applied the rules in favor of the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff and against Brower.
29. A review of Indiana case law, being those cases decided and reported by the Indiana Court of Appeals and the Indiana Supreme Court, reveal no decisions where a party has been defaulted having timely filed a responsive pleading. In short, no litigant in the history of Indiana case law has been defaulted or recommended to be defaulted having timely filed a request for hearing/answer/responsive pleading. Any judge that would do so would be recommending or acting contrary to state law and in violation to both state and federal constitutionally guaranteed rights and would be subject to disqualification pursuant to IC 4-21.5-3-10(a)(4). ALJ Pylitt having done so, is subject to being and should be disqualified as ALJ in this matter.
30. On November 29, 2017, a Pre-Hearing Conference to schedule deadlines was conducted by ALJ Pylitt in this matter at the request of the IHRC's counsel, Leah

Ellingwood. During said hearing, Brower's counsel, Peter J. Sacopulos and Greg Carter, clearly stated to ALJ Pylitt that said hearing was not requested by Brower and was inappropriate because ALJ Pylitt had not been appointed by the agency's ultimate authority, the Indiana Horse Race Commission, as required by I.C. 4-21.5-3-9. Whereas he may have been appointed for the initial action against Brower, that matter was concluded upon the wrongful and inappropriate entry of the Default Judgment against Brower, and subsequently presented for judicial review in the trial court. Once the trial court made its determination that Brower was entitled to a hearing and remanded same to the IHRC, the IHRC was then required to appoint an Administrative Law Judge. As of the date of this motion, the Indiana Horse Racing Commission has not appointed an ALJ. Further, Brower's counsel advised ALJ Pylitt that Brower intended to and would file a Motion to Disqualify ALJ Pylitt.

31. Nevertheless, ALJ Pylitt proceeded with said hearing, setting deadlines and issuing a Pre-Conference Order, a copy of which is attached hereto and made a part hereof as Exhibit "B". Said Order does not address if or how ALJ Pylitt was appointed or could assume jurisdiction. Further, within said Order, ALJ Pylitt exceeded his authority in a manner adverse to Bobby Brower thereby exercising additional bias and prejudice against Brower. Specifically, in said Order ALJ Pylitt states, "...If Mr. Brower fails to attend the scheduled hearing or cooperate during discovery, he may be held in default..." This language supercedes the language in I.C. 4-21.5-3-24 by adding a basis for default. This is inappropriate and further demonstrates bias and prejudice against Bobby Brower.
32. Additionally, prior to the November 29, 2017, hearing, Brower had not filed a Motion to Disqualify. However, ALJ Pylitt included in the Prehearing Scheduling Order statements as to a Motion to Disqualify that has not yet been filed. Those statements are self-serving and biased against Mr. Brower. Disqualification pursuant to I.C. 4-21.5-3-10 was not an issue of the Pre-Hearing Conference. Further, ALJ Pylitt's statement in the Order of November 29, 2017, that Brower's counsel: "...refused to provide any specific reason or evidence to support his claim that the ALJ is prejudiced or biased which would require his being disqualified..." is inappropriate and incorrectly implies that Mr. Brower has no basis for a Motion to Disqualify. This is incorrect and contrary to the basis set forth in this motion.
33. The IHRC presently has at least four ALJs it has selected, approved and assigns matters. The IHRC/IHRC Staff has sole control over the selection and compensation of the ALJ appointed. This leads to inherent conflict. If the evidence against Mr. Brower is compelling and the witnesses' testimony so convincingly in favor of the IHRC Staff, the result of a hearing on the merits will presumably result in the same outcome/result regardless of the ALJ assigned. Mr. Brower has been improperly defaulted by ALJ Pylitt and most recently received

an order for the same ALJ inappropriately and without authority expanding the terms by which he may be defaulted. Obviously, an issue to which Bobby Brower is sensitive having been improperly defaulted without a hearing on the merits. Bias and prejudice against Mr. Brower by ALJ Pylitt is clear. The IHRC has other ALJs it has selected, approved, retained, etc., that it may assign to hear this matter/dispute.

34. For all the above reasons, ALJ Bernard Pylitt should be disqualified as administrative law judge in this matter, and one of the other Indiana Horse Racing Commission approved/qualified ALJs appointed to preside over this matter.

Respectfully Submitted,

SACOPULOS, JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, IN 47807
Telephone: (812) 238-2565
Facsimile: (812) 238-1945

By:


Peter J. Sacopulos, #14403-84

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by email transmission and Certified U.S. Mail, postage prepaid, this 4th day of January, 2018:

Attorney Lea Ellingwood
General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202
lellingwood@hrc.in.gov

Bernard L. Pylitt
Administrative Law Judge
Katz Korin Cunningham PC
334 North Senate Avenue
Indianapolis, IN 46204
Bylitt@kkclegal.com


Peter J. Sacopulos

Brower, through his attorney, filed an answer on November 29, 2016, pursuant to 71 IAC 10-3-21. This filing is within twenty (20) days of Brower's receipt of the administrative complaint. 71 IAC 10-3-21 is titled "Settlement Procedures". Brower followed the requirements of §21 and not §20. If the IHRC filed an administrative complaint pursuant to 71 IAC 10-3-21, then the licensee shall file an answer within twenty (20) days of service of the complaint. Following the filing of an answer, the parties can enter into a settlement agreement. If a settlement agreement is not reached, then an administrative complaint may be filed under 71 IAC 10-3-20.

The twenty (20) day window expired on December 6, 2016, and Brower filed a written request for hearing on December 7, 2016. Pursuant to the IHRC's administrative procedures, it filed a Notice of Proposed Default against Brower on December 16, 2016, because he failed to file a written request for hearing in the allotted time. Brower filed his objection to the Notice of Proposed Default on December 21, 2016. The assigned administrative law judge on January 3, 2017, recommended to the IHRC that it find Brower in default. Brower filed his objection to the administrative law judge's recommendation on January 12, 2017. The IHRC voted on March 7, 2017, and issued its final order finding Brower in default on March 14, 2017. Brower filed this case seeking judicial review of a final agency action on March 31, 2017.

I.C. 4-21.5-3-24 governs the process engaged in by the parties. The statute in full reads:

(a) At any stage of a proceeding, if a party fails to:

- (1) satisfy the requirements of section 7(a) [IC 4-21.5-3-7(a)] of this chapter;
- (2) file a responsive pleading required by statute or rule;
- (3) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or
- (4) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;

the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed

default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 [IC 4-21.5-3-23] of this chapter to resolve any issue of fact.

I.C. 4-21.5-3-24 requires one of four triggers prior to an agency seeking a default judgment. Subsection (a)(1) covers personnel actions in the State's Civil Service System and is inapplicable here. Subsection (a)(2) authorizes an agency to seek a default when a party fails to file a responsive pleading. This is the subsection at issue in this case. Subsections (a)(3) and (a)(4) are not implicated by the facts of this case.

The IHRC defines a "pleading" as:

(a) Pleadings filed with the commission include the following:

- (1) Appeals
- (2) Applications
- (3) Answers
- (4) Complaints
- (5) Exceptions
- (6) Replies
- (7) Motions

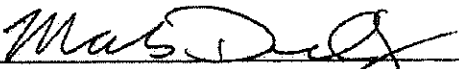
Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

71 IAC 10-3-3. The IHRC does not define a request for a hearing. The IHRC does differentiate between an answer and a request for hearing. *Id.* It does recognize that one is a pleading and the other is not. The court's analysis can stop at this point because the IHRC's action contravenes I.C. 4-21.5-3-24(a). Brower never failed to file a "responsive pleading required by statute or rule" and as such, the IHRC cannot meet its burden that its procedures conform to the statutory mandate.

In further support of the court's conclusion are the IHRC's own rules. Even if the court was persuaded that a request for hearing is a required pleading, Brower's answer

clearly disputed the IHRC's allegations. The IHRC tells its licensees "regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it was filed." 71 IAC 10-3-3(a). While Brower's document is titled, "Answer" its substance told the IHRC that he wished to contest the proposed fine and suspension. The IHRC must follow its own rules and accord Brower's "Answer" its true status as a timely request for a hearing. The court finds that Brower timely responded to IHRC's complaint. The parties are to contact the court to set a pretrial conference date to address the remaining issues of Brower's request to stay IHRC's suspension and his request to remand the case to the IHRC.

All of which is so ordered, this 28th day of July, 2017.

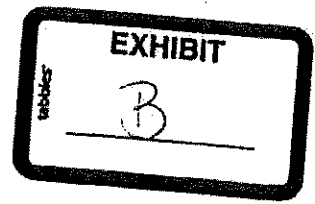


The Honorable Mark Dudley, Judge
Madison Circuit Court No. 6



Copies to:

Peter Sacopulos
John Shanks
Robin Babbitt



**BEFORE AN ADMINISTRATIVE LAW JUDGE
APPOINTED BY THE INDIANA HORSE RACING COMMISSION**

**INDIANA HORSE RACING
COMMISSION STAFF,**

Petitioner,

v.

BOBBY BROWER,

Respondent.

In Re: Administrative Complaint No. 216005

PREHEARING ORDER

On November 16, 2017, Bernard L. Pylitt, was requested to conduct a prehearing conference and schedule deadlines and a hearing having previously been assigned on December 16, 2016 to serve as Administrative Law Judge to handle this matter. In accordance with I.C. 4-21.5-3-18, and after consulting with counsel, ALJ Pylitt sent written Notice rescheduling a previously noticed telephonic pre-hearing conference for Wednesday, November 29, 2017 at 4:00 p.m.

In attempting to find a mutually agreeable date to reschedule the Prehearing Conference, Mr. Sacopulos emailed ALJ Pylitt on November 20, 2017, with copy to counsel for the IHRC Staff, stating, in part:

“It is our position that you are not the ALJ in this matter. Pursuant to the Agreed Judgment entered in the Madison Circuit Court 6 dated October 17, 2017, this matter was remanded to the IHRC for a hearing on the merits. To date, I have not received any letter of appointment from Director Smith, as required. If there is an Order appointing you as referenced in the Order of November 16, 2017, I have not been provided or served with a copy of the same. If there is such an Order, I respectfully request a copy of the same. At this point, the IHRC has not appointed an ALJ in this case.

Furthermore, please be advised that my client, Bobby Brower, should you be appointed/re-appointed, intends to file a motion to disqualify you from serving as ALJ in this matter. That motion would be filed, pursuant to I.C. 4-21.5-3-10.”

Lea Ellingwood appeared during the scheduled telephonic prehearing conference on behalf of the IHRC Staff. Bobby Brower appeared by his legal counsel, Peter Sacopulos and Greg Carter.

During the Telephonic Prehearing Conference, Mr. Carter restated his client’s position but refused to provide any specific reason or evidence to support his claim that the ALJ is prejudiced or biased which would require his being disqualified. Mr. Carter further argued that ALJ Pylitt does not have jurisdiction to hear this matter since the Petition for Judicial Review resulted in the

matter being remanded to the Indiana Horse Racing Commission as the ultimate authority, and they have not assigned ALJ Pylitt since the remand as required by I.C. 4-21.5-5-15

Counsel for IHRC Staff stated that ALJ Pylitt has jurisdiction to hear this matter since he was duly authorized and lawfully appointed to serve as ALJ on December 16, 2016 by the Commission's Chair. Counsel further stated that said appointment has not been revoked or modified in any fashion, including but not limited to the referenced Agreed Entry in the Madison County Circuit Court case.

ALJ Pylitt notes that his only previous involvement was to render a Notice of Proposed Default on December 16, 2016, followed by a Recommended Order Granting the IHRC Staff's Motion for Default Judgment on December 30, 2016, based upon IC 4-21.5-3-24 (b), without any mention about the merits of the case. ALJ Pylitt had no involvement or participation in the Madison County Circuit Court.

Given ALJ Pylitt's limited involvement, nothing in the record, nor any prior ruling by ALJ Pylitt demonstrated any prejudice or bias against Mr. Brower, nor has ALJ Pylitt indicated any interest in the outcome of the proceeding requiring ALJ Pylitt to be disqualified pursuant to IC 4-21.5.3-10.

ALJ Pylitt noted that the Indiana Horse Racing Commission is scheduled to meet on December 6, 2017. Mr. Brower and his counsel are reminded that pending any future action by the Indiana Horse Racing Commission removing or disqualifying ALJ Pylitt, **failure of Mr. Brower to attend or participate in a pre-hearing conference, hearing, or other later stage of the proceeding may result in his being held in default pursuant to I.C. 4-21.5-3-24.**

Given the fact that the proposed race dates for standardbreds in Indiana is scheduled to begin on March 30, 2018, counsel for IHRC Staff requested that discovery deadlines be established to maximize the availability to both parties to have potential witnesses in the State of Indiana for a hearing in this matter. Therefore, in accordance with Indiana Code 4-21.5-3-19, the following deadlines were discussed, and are hereby Ordered over the objection of Mr. Brower who claims that the ALJ does not have jurisdiction over this matter:

1. The parties shall insure that the original and one copy of all pleadings are filed with the Commission, with a copy emailed to the Administrative Law Judge and opposing counsel the same day pursuant to 71 IAC 10-3-4.
2. Preliminary Witness and Exhibit lists shall be filed by no later than noon on Friday, December 15, 2017, including contact information for each witness. Copies shall also be emailed to the ALJ and counsel for the opposing party.
3. All paper discovery requests shall be served by no later than noon on Friday, January 12, 2018. Responses shall be served within thirty (30) days following receipt.
4. All depositions shall be completed by no later than noon on Friday, April 6, 2018.

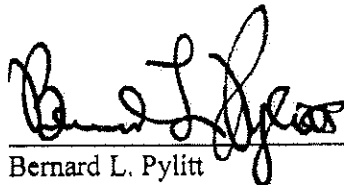
5. Final Witness and Exhibit Lists shall be filed by no later than the noon on Friday, April 13, 2018, with copies of all exhibits pre-marked and sent electronically to the ALJ and opposing counsel. IHRC Staff shall label its exhibits IHRC Staff and numbered and Bobby Brower shall label his exhibits Brower followed by letters. The failure to file and exchange pre-marked exhibits in a timely fashion may result in their being excluded.
6. A final prehearing conference shall take place on Wednesday, April 18, 2018 at 10:00 a.m. at the offices of ALJ Pylitt. Counsel and Mr. Brower are ordered to appear at that time.
7. The hearing in this matter will be conducted in the conference room of Katz Korin Cunningham PC, 334 North Senate Avenue, Indianapolis, Indiana, before Bernard L. Pylitt, the duly authorized and designated Administrative Law Judge on Tuesday, April 24, 2018 beginning promptly at 9:00 a.m. local time, and continue through Wednesday, April 25, 2018, if necessary. Bobby Brower is ordered to appear for said hearing.
8. The parties are encouraged to discuss stipulations of fact and/or the admissibility of exhibits at least 10 days prior to the hearing.
9. Absent unusual circumstances, the deadlines and the date for the hearing shall not be continued.
10. Counsel for IHRC Staff shall arrange for a Court Reporter.
11. Pursuant to IC 4-21.5-3-14, IHRC Staff has the burden of proof of the allegations in the Administrative Complaint by a preponderance of the evidence presented at the hearing.
12. The public hearing will follow the provisions of 71 IAC 10-3-10, specifically:
 - a. All testimony will be under oath.
 - b. Each party may make an opening statement of no more than ten (10) minutes.
 - c. IHRC Staff shall present its case in chief.
 - d. At the close of IHRC Staff's case, Bobby Brower may move for a directed finding.
 - e. Respondent may then present his case.
 - f. Each party may conduct cross-examination of adverse witnesses.

- g. At the conclusion of the defense, IHRC Staff may offer rebuttal evidence.
 - h. Both parties may make a closing argument of no more than ten (10) minutes.
 - i. Proposed Findings of Fact and Conclusions of Law shall be filed and exchanged between counsel for the parties, with a copy sent electronically to the ALJ, no later than fourteen (14) calendar days following the completion of the hearing.
13. Indiana Code 4-21.5 and 71 IAC 10 of the Indiana Administrative Code will govern this matter.

At the end of the prehearing conference counsel for Mr. Brower requested a settlement conference with IHRC Staff.

A party who fails to attend or participate in a pre-hearing conference, hearing, or other later stage of the proceeding may be held in default or have a proceeding dismissed under I.C. 4-21.5-3-24. If Mr. Brower fails to attend the scheduled hearing or cooperate during discovery, he may be held in default.

IT IS SO ORDERED THIS 29th DAY OF NOVEMBER 2017.



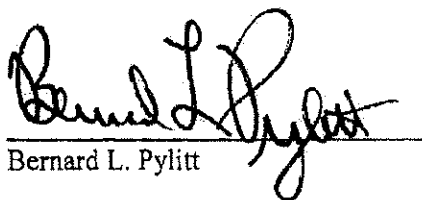
Bernard L. Pylitt
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served via e-mail and first-class United States mail, postage prepaid this 29th day of November 2017 to the following parties of record:

Peter Sacopulos
Greg Carter
Sacopulos Johnson & Sacopulos
676 Ohio Street, IN 47807
Terre Haute, IN 47807
Email: pete_sacopulos@sacopulos.com
Greg_carter@sacopolos.com

Lea Ellingwood
Indiana Horse Racing Commission
1302 North Meridian, Suite 175
Indianapolis, IN 46202
Email: lellingwood@hrc.in.gov


Bernard L. Pylitt

Bernard L. Pylitt
Katz Korin Cunningham PC
334 North Senate Avenue
Indianapolis, IN 46204
Office: 317-464-1100 Fax: 317-464-1111
Email: bpylitt@kckelegal.com

PLA

From: Bernard Pylitt <bylitt@kkclegal.com>
Sent: Friday, January 05, 2018 10:38 AM
To: Ellingwood, Lea; PLA
Cc: Vicky Bland
Subject: IHRC Staff v. Bobby Brower

15 days from yesterday, or by no later than NOON on Friday January 19, 2018.
Pete will have 7 days to file a Reply, if any, or by no later than NOON on Friday, January 26, 2018.
Let this email serve as my Order establishing deadlines on these Motions.
ALL other deadlines in the Prehearing Order issued on November 29, 2017 remain in full force and effect.

I will then issue a Recommended Order.
When is IHRC scheduled to meet next?

Bernard L. Pylitt
katz korin cunningham | www.kkclegal.com
The Emelie Building | 334 North Senate Avenue | Indianapolis, IN 46204-1708
Office 317.464.1100 | Fax 317.464.1111
bpylitt@kkclegal.com

Our most recent Firm News: <http://kkclegal.com/katz-korin-news/>

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If you are a client of this firm, we respectfully remind you that to avoid waiver of the attorney-client privilege, you should not send, forward, or show this e-mail or attachments to anyone else. Thank you.

From: Ellingwood, Lea [mailto:LEllingwood@hrc.IN.gov]
Sent: Friday, January 05, 2018 10:29 AM
To: Bernard Pylitt <bylitt@kkclegal.com>; PLA <pla@sacopulos.com>
Subject: RE: IHRC Staff v. Bobby Brower

Yes, Judge. Staff would appreciate a couple of weeks to respond, if possible?

From: Bernard Pylitt [mailto:bylitt@kkclegal.com]
Sent: Friday, January 05, 2018 9:16 AM
To: PLA; Ellingwood, Lea
Subject: RE: IHRC Staff v. Bobby Brower

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Will IHRC Staff be filing a response to any of these Motions?
If so, when?



Have a nice weekend.
Buddy

Bernard L. Pylitt

katz korin cunningham | www.kkclegal.com

The Emelie Building | 334 North Senate Avenue | Indianapolis, IN 46204-1708

Office 317.464.1100 | Fax 317.464.1111

bpylitt@kkclegal.com

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If you are a client of this firm, we respectfully remind you that to avoid waiver of the attorney-client privilege, you should not send, forward, or show this e-mail or attachments to anyone else. Thank you.

From: PLA [<mailto:pla@sacopulos.com>]

Sent: Thursday, January 04, 2018 2:56 PM

To: Bernard Pylitt <bylitt@kkclegal.com>; Ellingwood, Lea <LEllingwood@hrc.IN.gov>

Subject: IHRC Staff v. Bobby Brower

Dear ALJ Pylitt and Attorney Ellingwood:

Attached please find copies of the following filings that I have prepared and filed on behalf of my client, Bobby Brower, in connection with the above stated matter:

- Respondent, Bobby Brower's, Motion to Disqualify Administrative Law Judge;
- Respondent, Bobby Brower's, Motion to Stay Administrative Proceedings;
- Respondent, Bobby Brower's Notice of Service of Discovery Requests;
- Respondent, Bobby Brower's, Interrogatories to Indiana Horse Racing Commission;
- Respondent, Bobby Brower's, Request for Production of Documents to Indiana Horse Racing

Commission;

- Respondent, Bobby Brower's Request for Admissions to Indiana Horse Racing Commission;
- Respondent, Bobby Brower's, Motion to Shorten Time to Allow for Service of Third Party Discover

Requests and proposed Order

- Respondent, Bobby Brower's, Notice of Intent to Serve Third-Party Requests along with attached Requests for Production and Subpoena Duces Tecum

I attach copies of these filings for your review and so that your records are complete.

Yours Sincerely,

Peter J. Sacopulos

SACOPULOS, JOHNSON & SACOPULOS

676 Ohio Street

Terre Haute, IN 47807

Telephone: (812) 238-2565
Facsimile: (812) 238-1945
pete@sacopulos.com

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INDIANA HORSE RACING COMMISSION
BEFORE AN ADMINISTRATIVE LAW JUDGE

2018 JAN 17 P 12:48

INDIANA HORSE RACING COMMISSION
STAFF,

Petitioner,

v.

BOBBY BROWER,

Respondent.

Administrative Complaint No. 216005

Before the Hon. Bernard L. Pylitt,
Administrative Law Judge

INDIANA
HORSE RACING COMM.

**COMMISSION STAFF'S OPPOSITION TO RESPONDENT, BOBBY BROWER'S
MOTION TO DISQUALIFY ADMINISTRATIVE LAW JUDGE**

Respondent Bobby Brower's ("Brower") Motion to Disqualify Administrative Law Judge ("ALJ") Pylitt has no basis in fact or law. Instead, it relies on mischaracterizations of the Judge's previous rulings and ignores the provisions of the Indiana Code of Judicial Conduct and applicable Indiana case precedent. Brower has not presented any legitimate support for his motion to disqualify Judge Pylitt. Accordingly, his motion must be denied.

PROCEDURAL HISTORY

On December 16, 2016, Indiana Horse Racing Commission ("IHRC") Chairman Tom Weatherwax assigned ALJ Bernard Pylitt to hear the disciplinary action related to Administrative Complaint 216005. (See Exhibit 1.) Pursuant to 71 IAC 10-3-20(d), Indiana Horse Racing Commission Staff ("Staff") filed a Motion for Default Judgment on the basis that the appropriate pleading was not timely filed and therefore, default judgment was appropriate. Staff's Motion for Default Judgment was granted by ALJ Pylitt and was affirmed by the Indiana Horse Racing Commission at its March 7, 2017, meeting. Brower timely filed a Petition for Judicial Review in



the Madison Circuit Court. In response Commission Staff filed a Motion to Dismiss¹, which was denied. In its denial, the Madison Circuit Court judge found that a responsive pleading had been timely filed.

Staff and Brower then entered into a settlement agreement, the terms of which were memorialized in an Agreed Entry, approved by the Madison Circuit Court on October 17, 2017.

(See Exhibit 2.) Relevant portions of that Agreed Entry provide that:

- “the parties agree to the entry of a Judgment in Favor of Brower remanding the matter to the Commission for further proceedings relating to Administrative Complaint No. 216005 issued by the Commission’s Executive Director on Nov. 14, 2016 consistent and in compliance with the Indiana Administrative Orders and Procedures Act and Commission regulations.”
- “[E]ach party reserves all rights with respect to the previous appointment of Administrative Law Judge, Bernard Pylitt, to preside over this matter.”

ARGUMENT

“The law presumes that a judge is unbiased and unprejudiced in the matters which come before the judge.” *Smith v. State*, 477 N.E.2d 857, 864 (Ind. 1985). Brower’s Motion to Disqualify does nothing to rebut this presumption. Rather, Brower cherry-picks quotations from the Madison Circuit Court’s denial of Staff’s Motion to Dismiss in a tiresome and unsuccessful

¹ In his Motion to Disqualify, Brower states ““Commission Staff for reasons unknown to the Respondent and in direct contradiction to the Indiana Inspector General’s Report of September 2, 2011, retained private counsel, instead of assigning defense to its staff counsel or assigning the matter to the office of the Indiana General for representation in connection with Brower’s Verified Petition for Judicial Review.” First, Staff struggles to see the relevance of this statement to Brower’s position regarding disqualification. Second, the Indiana Inspector General’s Report is not a document that binds the Commission to particular action, and furthermore, the Office of the Attorney General is responsible for providing legal counsel for agencies at a trial court level, not in house counsel. Staff sought the Attorney General’s approval to use outside counsel in this case, and said approval was granted.

argument that Judge Pylitt cannot preside fairly over his case because in a prior Recommended Order, he concluded that Brower was in default for failing to timely file an answer. ALJ Pylitt interpreted the rules according to precedent at the time of the Recommended Order. Brower alleges that this interpretation based upon precedent evidences bias and prejudice. However, Brower fails to state *why* or *how* ALJ Pylitt showed bias or prejudice. Brower only claims that bias and prejudice are shown by the outcome, and not by the process or method used to reach the outcome. An unfavorable outcome to one's case is not evidence of bias or prejudice. There must be more, of which Brower has failed to demonstrate.

Brower essentially argues that ALJ Pylitt's decision on Staff's Motion to Dismiss is evidence that ALJ Pylitt is biased against him². Brower's reference to IC 4-21.5-3-10(a)(4), which states that an individual may be disqualified for "any cause for which a judge of a court may be disqualified³" completely ignores that Indiana precedent makes clear that a judge need not be disqualified on the sole basis of a prior ruling.

Canon 2.11 of the Indiana Code of Judicial Conduct provides:

[A] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including...the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding[, or]...(5) The judge...has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

² Brower argues that ALJ Pylitt failed to give Brower the hearing on the merits to which Brower believes he was entitled; however, that argument ignores that the appropriate procedural process after granting a Motion for Default Judgment is review by the agency's final authority, not a hearing on the merits.

³ Paragraph 24 of Brower's Motion to Disqualify states that ALJ Pylitt has demonstrated bias in favor of the state agency that selected and appointed him, as well as paid him. Respondent implies that the fact that the agency selects and pays for the ALJ's services are evidence of bias. IC 4-21.5-3-10(a), cited multiple times by the Respondent, specifically contemplates that ALJ may be employees of the agency. Furthermore, by that logic, no ALJ assigned by the IHRC would satisfy Brower's requirements.

(Emphasis added). *See also* Ind. Code § 4-21.5-3-10 (setting forth grounds for disqualification of an ALJ, which include “bias [or] prejudice,” or “any cause for which a judge of a court may be disqualified.”). As the Canon expressly contemplates, the fact that a judge makes a statement in a court proceeding or judicial decision does not compel the judge’s disqualification, even if the statement appears to commit the judge to reach a particular result.

Interpreting Indiana case law has repeatedly reinforced this principle. As a general proposition, “[a]dverse rulings and findings do not, in and of themselves, establish a judge’s bias or prejudice.” *Brown v. State*, 684 N.E.2d 529, 534 (Ind. Ct. App. 1997). For instance, the Indiana Court of Appeals in *Green v. State* observed that “[t]he fact that a determination was made by a judge...is not conclusive on the issue of neutrality [and] the law presumes that a judge is unbiased and unprejudiced in the matters before him.” 676 N.E.2d 755, 761 (Ind. Ct. App. 1996) (internal citations omitted). The court went on to specifically hold that “[t]he law does not prohibit a judge from trying a case on the merits after participating in a probable cause determination.” *Id.* Nor does it “require a trial judge to disqualify himself although he or she presided over a co-defendant’s bench trial,” even where the prior bench trial resulted in a conviction. *Id.* (citing *Jones v. State*, 416 N.E.2d 880 (Ind. Ct. App. 1981)). *See also* Ind. Code § 4-21.5-3-13(c), (d) (providing that disqualification of an ALJ is not required on the grounds that the individual made a determination of probable cause or other preliminary determination in a proceeding and authorizing an ALJ to preside at successive stages of the same proceeding).

This principle was reinforced by the United States Supreme Court in *Withrow v. Larkin*, 421 U.S. 35, 56 (1975), in which the Court wrote:

Judges repeatedly issue arrest warrants on the basis that there is probable cause to believe that a crime has been committed and that the person named in the warrant has committed it. Judges also preside at preliminary hearings where they must decide whether the evidence is sufficient to hold the defendant for trial. Neither of these pre-trial involvements has been thought to raise any constitutional barrier against the judges presiding over the criminal trial and, if the trial is without a jury, against making the necessary determination of guilt or innocence. Nor has it been thought that a judge is disqualified from presiding over injunction proceedings because he has initially assessed the facts in issuing or denying a temporary restraining order or a preliminary injunction. It is also very typical for the members of administrative agencies to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in the ensuing hearings. This mode of procedure does not violate the Administrative Procedure Act, and it does not violate due process of law.

Id.

Following Brower's logic that a previous ruling against Brower is evidence sufficient to disqualify ALJ Pylitt from hearing the matter, the Commission itself, which held a hearing to evaluate, and subsequently adopt, ALJ Pylitt's Recommended Order granting default judgment against Brower would also be disqualified from hearing the matter.

Brower further argues that statements in ALJ Pylitt's Prehearing Conference Order⁴ evidence "additional bias and prejudice against Brower." Specifically, Brower refers to a sentence in the November 29, 2017, Prehearing Order, which states "...If Mr. Brower fails to attend the scheduled hearing or cooperate during discovery, he may be held in default..." Brower alleges that this language "supercedes the language in I.C. 4-21.5-3-24 by adding a basis for default." Ind. Code 4-21.5-3-24 provides, in pertinent part, that "(a) At any stage of a proceeding, if a party fails to: (2) file a responsive pleading required by statute or rule; or (3)

⁴ Brower's Motion to Disqualify repeatedly confuses the nature of the November 29, 2017, pre-hearing teleconference between parties. That meeting was simply a conference, not a hearing, as he has mistakenly referenced in Paragraphs 30-32.

attend a prehearing conference, hearing, or other stage of the proceeding, the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.” ALJ Pylitt’s statement that Brower *might* be held in default for failure to attend hearings or cooperate during discovery (a stage of proceedings governed by rules of procedure for civil courts) fits squarely within I.C. 4-21.5-3-24 and is entirely appropriate.

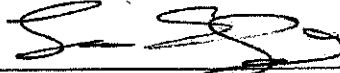
Irrespective of whether ALJ Pylitt’s statement is an accurate statement of the law, this statement isn’t evidence of bias against Brower. Again, Canon 2.11 of the Indiana Code of Judicial Conduct specifically carves out an exception for statements made by judges in court proceedings, judicial decisions, or opinions.

In short, Brower has not only failed to provide any evidence to support his spurious allegations of bias against Judge Pylitt, he has failed to acknowledge any legal authority in support of his arguments.

CONCLUSION

Administrative law judges are “assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances.” *U.S. v. Morgan*, 313 U.S. 409, 421 (1941). Judge Pylitt is entitled to the benefit of that presumption, and Brower has done nothing to establish that it should be reversed in this case. Accordingly, Brower’s Motion to Disqualify Administrative Law Judge Pylitt should be denied.

Respectfully submitted,



Lea Ellingwood (Atty. No. 22346-49)
INDIANA HORSE RACING
COMMISSION
1302 N. Meridian, Suite 175
Indianapolis, IN 46202

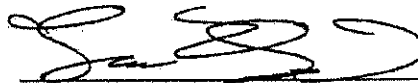
*Counsel for Indiana Horse Racing
Commission Staff*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served via e-mail and deposited in the U.S. mail, first-class postage prepaid, on the 17 day of January, 2018, addressed to:

Peter J. Sacopulos
Sacopulos, Johnson & Sacopulos
676 Ohio Street
Terre Haute, IN 47807
pete_sacopulos@sacopulos.com

Bernard L. Pylitt
Administrative Law Judge
Katz Korin Cunningham PC 334 North
Senate Avenue
Indianapolis, IN 46204
bpylitt@kkclegal.com



Lea Ellingwood



State of Indiana Indiana Horse Racing Commission

Michael Pence, Governor

www.in.gov/ihr

VIA U.S. MAIL and EMAIL to bpylitt@katzkorin.com

December 16, 2016

The Honorable Bernard Pylitt
Katz & Korin, P.C.
The Emelie Building
334 North Senate Avenue
Indianapolis, IN 46204-1708

Re: IHRC Staff v. Bobby Brower

Dear Judge Pylitt:

Please consider this letter as your appointment by the Indiana Horse Racing Commission's Chairman, Mr. Tom Weatherwax, as the Administrative Law Judge in the above-referenced matter.

Please find enclosed copies of the following:

1. Administrative Complaint No. 216005 (as an attachment to the Motion for Default); and
2. IHRC Staff Motion for Default;

Commission Staff will be represented by Lea Ellingwood (lellingwood@hrc.in.gov), who can be reached via telephone at 317-232-0397. In response to the administrative complaint, Brower has retained Pete Sacopulos (pla@sacopulos.com) in this matter, and Commission Staff has accordingly served Mr. Sacopulos with paperwork relating to the administrative complaint and Motion for Default Judgment. Mr. Sacopulos be reached at 812-238-2565.

Sincerely,

A handwritten signature in black ink that reads "Mike Smith".

Mike Smith
Executive Director
Enclosures

cc: Mr. Tom Weatherwax via email (enclosures omitted)
Pete Sacopulos (email, and First Class Mail)



STATE OF INDIANA
COUNTY OF MADISON

SS:

IN THE MADISON CIRCUIT COURT
DIVISION 6

2017 TERM

BOBBY BROWER

CAUSE NO. 48C06-1703-MI-279

Petitioner,

vs.

INDIANA HORSE RACING
COMMISSION, INDIANA HORSE
RACING COMMISSION STAFF,

Respondent.

AGREED ENTRY

The Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff (the "Commission"), by counsel, Robin Babbitt, and the Petitioner, Bobby Brower ("Brower"), by counsel, Peter J. Sacopulos, subject to this Court's approval, agree as follows:

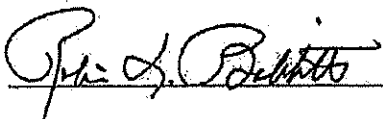
1. Under the facts of this particular case and consistent with this Court's ruling on the Commission's Motion to Dismiss dated July 28, 2017, the parties agree to the entry of a Judgment in Favor of Brower remanding the matter to the Commission for further proceedings relating to Administrative Complaint No. 216005 issued by the Commission's Executive Director on Nov. 14, 2016 consistent and in compliance with the Indiana Administrative Orders and Procedures Act (I.C. 4-21.5-3-1 et seq.) and Commission regulations (71 IAC 1-1-1 et. seq.). The parties agree that this stipulated judgment is limited to the specific facts of the Brower case and does not have precedential effect on any other judicial and/or administrative matter involving the Indiana Horse Racing Commission.
2. The parties agree that the Stay Petition filed by Brower with the Judicial Review Petition in this matter is hereby rendered as moot.
3. Upon the Court's entry of Judgment, the Commission will rescind Ruling No. 2017-1006 without prejudice to the rights of the Commission to prosecute Administrative Complaint No. 216005 issued by the Commission's Executive Director on Nov. 14, 2016. This action will lift the sanctions (subject to the outcome of further administrative proceedings) that were entered against Mr. Brower following and resulting from the entry of the Recommended Default Judgment by the Commission which is the subject of this Petition for Judicial Review;
4. Upon the Court's entry of Judgment, the Commission will review and consider any application by Brower as it would any other. The Commission's consent to this agreed judgment does not guarantee Brower's licensure and his application may be granted,



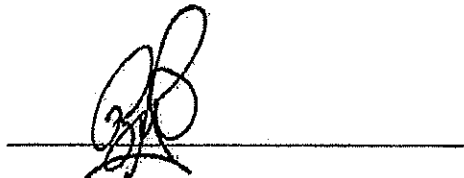
- denied, refused or placed in a probationary status.
5. Each party reserves all rights with respect to the previous appointment of Administrative Law Judge, Bernard I. Pylitt, to preside over this matter.
 6. Commissioner Lytle will recuse herself from any further involvement in the Commission's consideration of the issues relating to Administrative Complaint No. 216005 issued by the Commission's Executive Director on Nov. 14, 2016 including, but not limited, to any appeal of a recommended decision of the ALJ to the IHRC.

The above is agreed to subject to this Court's approval.

Dated this 17th day of October, 2017.



Robin Babbitt, #3765-49
Attorney for Respondent



Peter J. Sacopulos, #14403-84
Attorney for Petitioner

ORDER ON AGREED ENTRY

The Petitioner, Bobby Brower ("Brower"), by counsel, Peter J. Sacopulos, and the Respondent, Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff (the "Commission"), by counsel, Robin Babbitt, having advised this Court that an agreed resolution has been reached and having submitted the above Agreed entry, and the Court having reviewed the same, and being duly advised in the premises, now finds that the Agreed Entry is meritorious and should be and hereby is granted.


Now, Therefore, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Under the facts of this particular case and consistent with this Court's ruling on the Commission's Motion to Dismiss dated July 28, 2017, the Court enters Judgment in Favor of Brower remanding the matter to the Commission for further proceedings relating to Administrative Complaint No. 216005 issued by the Commission's Executive Director on Nov. 14, 2016 consistent and in compliance with the Indiana Administrative Orders and Procedures Act (I.C. 4-21.5-3-1 et seq.) and Commission regulations (71 IAC 1-1-1 et. seq.). The parties agree and the Court recognizes that this Judgment is limited to the specific facts of the Brower case and does not have precedential effect on any other judicial and/or administrative matter involving the Indiana Horse Racing Commission;
2. The Court hereby dismisses as moot the Stay Petition filed by Brower with the Judicial Review Petition in this matter;
3. The Commission is hereby Ordered to rescind Ruling No. 2017-1006 without prejudice to the rights of the Commission to prosecute Administrative Complaint No. 216005 issued by the Commission's Executive Director on Nov. 14, 2016. It is understood and agreed that this action will lift the sanctions (subject to the outcome of further

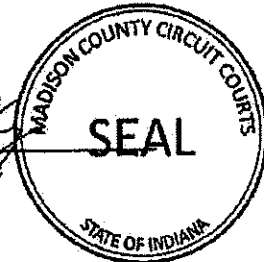
administrative proceedings) that were entered against Brower following and resulting from the entry of the Recommended Default Judgment by the Commission which is the subject of the Petition for Judicial Review that was filed in this action;

4. The Commission is hereby Ordered to review and consider any application submitted by Brower as it would any other. It is understood that this action will not guarantee Brower's licensure and his application may be granted, denied, refused or placed in a probationary status by the Commission; and
5. This Judgment recognizes that Brower and the Commission reserve all rights with respect to the previous appointment of Administrative Law Judge, Bernard I. Pylitt, to preside over Administrative Complaint No. 216005 and any matters that may be related thereto.

ALL OF THIS IS SO ORDERED this 17th day of October 2017.



The Honorable Mark Dudley, Judge
Madison Circuit Court 6



11

Distribution to:

Robin Babbitt
Peter Sacopulos
Greg Carter
John Shanks

STATE OF INDIANA
INDIANA HORSE RACING COMMISSION
2018 TERM

2018 JAN 26 A 11:28

Re: Bobby Brower
7281 S 400 W
Muncie, In 47302

ADMINISTRATIVE COMPLAINT NO.
216005

INDIANA
HORSE RACING COMM.

**RESPONDENT, BOBBY BROWER'S, REPLY TO COMMISSION STAFF'S
OPPOSITION TO RESPONDENT, BOBBY BROWER'S, MOTION TO DISQUALIFY
ADMINISTRATIVE LAW JUDGE**

Respondent, Bobby Brower, by counsel, Peter J. Sacopulos, for his reply to the IHRC/IHRC Staff's Opposition to his Motion to Disqualify Administrative Law Judge states:

The IHRC/IHRC Staff incorrectly states, in part, the history of these proceedings. Specifically, the IHRC/IHRC Staff states that the: "...Staff's Motion for Default Judgment was granted by ALJ Pylitt..." That is incorrect. The correct procedural history is that ALJ Pylitt issued an Order wherein he recommended granting the Motion for Default Judgment against Mr. Brower. That recommendation was in error. ALJ Pylitt's error is evidenced by the Order of the Madison County Circuit Court 6 of July 28, 2017, in favor of Bobby Brower and against the IHRC. A true and exact copy of the trial court's Order is presented as Exhibit "A" to Respondent, Bobby Brower's Motion to Disqualify Administrative Law Judge.

The Honorable Mark Dudley, Judge of Madison County Circuit Court 6, held, in his Order of July 28, 2017, that Mr. Brower had timely complied/responded to the Administrative Complaint filed against him and was/is entitled to a hearing on the merits. In so ruling, the trial court held that Mr. Brower's timely filed answer had not been accorded its true status as required by 71 IAC 10-3-3(a). The trial court, in said Order (Exhibit A), held that ALJ Pylitt's Recommended Order defaulting Mr. Brower was in error and contrary to 71 IAC 10-3-3(a). The trial court went on to hold and state: "the IHRC must follow its own rules..." (emphasis added). ALJ Pylitt's failure and/or refusal to follow the agency rules and 71 IAC 10-3-3(a) resulted in extensive and ongoing prejudice and bias towards Mr. Brower. This prejudice and bias consists, in part, of being excluded from the Indiana racing program as well as other states' racing programs during the 2017 racing season, damage to his reputation, loss of business, future loss of earnings, extensive and ongoing costs and fees associated with administrative appeal and the successful judicial review of ALJ Pylitt's erroneous recommended order.

The IHRC/IHRC Staff recites a portion of the Order issued by the Madison County Circuit Court dated October 17, 2017, that is attached hereto, made a part hereof, and marked as Exhibit "A." The Order addresses the issue of ALJ Pylitt's potential continued involvement in this matter. This is because Mr. Brower expressed his concern and trepidation of having ALJ Pylitt continue to sit in judgment of his case following ALJ Pylitt's incorrect and improper Recommended Order Granting Default Judgment that further evidences ALJ Pylitt's bias and



prejudice against him. Mr. Brower expressed his concern in this regard to the trial court and to counsel for the IHRC/IHRC Staff as well as his desire to have a different administrative law judge preside over his case. It was determined and agreed that the trial court's authority was to remand the matter to the agency and that the trial court did not possess authority to remand the matter to a specific administrative law judge.

It speaks volumes that the IHRC/IHRC Staff, a state agency entrusted to promote the integrity of the Indiana horse racing program including the fair and unbiased enforcement of its rules and regulations, insists on having ALJ Pylitt sit in judgment of this matter. This despite the Madison Circuit Court's correct finding that ALJ Pylitt failed or refused to follow 71 IAC 10-3-3(a) as well as the failure of ALJ Pylitt to "follow...(the IHRC's) own rules" and despite the IHRC/IHRC Staff having multiple other approved/selected ALJs that it could/can and should have appointed to sit in judgment of the allegations against Mr. Brower and his defense of the same, especially in the face of the prejudice and bias shown Mr. Brower by ALJ Pylitt's actions and recommended rulings and rulings in this matter to date.

The IHRC/IHRC Staff's counsel argues that the law presumes a Judge/ALJ is unbiased and impartial. However, in those situations or instances where prejudice/bias is displayed/exhibited, as in this case, the adversely affected party (Mr. Brower) has a remedy of moving to disqualify that ALJ. This is Mr. Brower's only remedy to such a fair and impartial ALJ to hear his case. He is not offered a change of judge as is a litigant in a civil matter nor is he offered the opportunity to attempt to have a third party neutral assist in resolving this dispute, via Alternative Dispute Resolution, because the IHRC has and continues to flatly refuse to engage in the mediation/alternative dispute resolution process despite it being provided for in the AOPA (I.C.4-21.5-3.5-1 et al). Bobby Brower has not only rebutted the presumption, but that presumption has been and is rebutted by ALJ Pylitt's acts of bias and prejudice toward Mr. Brower that include the following:

- (1) ALJ Pylitt's failure to follow or refusal to follow I.C. 10-3-3(a) by failing to give Bobby Brower's timely filed answer its true status in the proceeding in which it was filed and by failing to follow the IHRC's own rules, fairly and impartially as to Mr. Brower;
- (2) ALJ Pylitt's failure to properly recuse himself when his bias and prejudice was evidenced by Bobby Brower's successful Petition for Judicial Review and in the face of the trial court judge's finding that ALJ Pylitt's Recommended Order failed to follow the rules and regulations of the state and of the agency;
- (3) ALJ Pylitt's Prehearing Order of November 29, 2017, wherein ALJ Pylitt enhanced and increased, without authority, the basis by which Bobby Brower may be defaulted while failing or refusing to impose any such potential penalty against the state agency that selected and appointed him should it fail or refuse to comply with discovery by potentially having its Administrative Complaint against Mr. Brower dismissed;
- (4) ALJ Pylitt's refusal to amend, and enter a nunc pro tunc Order, at Brower's request, an Order that complies and follows the AOPA rule on default and/or add similar language relative to the IHRC/IHRC Staff's Administrative Complaint being subject to dismissal for a same failure or non-compliance.
- (5) ALJ Pylitt's Order of January 16, 2018, wherein he denies Mr. Brower additional time

to conduct third party discovery that is necessary to Mr. Brower to fully and properly defend the allegations against him as well as the recommended penalty of a fifteen (15) year suspension and a \$40,000 fine. Significantly, with regard to this example of bias and prejudice against Mr. Brower, Mr. Brower had, at the time that he made the request for additional time to conduct third party discovery only received the IHRC/IHRC Staff's Preliminary Witness List, twenty-seven (27) days before. Said witness and exhibit list, filed by the IHRC Staff, were necessary and instructive relative to Mr. Brower's decision and focus as to third party discovery;

The IHRC Staff further argues, incorrectly, that Bobby Brower failed to show why ALJ's actions/rulings demonstrated bias and prejudice. That argument is incorrect and must fail. It must so because ALJ Pylitt, who is selected and appointed by the IHRC/IHRC Staff, has ignored the provisions of the AOPA and Indiana law. Further, it must fail because the Honorable Mark Dudley, Judge of the Madison County Circuit Court 6, correctly stated, in his Order of July 28, 2017, that ALJ Pylitt, in recommending Mr. Brower be defaulted failed to follow the rules. This has resulted in direct, abject, and ongoing prejudice and bias to Mr. Brower who, as a result of the same, has been excluded in participating in Indiana or other states' racing programs for over a year. To say that Mr. Brower has not shown, demonstrated, and suffered prejudice and bias as a result of the agency's appointed ALJ as well as the ALJ's ongoing actions is both incorrect and incredulous.

The IHRC/IHRC Staff further incorrectly argues that ALJ Pylitt's decision on the IHRC Staff's motion to default Mr. Brower is not evidence of bias and prejudice. In fact, it is. While the IHRC Staff is correct that procedural process was followed after ALJ Pylitt incorrectly and inappropriately recommended Bobby Brower be defaulted, the bias and prejudice visited upon Mr. Brower was the result of ALJ Pylitt's failure or refusal to follow and apply the rules fairly and impartially as to Mr. Brower. The IHRC Staff's argument that, because the administrative process was correctly followed after the incorrect recommended order of ALJ Pylitt, somehow erases, dismisses or mitigates the bias and prejudice against Mr. Brower is disingenuous and incorrect.

The IHRC/IHRC Staff next argues that an adverse finding does not itself establish bias or prejudice. To this end, the IHRC/IHRC Staff cites the cases of *Brown v. State*, 684 N.E.2d 529, 534 (Ind. Ct. App. 1997), *Green v. State*, 676 N.E.2d 755, 761 (Ind. Ct. App. 1996), and *Jones v. State*, 416 N.E.2d 880 (Ind. Ct. App. 1981), and *Withrow v. Larkin*, 421 U.S. 35, 56 (1975). The IHRC/IHRC Staff's argument ignores the fact that ALJ Pylitt not only made an adverse ruling as against Mr. Brower, he made an incorrect inappropriate ruling and in doing so, failed to fairly and impartially apply 71 IAC 10-3-3(a) as well as the agency's own rules. ALJ Pylitt, after having done so, then recommended without any evidence or any testimony, a penalty of \$40,000 together with a fifteen (15) year suspension. This further demonstrates and evidences his bias and prejudice against Mr. Brower. ALJ Pylitt has denied all motions made by or on behalf of Mr. Brower including a motion to stay, a motion to extend time to conduct third party discovery, a request to correct his order of November 29, 2017, as well as Mr. Brower's motion to deny the IHRC Staff's request that he be defaulted and his request that the recommended "death penalty"

not be recommended. In contrast, all requests made by the IHRC Staff have been approved. The bias and prejudice as against Bobby Brower is clear.

The IHRC/IHRC Staff also relies on the decision of *Withrow v. Larkin*, 421 U.S. 35, 56 (1975) and cites to a portion of the opinion whereby the U.S. Supreme Court held that: “Judges repeatedly issue arrest warrants on the basis that there is probable cause to believe that a crime has been committed and that the person named in the warrant has committed it.” See *Withrow v. Larkin*, 421 U.S. 35, 56 *id.* There is a significant difference between a trial judge issuing an arrest warrant and ALJ Pylitt’s actions of bias and prejudice toward Bobby Brower in this matter. In issuing an arrest warrant, the trial judge is not denying the accused his or her due process and/or ability to present a defense on the merits as did ALJ Pylitt in this matter. In issuing an arrest warrant, a trial court judge is presumably following the rules, laws and regulations. ALJ Pylitt did not do so in his recommended order defaulting Mr. Brower. In fact, his failure or refusal to properly apply the rules and regulations afforded Mr. Brower, resulted in Brower’s denial of due process, denial of a right to a hearing on the merits, and a denial to present any evidence or testimony as to the IHRC/IHRC Staff’s recommended penalties.

The IHRC Staff also incorrectly argues that because the November 29, 2017, hearing was “a conference not a hearing” that this somehow excludes the administrative law judge’s actions and resulting Order from any possible bias and prejudice. That is simply incorrect. ALJ Pylitt’s actions, statements, and positions taken during the hearing of November 29, 2017, whether a hearing or a conference, are further evidence of his bias and prejudice against Mr. Brower. This is evidenced by the ALJ’s Order of that date wherein he, without authority, expands and increases the bases upon which he (ALJ Pylitt) “may” default Mr. Brower. Significantly, ALJ Pylitt did not include in his Order any ramifications for failure to comply with discovery by the state agency that may result in dismissal of the agency’s pending administrative complaint. Again, it is a one way street of bias and prejudice against Mr. Brower.

Respondent, Bobby Brower, encourages the IHRC to ask its Staff this question: “Why, if the evidence against Bobby Brower is so overwhelming and the witnesses that will be presented, so credible and compelling in their testimony, is there a refusal to have any other ALJ preside over Mr. Brower’s case?” The answer speaks volumes.

The IHRC further argues, offensively, that Mr. Brower has made “spurious allegations” in his Motion to Disqualify Administrative Law Judge. That is incorrect. What Bobby Brower has done is been the subject of bias and prejudice by an administrative law judge selected, initially appointed, and then, improperly reassigned, over objection, to further sit in judgment of Mr. Brower. ¹

¹Bobby Brower has contested and continues to contest ALJ Pylitt’s appointment in this matter. This is based on the trial court’s Order remanding this matter to the agency. The agency then is required to appoint an administrative law judge. That appointment is required, pursuant to I.C. 4-21.5-3-9, by the agency’s ultimate authority. In this case, there was no such appointment

Importantly, Respondent, Bobby Brower, personally feels and believes that ALJ Pylitt is biased. Fairness, justice and integrity, as well as the AOPA rules, the agency rules and regulations, and the Indiana Code of Judicial Conduct, support Bobby Brower's motion. ALJ Pylitt should be disqualified and a new and different ALJ appointed to hear and preside over this matter.

WHEREFORE, Respondent, Bobby Brower, respectfully requests that ALJ Bernard Pylitt be disqualified as administrative law judge in this matter, and one of the other Indiana Horse Racing Commission approved/qualified ALJs appointed to preside over this matter.

Respectfully submitted,

SACOPULOS JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, Indiana 47807
Telephone: (812) 238-2565
Fax: (812) 238-1945

By: 
Peter J. Sacopulos, #14403-84

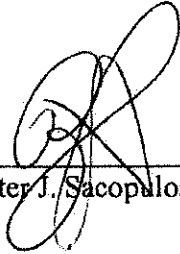
or re-appointment of ALJ Pylitt by the ultimate authority following the Court's Order remanding this matter to the agency of October 17, 2017. Instead, there was a letter by opposing counsel notifying the Judge that he was to re-engage in this matter. That is inappropriate and does not constitute a proper appointment of an ALJ pursuant to the rules.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by email transmission and Certified U.S. Mail, postage prepaid, this 25th day of January, 2018:

Attorney Lea Ellingwood
General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202
lellingwood@hrc.in.gov

Bernard L. Pylitt
Administrative Law Judge
Katz Korin Cunningham PC
334 North Senate Avenue
Indianapolis, IN 46204
Bylitt@kkclegal.com



Peter J. Sacopolos

STATE OF INDIANA
COUNTY OF MADISON

SS: IN THE MADISON CIRCUIT COURT
DIVISION 6

2017 TERM

BOBBY BROWER

CAUSE NO. 48C06-1703-MI-279

Petitioner,

vs.

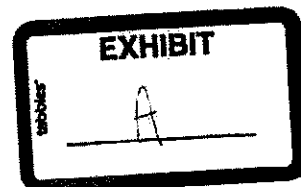
INDIANA HORSE RACING
COMMISSION, INDIANA HORSE
RACING COMMISSION STAFF,

Respondent.

AGREED ENTRY

The Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff (the "Commission"), by counsel, Robin Babbitt, and the Petitioner, Bobby Brower ("Brower"), by counsel, Peter J. Sacopolos, subject to this Court's approval, agree as follows:

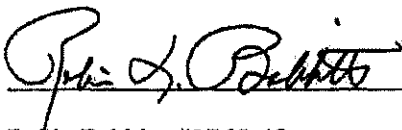
1. Under the facts of this particular case and consistent with this Court's ruling on the Commission's Motion to Dismiss dated July 28, 2017, the parties agree to the entry of a Judgment in Favor of Brower remanding the matter to the Commission for further proceedings relating to Administrative Complaint No. 216005 issued by the Commission's Executive Director on Nov. 14, 2016 consistent and in compliance with the Indiana Administrative Orders and Procedures Act (I.C. 4-21.5-3-1 et seq.) and Commission regulations (71 IAC 1-1-1 et. seq.). The parties agree that this stipulated judgment is limited to the specific facts of the Brower case and does not have precedential effect on any other judicial and/or administrative matter involving the Indiana Horse Racing Commission.
2. The parties agree that the Stay Petition filed by Brower with the Judicial Review Petition in this matter is hereby rendered as moot.
3. Upon the Court's entry of Judgment, the Commission will rescind Ruling No. 2017-1006 without prejudice to the rights of the Commission to prosecute Administrative Complaint No. 216005 issued by the Commission's Executive Director on Nov. 14, 2016. This action will lift the sanctions (subject to the outcome of further administrative proceedings) that were entered against Mr. Brower following and resulting from the entry of the Recommended Default Judgment by the Commission which is the subject of this Petition for Judicial Review;
4. Upon the Court's entry of Judgment, the Commission will review and consider any application by Brower as it would any other. The Commission's consent to this agreed judgment does not guarantee Brower's licensure and his application may be granted,



- denied, refused or placed in a probationary status.
5. Each party reserves all rights with respect to the previous appointment of Administrative Law Judge, Bernard I. Pylitt, to preside over this matter.
 6. Commissioner Lytle will recuse herself from any further involvement in the Commission's consideration of the issues relating to Administrative Complaint No. 216005 issued by the Commission's Executive Director on Nov. 14, 2016 including, but not limited, to any appeal of a recommended decision of the ALJ to the IHRC.

The above is agreed to subject to this Court's approval.

Dated this 17th day of October, 2017.



Robin Babbitt, #3765-49
Attorney for Respondent



Peter J. Sacopulos, #14403-84
Attorney for Petitioner

ORDER ON AGREED ENTRY

The Petitioner, Bobby Brower ("Brower"), by counsel, Peter J. Sacopulos, and the Respondent, Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff (the "Commission"), by counsel, Robin Babbitt, having advised this Court that an agreed resolution has been reached and having submitted the above Agreed entry, and the Court having reviewed the same, and being duly advised in the premises, now finds that the Agreed Entry is meritorious and should be and hereby is granted.


Now, Therefore, IT IS ORDERED, ADJUDGED AND DECREED that:

1. Under the facts of this particular case and consistent with this Court's ruling on the Commission's Motion to Dismiss dated July 28, 2017, the Court enters Judgment in Favor of Brower remanding the matter to the Commission for further proceedings relating to Administrative Complaint No. 216005 issued by the Commission's Executive Director on Nov. 14, 2016 consistent and in compliance with the Indiana Administrative Orders and Procedures Act (I.C. 4-21.5-3-1 et seq.) and Commission regulations (71 IAC 1-1-1 et. seq.). The parties agree and the Court recognizes that this Judgment is limited to the specific facts of the Brower case and does not have precedential effect on any other judicial and/or administrative matter involving the Indiana Horse Racing Commission;
2. The Court hereby dismisses as moot the Stay Petition filed by Brower with the Judicial Review Petition in this matter;
3. The Commission is hereby Ordered to rescind Ruling No. 2017-1006 without prejudice to the rights of the Commission to prosecute Administrative Complaint No. 216005 issued by the Commission's Executive Director on Nov. 14, 2016. It is understood and agreed that this action will lift the sanctions (subject to the outcome of further

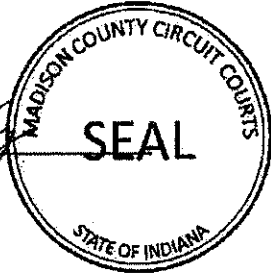
administrative proceedings) that were entered against Brower following and resulting from the entry of the Recommended Default Judgment by the Commission which is the subject of the Petition for Judicial Review that was filed in this action;

4. The Commission is hereby Ordered to review and consider any application submitted by Brower as it would any other. It is understood that this action will not guarantee Brower's licensure and his application may be granted, denied, refused or placed in a probationary status by the Commission; and
5. This Judgment recognizes that Brower and the Commission reserve all rights with respect to the previous appointment of Administrative Law Judge, Bernard I. Pylitt, to preside over Administrative Complaint No. 216005 and any matters that may be related thereto.

ALL OF THIS IS SO ORDERED this 17th day of October 2017.



The Honorable Mark Dudley, Judge
Madison Circuit Court 6



SEAL
MADISON COUNTY CIRCUIT COURT
STATE OF INDIANA

JJ

Distribution to:

Robin Babbitt
Peter Sacopulos
Greg Carter
John Shanks

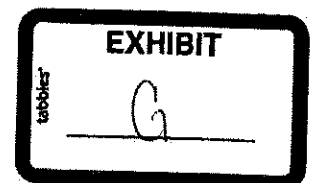
**BEFORE AN ADMINISTRATIVE LAW JUDGE
APPOINTED BY THE INDIANA HORSE RACING COMMISSION**

INDIANA HORSE RACING)	
COMMISSION STAFF,)	
)	
Petitioner,)	Administrative Complaint No. 216005
)	
v.)	
)	
BOBBY BROWER,)	
)	
Respondent.)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER DENYING BOBBY BROWER'S
MOTION TO DISQUALIFY BERNARD PYLITT
AS ADMINISTRATIVE LAW JUDGE**

On January 4, 2018, counsel for Bobby Brower ("Brower") emailed his Motion to Disqualify Administrative Law Judge Pylitt pursuant to I.C. 4-21.5-3-10. Brower argues that ALJ Pylitt is prejudiced and bias against Brower pursuant to IC 4-21.5-3-10, was not properly appointed to hear the matter remanded by the Madison County Court, and therefore must be disqualified.

On January 17, 2018, the Commission Staff filed its Opposition to the Motion to Disqualify. The Commission Staff argues that Brower has the burden of proof but failed to allege or provide any basis in fact of law to support his allegations of bias or prejudice required by the statute mandating the disqualification of ALJ Pylitt. IHRC Staff concludes that the "law presumes that a judge is unbiased and unprejudiced in the matters which come before the judge". *Smith v. State*, 477 N. E. 2d 857, 864 (Ind. 1985).



Additionally, IHRC Staff argues that Brower failed to state how or why ALJ Pylitt showed bias or prejudice. Brower only claims that bias and prejudice are shown by the outcome in ALJ Pylitt's previous Recommended Order Granting Default Judgment.

On January 26, 2018, Brower filed his Reply to IHRC Staff's Opposition to his Motion to Disqualify ALJ Pylitt with unsupported statements that ALJ Pylitt cannot remain neutral in handling the matter given the fact that he failed to follow IHRC's Rules.

Brower correctly acknowledged in the second paragraph of his Reply that ALJ Pylitt issued an Order "recommending" that IHRC Staff's Motion for Default Judgment be granted thereby recognizing that an ALJ can only make a Recommended Order given the fact that the IHRC is the ultimate authority. Brower erroneously argues that ALJ Pylitt somehow caused Brower to be excluded from the 2017 racing season ignoring the fact that it was the IHRC that suspended Brower; not the ALJ.

Brower erroneously argues that the Madison County Circuit Judge found that "ALJ Pylitt failed or refused to follow 71 IAC 10-3-3 (a)". A careful review of Judge Dudley's Order Denying Motions to Dismiss, issued July 28, 2017, attached the Brower's original Motion to Disqualify as Exhibit "A", never once suggested that ALJ Pylitt "failed or refused to follow" any regulation or statute. Rather, Judge Dudley's Order concluded that the "IHRC must follow its own rules" with no mention of the recommendation by ALJ Pylitt.

Brower's unverified Reply concludes that he "personally feels and believes that ALJ Pylitt is biased" without any specific basis for his conclusion. Significantly, ALJ Pylitt and Brower have never met or spoke.

Brower's Reply offered no additional fact to meet his burden of showing bias or prejudice requiring disqualification.

RELEVANT PROCEDURAL HISTORY

On November 4, 2016, Administrative Complaint 216005 was issued by the Commission's Executive Director against Brower as the result of an alleged incident that allegedly occurred on August 18, 2016 involving a horse he allegedly trained named B ABland.

Bernard Pylitt was lawfully appointed to serve as the Administrative Law Judge to handle the above referenced matter on December 16, 2016 by Thomas Weatherwax, then Chair of the Indiana Horse Racing Commission.

ALJ Pylitt had limited prior involvement and simply rendered a Notice of Proposed Default on December 16, 2016, followed by a Recommended Order Granting the IHRC Staff's Motion for Default Judgment on December 30, 2016, pursuant to IC 4-21.5-3-24 (b), without any discussion about the merits of the case.

The Indiana Horse Racing Commission after hearing arguments of counsel unanimously approved the Recommended Order on March 7, 2017.

Brower filed a Petition for Judicial Review in the Madison County Circuit Court Division 6 on April 4, 2017 under Cause Number 48C06-1703-ML-279 challenging the Commission's Decision.

Indiana Horse Racing Commission and IHRC Staff filed a Motion to Dismiss in the Madison County matter which was denied on July 28, 2017. Pursuant to an Agreed Entry approved by the Court on October 17, 2017, the matter was remanded back to the Indiana Horse Racing Commission for further proceedings related to the Administrative Complaint.

On November 16, 2017, Bernard L. Pylitt, was requested by counsel for IHRC Staff to conduct a Prehearing Conference and schedule deadlines and a hearing on the Administrative

Complaint having previously been assigned on December 16, 2016 to serve as Administrative Law Judge to handle this matter.

In attempting to find a mutually agreeable date to reschedule the Prehearing Conference, Mr. Sacopulos, counsel for Brower, emailed ALJ Pylitt on November 20, 2017, with copy to counsel for the IHRC Staff, stating, in part:

It is our position that you are not the ALJ in this matter. Pursuant to the Agreed Judgment entered in the Madison Circuit Court 6 dated October 17, 2017, this matter was remanded to the IHRC for a hearing on the merits. To date, I have not received any letter of appointment from Director Smith, as required. If there is an Order appointing you as referenced in the Order of November 16, 2017, I have not been provided or served with a copy of the same. If there is such an Order, I respectfully request a copy of the same. At this point, the IHRC has not appointed an ALJ in this case.

Furthermore, please be advised that my client, Bobby Brower, should you be appointed/re-appointed, intends to file a motion to disqualify you from serving as ALJ in this matter. That motion would be filed, pursuant to I.C. 4-21.5-3-10.

In accordance with I.C. 4-21.5-3-18, and after consulting with counsel, ALJ Pylitt sent written Notice rescheduling the previously noticed Telephonic Prehearing Conference. Lea Ellingwood appeared during the Telephonic Prehearing Conference on Wednesday, November 29, 2017 at 4:00 p.m. on behalf of the IHRC Staff. Brower appeared by his counsel, Peter Sacopulos and Greg Carter.

When asked by the ALJ during the Telephonic Prehearing Conference to provide any specific reason or evidence to support his claim that the ALJ is prejudiced or biased which would require disqualification, counsel provided none. Counsel for Brower further argued that ALJ Pylitt does not have jurisdiction to hear this matter since the Agreed Entry in the Madison County judicial review matter resulted in the matter being remanded to the Indiana Horse Racing Commission as the ultimate authority, and they have not assigned ALJ Pylitt since the remand as required by I.C. 4-21.5-5-15.

Counsel for IHRC Staff argued that ALJ Pylitt has jurisdiction to hear this matter since he was duly authorized and lawfully appointed to serve as ALJ on December 16, 2016 by the Commission's Chair. Counsel further argued that said appointment has not been revoked or modified in any fashion, including but not limited to the referenced Agreed Entry in the Madison County Circuit Court case.

ALJ Pylitt's only previous involvement was to render a Notice of Proposed Default on December 16, 2016, followed by a Recommended Order Granting the IHRC Staff's Motion for Default Judgment on December 30, 2016, based upon IC 4-21.5-3-24 (b), without any mention about the merits of the case. ALJ Pylitt had no involvement or participation at any stage during in the Madison County Circuit Court. ALJ Pylitt and Brower have never met or spoken.

Given ALJ Pylitt's limited involvement, nothing in the record, nor any prior ruling by ALJ Pylitt demonstrated any prejudice or bias against Brower, nor has ALJ Pylitt indicated any interest in the outcome of the proceeding requiring ALJ Pylitt to be disqualified pursuant to IC 4-21.5.3-10.

RELEVANT STATUTES

Indiana Code 4-21.5-3-10 (a) sets forth the applicable standard for disqualification of an ALJ in an administrative proceeding:

Sec. 10. (a) Any individual serving or designated to serve alone or with others as an administrative law judge is subject to disqualification for:

- (1) bias, prejudice, or interest in the outcome of the proceeding;
- (2) ...
- (3) ...
- (4) any cause for which a judge of a court may be disqualified.

Indiana Code 4-21.5-3-13 addresses the involvement of an administrative law judge in the pre-adjudicative stage, and provides in part:

- (a) ...
- (b) ...
- (c) ...
- (d) An individual may serve as an administrative law judge ... at successive stages of the same proceeding, unless a party demonstrates grounds for disqualification under section 10 of this chapter.

**REASONS FOR DETERMINATION AND RECOMMENDED ORDER
DENYING BROWER'S MOTION TO DISQUALIFY ALJ PYLITT**

Unlike Indiana Trial Rule 76, which allows for an automatic change of judge upon the timely filing of a motion requesting a change, an ALJ cannot be automatically removed. The party seeking disqualification must demonstrate that grounds exist under IC 4-21.5-3-10 (a) requiring disqualification. Brower has the burden of proof to demonstrate that ALJ Pylitt must be disqualified. There is simply no evidence offered by Brower that supports his belief that there is any bias or prejudice on the part of ALJ Pylitt against Brower.

FINDINGS OF FACT

From the information and pleadings submitted by Brower, and in the record, the ALJ finds the following facts:

1. Administrative Complaint 216005 was issued against Brower on November 4, 2016 as a result of an alleged incident involving a horse named B ABland that allegedly occurred on August 18, 2016.
2. On December 16, 2016 ALJ Pylitt was lawfully appointed by then Chairman Weatherwax to serve as ALJ handling the Administrative Complaint against Brower.

3. ALJ Pylitt rendered a Notice of Proposed Default on December 16, 2016, followed by a Recommended Order Granting the IHRC Staff's Motion for Default Judgment on December 30, 2016, pursuant to IC 4-21.5-3-24 (b), without any mention about the merits of the case.
4. The Indiana Horse Racing Commission unanimously approved the Recommended Order of ALJ Pylitt on March 7, 2017.
5. Brower filed a Petition for Judicial Review in the Madison County Circuit Court Division 6 on April 4, 2017 under Cause Number 48C06-1703-ML-279 challenging the decision of the Indiana Horse Racing Commission.
6. Indiana Horse Racing Commission and IHRC Staff filed a Motion to Dismiss which were denied on July 28, 2017.
7. Brower erroneously argues in paragraph 28 of his Motion to Disqualify that Madison County Judge Mark Dudley's Order Denying Defendants Motions to Dismiss, attached to his Motion as Exhibit A, found that ALJ Pylitt "incorrectly and inappropriately failed to follow 'the agency's own rules' ".
8. Nowhere in the July 28 Order does Judge Dudley find that ALJ Pylitt "incorrectly and inappropriately failed to follow 'the agency's own rules' ". Judge Dudley concluded that the IHRC must follow its own rules.
9. Pursuant to an Agreed Entry approved by the Court on October 17, 2017, the matter was remanded back to the Indiana Horse Racing Commission for further proceedings related to the Administrative Complaint.
10. ALJ Pylitt had no involvement or participation in the Madison County Circuit Court matter.
11. On November 16, 2017, ALJ Pylitt was requested by counsel for the IHRC Staff to conduct a Prehearing Conference to establish deadlines and schedule a hearing on the merits of this Administrative Complaint.
12. ALJ Pylitt conducted a Telephonic Prehearing Conference on November 29, 2017 and after consulting with counsel, and their calendars, scheduled discovery deadlines as well as a two-day hearing beginning on April 24, 2018.
13. Any Finding of Fact more properly a Conclusion of Law shall be treated as such.

CONCLUSIONS OF LAW

1. ALJ Pylitt was lawfully and properly appointed by the Chair of the Indiana Horse Racing Commission to serve as the Administrative Law Judge to handle Brower's Administrative Complaint.

2. That appointment has not been modified, withdrawn, or revoked.

3. ALJ Pylitt is not the ultimate authority over this matter.

4. Brower's Motion to Disqualify ALJ Pylitt must be evaluated pursuant to I.C. 4-21.5-3-10.

5. Brower has the burden of proof to demonstrate prejudice and/or bias to support his request that the ALJ be disqualified.

6. Brower failed to present any evidence to support his allegation that ALJ Pylitt is prejudiced or biased against Brower, or has any interest in the outcome of the proceeding as required by I.C. 4-21.5-3-10.

7. I.C. 4-21.5-3-13(c) provides that the disqualification of an administrative law judge is not required on the grounds that an administrative law judge made a determination of probable cause or any other preliminary determination in a proceeding.

8. I.C. 4-21.5-3-13 (d) authorizes an administrative law judge to preside at successive stages of the same proceeding.

9. Any Conclusion of Law more properly a Finding of Fact shall be treated as such.

ULTIMATE FINDING OF FACT

Nothing in the record demonstrates any prejudice or bias on the part of ALJ Pylitt against Brower, or any interest in the outcome of the proceeding against Brower requiring that he be


disqualified pursuant to I.C. 4-21.5.3-10. Accordingly, Brower has failed to meet his burden of proof.

RECOMMENDED ORDER

Therefore, ALJ Pylitt recommends that Brower's Motion to Disqualify ALJ Pylitt from presiding over the Administrative Complaint pursuant to I.C. 4-21.5-3-10 be DENIED.

Pursuant to I.C. 4-21.5-3-29(d), either party may petition the Indiana Horse Racing Commission as the ultimate authority, in writing, for review of this Recommended Order within 15 days after notice of the ruling is served, or by no later than February 13, 2018.

IT IS SO RECOMMENDED THIS 29th DAY OF JANUARY 2018.


Bernard L. Pylitt
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served via first-class United States mail, postage prepaid, and via email this 29th day of January, 2018 to the following:

Peter J. Sacopulos
Sacopulos, Johnson & Sacopulos
676 Ohio Street
Terre Haute, IN 47807
Email: Pete_sacopulos@sacopulos.com

Lea Ellingwood
Indiana Horse Racing Commission Staff
1302 North Meridian, Suite 175
Indianapolis, IN 46202
Email: lellingwood@hrc.in.gov


Bernard L. Pylitt

Katz Korin Cunningham PC
334 North Senate Avenue
Indianapolis, IN 46204
Office: (317)464-1100 Fax: (317)464-1111
Email: bpylitt@kkclegal.com

STATE OF INDIANA
INDIANA HORSE RACING COMMISSION
2018 TERM

Re: Bobby Brower
7281 S 400 W
Muncie, In 47302

ADMINISTRATIVE COMPLAINT NO.
216005

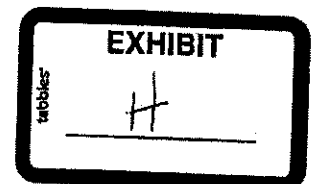
**RESPONDENT, BOBBY BROWER'S, OBJECTIONS TO FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER DENYING HIS MOTION
TO DISQUALIFY ADMINISTRATIVE LAW JUDGE**

Respondent, Bobby Brower, by counsel, Peter J. Sacopulos, pursuant to IC 4-21.5-3-29 respectfully submits his Objections and Exceptions to the ALJ's proposed Findings of Fact, Conclusions of Law, and Recommended Order of January 29, 2018 denying Mr. Brower's Motion to Disqualify Administrative Law Judge. In support of Respondent, Brower's, Verified Objections and Exceptions set forth herein, Respondent, Brower, states:

I. Respondent, Bobby Brower's objections and exceptions to this Administrative Law Judge's Recommended Order of January 29, 2018, and specifically that portion of the same that is untitled and found on pages one (1) and two (2) of said Order and that precedes the section of said Order entitled "Relevant Procedural History."

1. The ALJ, in his recitation of the facts and circumstances surrounding Respondent, Brower's, filing to disqualify him as Administrative Law Judge, begins with a statement that requires clarification for purposes of accuracy. ALJ Pylitt states that Mr. Brower "emailed" the subject Motion to Disqualify on January 4, 2018. In fact, Mr. Brower properly filed said motion.

This is significant because the scheduling Order issued by ALJ Pylitt, dated November 29, 2017, is reflective of the bias and prejudice Brower has and will continue to face if Bernard Pylitt is not disqualified and removed as the Administrative Law Judge in this matter. Specifically, regarding service, it is required that both mailed/hard copies be filed with the IHRC while on the same date service be perfected by email to the Administrative Law Judge and counsel. This is not an issue for the IHRC Staff Counsel that simply walks across the office and file stamps all IHRC Staff filings and then makes a return trip across the room to a desk where a button is pushed perfecting electronic service, via email. It is another story for Mr. Brower. It is an issue for Mr. Brower. He has and continues to be required to either physically deliver the hard copy of each filing to the IHRC's office in Indianapolis, making the trip from either Anderson to Indianapolis or Terre Haute to Indianapolis, or, alternatively, incurring an additional cost to send his filings, via Federal Express, with a tracking feature to



assure mid-day deadlines that are established for filing and, upon confirmation of delivery, serving the pleadings electronically by way of email to opposing counsel and to the ALJ. This discrepancy in the time, cost and effort to file documents with the IHRC in this case has resulted and continues to result in bias and prejudice and cost to Mr. Brower, all as a direct of the ALJ's Order of 11/29/17. Had, instead, the ALJ simply referred to Indiana Trial Rule 5 and allowed electronic filing, as most county court systems, administrative agencies and our Indiana Court of Appeals accept and honor, this bias and prejudice would not have been and continued to be visited upon Mr. Brower.

2. Next, the Administrative Law Judge incorrectly states that Mr. Brower's claims of bias and prejudice are shown only by the Recommended Order of Default Judgment. That is incorrect. In fact, Mr. Brower's claims prejudice and bias not only by way of his Recommended Order, which the Madison Circuit Court 6 found to be in error, but also by way of his failure to follow defined rules, by the ALJ's failure to recognize and exercise discretion, by the ALJ's failure to assign and afford Mr. Brower's timely Answer its true meaning—a request for hearing, by the ALJ's expanding, beyond the parameters of the rule of law and his authority, the bases by which Mr. Brower may be subject to default while not equally expanding the grounds by which the IHRC/IHRC Staff's Administrative Complaint may be subject to dismissal, and by this ALJ's repeated denials of all motions and requests filed by and on behalf of Mr. Brower while, to the contrary, granting and accommodating all requests made by and on behalf of the IHRC Staff. ALJ Pylitt's bias and prejudice as to Mr. Brower is clear.
3. Next, this Administrative Law Judge takes issue, incorrectly, with Mr. Brower's position that he (the Administrative Law Judge) failed to follow the IHRC rules. Mr. Brower's position is substantiated by a review of the Madison Circuit Court 6's Order. In that Order the Honorable Mark Dudley states that the Indiana Horse Racing Commission (this ALJ) failed to follow the IHRC rules by disregarding Mr. Brower's timely filed responsive pleading and failing to give it proper status. This failure, on the part of the ALJ, resulted in a biased and prejudicial recommended order.
4. The ALJ also seems to argue that he was not the cause of Mr. Brower being excluded from the 2017 racing season and, alternatively, that it was the mistake of the Indiana Horse Racing Commission. It is a disingenuous argument advanced by the Administrative Law Judge to say he is without fault or cause for the failure of this agency to properly follow the rules that lead to the severe and ongoing economic hardship visited upon Mr. Brower by a failure to follow the IHRC rules. It is well known that the IHRC routinely grants/approves the Recommended Order of the ALJs. It was this ALJ's recommended order, in error, that on judicial review was found not to be only erroneous but contrary to the IHRC's own rules,

which it had not followed. The result of which was Bobby Brower being excluded from the Indiana racing program for the 2017 racing season and, because of reciprocity, being excluded from racing in general for that racing season.

5. Next, this ALJ attempts to deflect his error and failure to follow the IHRC rules. His attempt is to deflect the error of having recommended Mr. Brower be defaulted from his actions to those of the Indiana Horse Racing Commission. It must be remembered that it was the ALJ that failed to properly follow the Indiana Horse Racing Commission's rules and failed to give Bobby Brower timely filed Answer, its proper status. Had this ALJ followed the Indiana Horse Racing Commission's rules, rules that he was charged to fairly and uniformly enforce, the only proper recommended order in response to the IHRC Staff's Motion for Default Judgment would have been one of denial.
6. Further, this ALJ is apparently of the practice and belief that bias and prejudice may only be visited upon a person in person or via direct communication. That, of course, is not the case and was not the case here.
7. Finally, this ALJ incorrectly states that Mr. Brower offered no additional "facts" by way of his Reply brief to show bias or prejudice. That too is incorrect: Respondent, Brower's, reply brief does, in fact, offer additional facts evidencing bias and prejudice against him and his reply brief speaks for itself.

II. RESPONDENT, BOBBY BROWER'S, OBJECTIONS AND EXCEPTIONS TO THE SECTION OF ALJ PYLITT'S RECOMMENDED ORDER OF JANUARY 29, 2018 ENTITLED "RELEVANT PROCEDURAL HISTORY"

Respondent, Bobby Brower, objects to ALJ Pylitt's account of the relevant procedural history of this matter. He does so because it is both incomplete and inaccurate. This is because Mr. Brower timely filed an Answer, pursuant to 71 IAC 10-3-21(a) denying the allegations set forth in the IHRC Staff's Administrative Complaint. Additionally, said history is incomplete in that it fails to reference Respondent's request for modification of the ALJ's Order of November 29, 2017.

The history presented by ALJ Pylitt is incomplete and inaccurate because it fails to include the fact that Respondent timely filed an Answer denying the allegations set forth in the IHRC/IHRC Staff's Administrative Complaint. This is not only significant, it is astonishing given the Order issued by the Madison Circuit Court 6, a copy of which was provided to the ALJ, and that states this ALJ failed to follow the IHRC's rules in improperly recommending that Mr. Brower be defaulted. It was Mr. Brower's timely filed Answer that ALJ Pylitt ignored in improperly recommending Mr. Brower be defaulted. ALJ Pylitt likewise ignores the fact that Mr. Brower timely filed an Answer in his Recommended Order of January 29, 2018. This is further evidence of the bias and prejudice that this ALJ has visited upon Mr. Brower and further reason

why he should be disqualified as ALJ sitting in judgment of Mr. Brower's case.

Respondent, Bobby Brower, further objects and takes exception to this ALJ's position that he is properly appointed. This is because I.C. 4-21.5-3-9 requires that an ALJ be appointed by the agency's ultimate authority. While true that the ALJ was properly appointed by former IHRC Chairman, Tom Weatherwax, on December 16, 2016, he was not so properly appointed following Respondent's successful Petition for Judicial Review and remand of this matter to the IHRC. Upon remand to this agency (IHRC), I.C. 4-21.5-3-9 requires appointment of an Administrative Law Judge by its ultimate authority. Subsequent to being remanded, opposing counsel in this case issued a letter, dated November 16, 2017, requesting ALJ Pylitt conduct a hearing. Opposing counsel's letter attempting to "reappoint" (without involving the ultimate authority) ALJ Pylitt did not and does not comply with I.C. 4-21.5-3-9. Respondent, Bobby Brower, therefore objects and takes exception, as he did prior to, during and after the November 29, 2017, hearing that ALJ Pylitt has been properly appointed and has authority to rules and/or preside over Mr. Brower's defense.

On Monday, February 5, 2018, the IHRC Staff served responses to Mr. Brower's Request for Production of Documents. Included in those responses and production is a letter authored by IHRC Staff General Counsel, Lea Ellingwood, to former IHRC Chairman, Tom Weatherwax, dated December 9, 2016. This letter is significant for the reason that General Counsel, who in the case of Mr. Brower is opposing counsel, is selecting the ALJ and requesting confirmation. A true and exact copy of General Counsel, Ellingwood's, letter to former Chairman Weatherwax of December 9, 2016, is attached hereto, made a part hereof, and marked as Exhibit "A." Given the ALJs are appointed by the Indiana Horse Racing Commission, paid by the Indiana Horse Racing Commission, retained by the Indiana Horse Racing Commission, the selection of the ALJ by the opposing attorney seems, at the very least, a conflict of interest for the IHRC/IHRC Staff/ALJ. Unquestionably, the selection of the ALJ by the opposing attorney is not in the spirit of IC 4-21.5-3-9 that requires the appointment of the ALJ by the agency's ultimate authority. Additionally, opposing counsel's selection of the trier of fact, when the Respondent is not afforded the opportunity to move for a change of ALJ, brings into clear focus, issues of integrity and fairness. Additionally, the Indiana Horse Racing Commission and the Indiana Horse Racing Commission Staff have historically refused and denied requests for mediation pursuant to the Administrative Orders and Procedures Act. In short, the system of appointing the ALJ is biased, prejudiced and without integrity when the opposing attorney selects the judge.

Mr. Brower further objects and takes exception with this ALJ's statement that the undersigned counsel's correspondence of November 20, 2017, had as its purpose finding: "...a mutually agreeable date to reschedule the Prehearing Conference..." The purpose of said correspondence was to inform this ALJ that the Respondent questioned his appointment and authority to conduct the Prehearing Conference requested by opposing counsel and to advise this ALJ of his intention of filing a Motion for Disqualification of the ALJ pursuant to I.C. 4-21.5-3-10, a motion that Respondent, Bobby Brower, filed of record on January 4, 2018.

Additionally, Respondent, Bobby Brower, objects and takes exception to ALJ Pylitt's statement that: "...when asked by the ALJ during the Telephonic Prehearing Conference to provide any specific reason or evidence to support his claim that the ALJ is prejudiced or biased which would require disqualification, counsel provided none...." Mr. Brower does so for two reasons. First, for the reason that it misstates counsel's position on this issue during the November 29, 2017, Telephonic Prehearing Conference. The undersigned counsel was asked by the ALJ if he/they would share, at that time, the basis for Mr. Brower's future motion to disqualify him pursuant to I.C. 4-21.5-3-10. The undersigned counsel advised/responded that they elected not to discuss or share the bases for disqualification at that time. Counsel's position not to share or provide a position on behalf of their client in advance of filing a motion to disqualify does not equate to Mr. Brower not having a basis for disqualification as implied by this ALJ in his Recommended Order of January 29, 2018. The second reason, Respondent, Bobby Brower, takes exception and objects to such statement is that he had not, as of November 29, 2017, filed his motion to disqualify ALJ Pylitt and, therefore, the same was not an issue or ripe for discussion during the November 29, 2017, hearing.

The fact that the Administrative Law Judge chose to imply that Mr. Brower/Respondent's counsel did not have, as of November 29, 2017, a basis for a motion to disqualify him as Administrative Law Judge further reflects his bias and prejudice as to Mr. Brower.

While the ALJ includes in his "relevant procedural history" counsel's correspondence of November 20, 2017, he omits a second and significant letter from counsel to the ALJ. A true and exact copy of the undersigned counsel's email to this ALJ of December 15, 2017, addressing issues and exceptions relative to his Order of November 29, 2017 and the ALJ's disingenuous response are attached hereto, made a part hereof, and marked as Exhibits "B" and "C." Counsel's correspondence to the ALJ of December 15, 2017 (Exhibit "B") points out issues and exceptions Mr. Brower had/has relative to factual accuracy, concerns over the ALJ expanding, without authority, the basis for which Respondent may be defaulted and his inappropriate comment relative to a future motion to default. ALJ Pylitt's response of the same date fails to address Respondent's written request that a nunc pro tunc order be issued to reflect those inaccuracies. Instead, the ALJ's response to Mr. Brower was/is that his order "...remains as is...." (*See Exhibit "C"*)

Exhibits "B" and "C" are significant in showing and establishing prejudice and bias on the part of the ALJ as to Mr. Brower for two reasons. First, it was prejudicial to the Respondent to use an Order that contains only a portion of the "Relevant Procedural History." The selective omission of Exhibits "B" and "C" supports Mr. Brower's argument that this ALJ must be disqualified and further evidence of prejudice and bias. Secondly, the ALJ's dismissive response, a response that fails to address the issues raised in counsel's correspondence of December 15, 2017, is further evidence of this ALJ's prejudice and bias as to Brower.

Next, this Administrative Law Judge incorrectly suggests that having never personally met or spoken with Mr. Brower is somehow proof that he (ALJ Pylitt) is incapable of being

biased or prejudiced against Mr. Brower. That, of course, is not correct. Nor is the ALJ's statement that "nothing in the record" demonstrates prejudice and bias against Mr. Brower. ALJ Pylitt's statement is extremely self-serving and it should be noted that ALJ Pylitt is paid by the IHRC/IHRC Staff and that he (Pylitt) has an economic incentive to continue serving as ALJ in this case. A review of the administrative record includes a timely filed Answer denying the allegations set forth in the Administrative Complaint. A review of reported case law in Indiana reveals that at no time in Indiana recorded case history has a party that timely filed a responsive pleading has been defaulted. Contrary to this ALJ's belief that "nothing in the record" suggests prejudice or bias, the administrative record itself is compelling evidence of just the opposite.

RELEVANT STATUTES

Respondent, Bobby Brower, has no objection to this ALJ's recitation of the relevant statute, that being I.C. 4-21.5-3-10.

RESPONDENT, BOBBY BROWER'S OBJECTIONS AND EXCEPTIONS TO THE ALJ'S RECOMMENDED ORDER OF JANUARY 29, 2018, AND SPECIFICALLY THE SECTION ENTITLED "REASONS FOR DETERMINATION AND RECOMMENDED ORDER DENYING BROWER'S MOTION TO DISQUALIFY ALJ PYLITT"

Respondent, Bobby Brower, agrees that he was not afforded the opportunity or right to request a change of judge. He further agrees that he bears the burden of proving this Administrative Law Judge should be disqualified pursuant to I.C. 4-21.5-3-10. However, he objects to this ALJ's statement that he has offered no evidence of bias or prejudice. A review of Respondent, Brower's, Motion to Disqualify Administrative Law Judge and Reply Brief together with corresponding exhibits to the same and the arguments set forth in this Petition, clearly and convincingly show just the opposite.

FINDINGS OF FACT

1. Respondent does not object to Finding of Fact number one (1).
2. Respondent does not object to Finding of Fact number two (2).
3. Respondent, Brower, objects to Finding of Fact number three (3) for the reason that it fails to consider and acknowledge that Respondent, Brower, had timely filed a responsive pleading/answer and that pursuant to 71 IAC 10-3-21(a), he was entitled to a hearing. Respondent, Brower's, timely filed Answer does address the merits of this case by denying the allegations against him. As such, there was mention of the merits by way of Respondent, Brower's, Answer and the same occurred during ALJ Pylitt's involvement in this matter and in advance of his inappropriate Order recommending default of Mr. Brower.

4. Respondent does not object to Finding of Fact number four (4).
5. Respondent does not object to Finding of Fact number five (5)
6. Respondent does not object to Finding of Fact number six (6).
7. Respondent, Brower, objects to Finding of Fact number seven (7) for the reason that the Honorable Mark Dudley, Judge of Madison Circuit Court 6, did hold/state that the IHRC failed to follow its own rules and, in doing so, held that this ALJ incorrectly and inappropriately failed to follow the IHRC's rules by defaulting a licensee that had timely filed a responsive pleading. Further, Judge Dudley's Order **denying** the IHRC's Motion to Dismiss is attached hereto, made a part hereof, and marked as Exhibit "D." (Respondent, Brower, calls the IHRC/Commissioner's attention to page four (4), line 5 of said exhibit).
8. Respondent, Brower, objects to Finding of Fact number eight (8) for the same reasons as set forth in his objection to the preceding Finding of Fact number seven (7) and incorporates by reference his response and objection to the same.
9. Respondent, Brower, does not object to Finding of Fact number nine (9).
10. Respondent, Brower, does not object to Finding of Fact number ten (10).
11. Respondent, Brower, does not object to Finding of Fact number eleven (11).
12. Respondent, Brower, does not object to Finding of Fact number twelve (12).
13. Respondent, Brower, does not object to Finding of Fact number thirteen (13).

CONCLUSIONS OF LAW

1. Respondent, Brower, objects to Conclusion of Law number one (1). Respondent, Bobby Brower both objects and takes exception to this Administrative Law Judge's position that he has been/is properly appointed. This is because I.C. 4-21.5-3-9 requires that an ALJ be appointed by the agency's ultimate authority. ALJ Pylitt was not properly appointed following Respondent, Brower's, successful Petition for Judicial Review and remand of this matter to the IHRC. This is because the matter was remanded to the agency (IHRC) and not to ALJ Pylitt. IC 4-21.5-3-9 requires appointment of an ALJ by the agency's ultimate authority. The ultimate authority in this case is the Indiana Horse Racing Commission and/or its Chairman. Instead of the ultimate authority, opposing counsel issued a letter dated November 16, 2017, requesting that ALJ Pylitt conduct a hearing. That letter was not and is not a proper appointment of ALJ Pylitt pursuant to I.C. 4-21.5-3-9 following remand of this matter to the Indiana

Horse Racing Commission. Respondent, Bobby Brower, therefore objects and takes exception to the position that this ALJ has authority, because he has not been properly re-appointed subsequent to the matter being remanded to the agency by the Madison Circuit Court 6.

2. Respondent, Brower, admits that the initial appointment by way of former IHRC Chairman, Tom Weatherwax, dated December 16, 2016, has not, to the best of his knowledge, been modified, withdrawn, or revoked. Respondent, Brower, does object to the extent that Conclusion of Law number two (2) suggests that this ALJ was properly appointed subsequent to this matter being remanded by the Madison Circuit Court 6 to the IHRC. Respondent, Brower, incorporates by reference his objection to Conclusion of Law number one (1).
3. Respondent, Brower, has no objection to Conclusion of Law number three (3).
4. Respondent, Brower, has no objection to Conclusion of Law number four (4).
5. Respondent, Brower, has no objection to Conclusion of Law number five (5).
6. Respondent, Brower, objects to Conclusion of Law number six (6). For his objection to Conclusion of Law number six (6), Respondent, Brower, incorporates his objections set forth in this petition and all of them as well as the evidence in set forth in his Motion to Disqualify Administrative Law Judge and his Reply Brief and all exhibits to each as well as the exhibits to this Petition.
7. Respondent, Brower, has no objection to Conclusion of Law number seven (7).
8. Respondent, Brower, objects to Conclusion of Law number eight (8) for the reason that this Conclusion of Law suggests and implies that this ALJ was properly appointed subsequent to the denial of the IHRC's Motion to Dismiss Respondent, Brower's, Petition for Judicial Review and this matter being remanded to the IHRC. Further, Respondent, Brower, incorporates by reference his objections to Conclusions of Law numbers 2 and 6 as set forth above.
9. Respondent, Brower, does not object to Conclusion of Law number nine (9).

ULTIMATE FINDING OF FACT

Respondent, Bobby Brower, objects to the Ultimate Finding of Fact. Respondent, Brower's, basis for his objection to the Ultimate Finding of Fact is the argument, evidence, statutory provision, case law, and objections set forth in his January 4, 2018, Motion to Disqualify Administrative Law Judge as well as his subsequently filed Reply Brief and this Petition for Review and Denial of ALJ Pylitt's Recommended Order of January 29, 2018, as well

as all exhibits to the same.

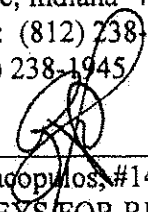
CONCLUSION

The IHRC has as its charge promoting integrity in Indiana horse racing and fairly and uniformly enforcing the rules and regulations governing participants in our state's racing program. Integrity, fairness and impartiality are present when all steps are taken to ensure licensees, such as Bobby Brower, are afforded a fair hearing before an unbiased trier of fact. Participants/licensees' rights pursuant to Indiana state law and the AOPA are an important component to ensuring integrity in our program. The impartial and unbiased adjudication of cases is equally critical to the integrity of the Indiana horse racing program.

Respondent, Brower, has met his burden of proof in establishing prejudice and bias on the part of the ALJ. Bernard Pylitt should be disqualified and replaced by another IHRC-approved and selected Administrative Law Judge. ALJ Pylitt's recommendation to default Respondent, Brower, in the face of a timely filed Answer, his denial of Mr. Brower's request for additional time to serve third party discovery, his refusal to amend, correct, complete and enter a nunc pro tunc order relative to the incorrect, inaccurate, incomplete and bias scheduling order of November 29, 2017, as evidenced by the undersigned counsel's letter of December 15, 2017, and ALJ Pylitt's dismissive response of December 15, 2017, his expanding the grounds and basis, beyond Indiana law and his authority, to potentially default Mr. Brower in his Order of November 29, 2017, his recommendation of a lifetime ban from Indiana racing (effectively all racing) for fifteen (15) years, as well as a punitive fine of \$40,000, without any evidence or any testimony, is all evidence advanced by Respondent, Brower, in establishing his position that the IHRC must disqualify Bernard Pylitt and appoint, pursuant to I.C. 4-21.5-3-9 a fair, impartial, unbiased and unprejudicial ALJ to decide this matter.

Respectfully submitted,

SACOPULOS JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, Indiana 47807
Telephone: (812) 238-2565
Fax: (812) 238-1945

By: 
Peter J. Sacopulos, #14403-84
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by email transmission and Certified U.S. Mail, postage prepaid, this 9th day of February, 2018:

Attorney Lea Ellingwood
General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202
lellingwood@hrc.in.gov

Bernard L. Pylitt
Administrative Law Judge
Katz Korin Cunningham PC
334 North Senate Avenue
Indianapolis, IN 46204
Bylitt@kkclegal.com



Peter J. Sacopulos

From: Ellingwood, Lea
To: Pennycuff, Dale L.
Subject: FW: ALJ Assignments
Date: Friday, February 02, 2018 9:48:53 AM

From: Tkwx [mailto:tkwx@comcast.net]
Sent: Friday, December 09, 2016 6:46 PM
To: Ellingwood, Lea
Cc: Smith, Michael D
Subject: Re: ALJ Assignments

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Good choices , please proceed as requested.

Chairman

Sent from my iPad

On Dec 9, 2016, at 11:34 AM, Ellingwood, Lea <LEllingwood@hrc.IN.gov> wrote:

Good morning, Tom!

I hate to bother you while you're taking care of Kay, but we need to assign an ALJ to two pending cases. Based on the schedule of each judge, we'd recommend assigning the first (which is a complaint against [REDACTED]) to Judge Ernie Yelton and the second (which is a complaint against Bobby Brower) to Judge Buddy Pylitt. Can you confirm these assignments?

Best,
Lea

Lea Ellingwood
General Counsel
Indiana Horse Racing Commission
1302 N. Meridian St.
Suite 175
Indianapolis, IN 46202
317-233-3119

BATES NO. IHRC00072



PLA

From: PLA
Sent: Friday, December 15, 2017 11:00 AM
To: 'Bernard Pylitt'
Subject: IHRC/IHRC Staff v. Bobby Brower

Dear ALJ Pylitt:

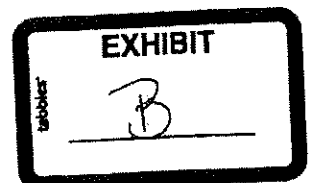
I am writing to address issues and exceptions my client, Bobby Brower, Attorney Greg Carter and I have relative to the Prehearing Order of November 29, 2017. I apologize for not addressing these issues more promptly but have been out of my office on other business matters. These issues are:

1. Your Order states: "...Bernard L. Pylitt, was requested to conduct a prehearing conference and schedule deadlines...." This suggests that Mr. Brower requested or jointly requested the same. That is not the case. In fact, Mr. Brower has challenged whether you have been appointed to serve as ALJ in this matter. The Madison Circuit Court remanded this matter to the Indiana Horse Racing Commission. I.C. 4-21.5-3-9 requires an Administrative Law Judge be appointed by the agency's (IHRC) ultimate authority. Subsequent to the trial court's Order, no such notice of your appointment has been provided or received.
2. The final paragraph of your Order adds a basis of default relative to Mr. Brower only that is not set forth or included in I.C. 4-21.5-3-24, specifically, your statement is: "...If Mr. Brower fails to attend the scheduled hearing or cooperate during discovery, he may be held in default...." Your statement supersedes the statute governing default by adding a basis for default.
3. The Order does not resolve or decide the disputed issue of whether you have properly been appointed and have jurisdiction over this matter. The Order summarizes Mr. Brower's position as well as that of the Agency but stops short of setting forth why you have jurisdiction pursuant to Chapter 9 and/or Chapter 15. My client requests clarification of this issue.
4. Mr. Brower, prior to November 29, 2017, had not filed a Motion to Disqualify. You have included, in the Prehearing Scheduling Order statements as to a Motion to Disqualify that has not yet been filed. Those statements are biased against Mr. Brower. Disqualification pursuant to I.C. 4-21.5-3-10 was not an issue of the Pre-Hearing Conference. Further, your statement that Mr. Carter: "...refused to provide any specific reason or evidence to support his claim that the ALJ is prejudiced or biased which would require his being disqualified..." is inappropriate and incorrectly implies that Mr. Brower has no basis for a Motion to Disqualify. That is not the case. Mr. Brower, Attorney Carter, and I take exception to the same and request that that statement be removed from the Order.

My client, Bobby Brower, respectfully requests that the Prehearing Order of November 29, 2017, be re-issued to reflect the modifications, changes, and deletions referenced above.

Yours Sincerely,

Peter J. Sacopulos
SACOPULOS, JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, IN 47807
Telephone: (812) 238-2565
Facsimile: (812) 238-1945
pete_sacopulos@sacopulos.com



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PLA

From: Bernard Pylitt <bylitt@kkclegal.com>
Sent: Friday, December 15, 2017 1:13 PM
To: PLA
Cc: Lea Ellingwood
Subject: Re: IHRC/IHRC Staff v. Bobby Brower



It does not appear that you copied Lea so I am including her with my response. Please refrain from any future ex parte communications.

My Prehearing Order needs no clarification and remains as is.

If you intend to file a Motion to Disqualify me as ALJ in this matter, please do so without delay so the issue may be resolved given the pending deadlines.

On Dec 15, 2017, at 11:00 AM, PLA <pla@sacopulos.com> wrote:

Dear ALJ Pylitt:

I am writing to address issues and exceptions my client, Bobby Brower, Attorney Greg Carter and I have relative to the Prehearing Order of November 29, 2017. I apologize for not addressing these issues more promptly but have been out of my office on other business matters. These issues are:

1. Your Order states: "...Bernard L. Pylitt, was requested to conduct a prehearing conference and schedule deadlines...." This suggests that Mr. Brower requested or jointly requested the same. That is not the case. In fact, Mr. Brower has challenged whether you have been appointed to serve as ALJ in this matter. The Madison Circuit Court remanded this matter to the Indiana Horse Racing Commission. I.C. 4-21.5-3-9 requires an Administrative Law Judge be appointed by the agency's (IHRC) ultimate authority. Subsequent to the trial court's Order, no such notice of your appointment has been provided or received.
2. The final paragraph of your Order adds a basis of default relative to Mr. Brower only that is not set forth or included in I.C. 4-21.5-3-24, specifically, your statement is: "...If Mr. Brower fails to attend the scheduled hearing or cooperate during discovery, he may be held in default...." Your statement supersedes the statute governing default by adding a basis for default.
3. The Order does not resolve or decide the disputed issue of whether you have properly been appointed and have jurisdiction over this matter. The Order summarizes Mr. Brower's position as well as that of the Agency but stops short of setting forth why you have jurisdiction pursuant to Chapter 9 and/or Chapter 15. My client requests clarification of this issue.
4. Mr. Brower, prior to November 29, 2017, had not filed a Motion to Disqualify. You have included, in the Prehearing Scheduling Order statements as to a Motion to Disqualify that has not yet been filed. Those statements are biased against Mr. Brower. Disqualification pursuant to I.C. 4-21.5-3-10 was not an issue of the Pre-Hearing Conference. Further, your statement that Mr. Carter: "...refused to provide any specific reason or evidence to support his claim that the ALJ is prejudiced or biased which would

require his being disqualified..." is inappropriate and incorrectly implies that Mr. Brower has no basis for a Motion to Disqualify. That is not the case. Mr. Brower, Attorney Carter, and I take exception to the same and request that that statement be removed from the Order.

My client, Bobby Brower, respectfully requests that the Prehearing Order of November 29, 2017, be re-issued to reflect the modifications, changes, and deletions referenced above.

Yours Sincerely,

Peter J. Sacopulos
SACOPULOS, JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, IN 47807
Telephone: (812) 238-2565
Facsimile: (812) 238-1945
pete_sacopulos@sacopulos.com

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STATE OF INDIANA
COUNTY OF MADISON

BOBBY BROWER
Plaintiff

VS.

INDIANA HORSE RACING COMMISSION,
INDIANA HORSE RACING COMMISSION
STAFF

Defendants

IN THE MADISON CIRCUIT COURT
DIVISION 6

2017 TERM

CAUSE NO. 48C06-1703-MI-279

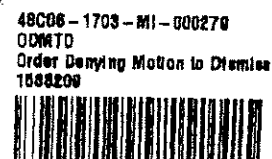
ORDER DENYING DEFENDANTS' MOTION TO DISMISS

The parties appeared in person and by counsel on June 16, 2017, for a hearing on Defendants, Indiana Horse Racing Commission and Indiana Horse Racing Commission Staff's (collectively "IHRC"), Motion to Dismiss. The parties fully briefed the issue.

The issue is whether this court has jurisdiction to hear plaintiff, Bobby Brower's ("Brower"), Petition for Judicial Review. Brower is a horse trainer licensed by the State of Indiana and subject to administrative oversight by IHRC. On November 4, 2016, the IHRC filed an administrative complaint pursuant to 71 IAC 10-3-20 against Brower alleging he mistreated a horse. Brower received the administrative complaint on November 16, 2016. 71 IAC 10-3-20 requires a licensee to request a hearing within twenty (20) days if he wishes to contest the administrative complaint. The language of 71 IAC 10-3-20(d) reads:

(d) Not later than the twentieth day after the date on which the executive director delivers or sends the administrative complaint, the person charged may make a written request for a hearing or may remit the amount of the administrative penalty to the commission. Failure to request a hearing or to remit the amount of the administrative penalty within the period prescribed by this subsection results in a waiver of a right to a hearing on the administrative penalty as well as any right to judicial review. If the person charged requests a hearing, the hearing shall be conducted in the same manner as other hearings conducted by the commission pursuant to this article.

The administrative code covering the IHRC does not provide a specific form for making a written request for a hearing.



Brower, through his attorney, filed an answer on November 29, 2016, pursuant to 71 IAC 10-3-21. This filing is within twenty (20) days of Brower's receipt of the administrative complaint. 71 IAC 10-3-21 is titled "Settlement Procedures". Brower followed the requirements of §21 and not §20. If the IHRC filed an administrative complaint pursuant to 71 IAC 10-3-21, then the licensee shall file an answer within twenty (20) days of service of the complaint. Following the filing of an answer, the parties can enter into a settlement agreement. If a settlement agreement is not reached, then an administrative complaint may be filed under 71 IAC 10-3-20.

The twenty (20) day window expired on December 6, 2016, and Brower filed a written request for hearing on December 7, 2016. Pursuant to the IHRC's administrative procedures, it filed a Notice of Proposed Default against Brower on December 16, 2016, because he failed to file a written request for hearing in the allotted time. Brower filed his objection to the Notice of Proposed Default on December 21, 2016. The assigned administrative law judge on January 3, 2017, recommended to the IHRC that it find Brower in default. Brower filed his objection to the administrative law judge's recommendation on January 12, 2017. The IHRC voted on March 7, 2017, and issued its final order finding Brower in default on March 14, 2017. Brower filed this case seeking judicial review of a final agency action on March 31, 2017.

I.C. 4-21.5-3-24 governs the process engaged in by the parties. The statute in full reads:

(a) At any stage of a proceeding, if a party fails to:

- (1) satisfy the requirements of section 7(a) [IC 4-21.5-3-7(a)] of this chapter;
- (2) file a responsive pleading required by statute or rule;
- (3) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or
- (4) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;

the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed

default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 [IC 4-21.5-3-23] of this chapter to resolve any issue of fact.

I.C. 4-21.5-3-24 requires one of four triggers prior to an agency seeking a default judgment. Subsection (a)(1) covers personnel actions in the State's Civil Service System and is inapplicable here. Subsection (a)(2) authorizes an agency to seek a default when a party fails to file a responsive pleading. This is the subsection at issue in this case. Subsections (a)(3) and (a)(4) are not implicated by the facts of this case.

The IHRC defines a "pleading" as:

(a) Pleadings filed with the commission include the following:

- (1) Appeals
- (2) Applications
- (3) Answers
- (4) Complaints
- (5) Exceptions
- (6) Replies
- (7) Motions

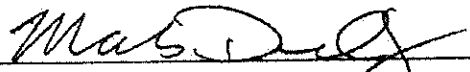
Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

71 IAC 10-3-3. The IHRC does not define a request for a hearing. The IHRC does differentiate between an answer and a request for hearing. *Id.* It does recognize that one is a pleading and the other is not. The court's analysis can stop at this point because the IHRC's action contravenes I.C. 4-21.5-3-24(a). Brower never failed to file a "responsive pleading required by statute or rule" and as such, the IHRC cannot meet its burden that its procedures conform to the statutory mandate.

In further support of the court's conclusion are the IHRC's own rules. Even if the court was persuaded that a request for hearing is a required pleading, Brower's answer

clearly disputed the IHRC's allegations. The IHRC tells its licensees "regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it was filed." 71 IAC 10-3-3(a). While Brower's document is titled, "Answer" its substance told the IHRC that he wished to contest the proposed fine and suspension. The IHRC must follow its own rules and accord Brower's "Answer" its true status as a timely request for a hearing. The court finds that Brower timely responded to IHRC's complaint. The parties are to contact the court to set a pretrial conference date to address the remaining issues of Brower's request to stay IHRC's suspension and his request to remand the case to the IHRC.

All of which is so ordered, this 28th day of July, 2017.


The Honorable Mark Dudley, Judge
Madison Circuit Court No. 6



Copies to:

Peter Sacopulos
John Shanks
Robin Babbitt

STATE OF INDIANA)	MADISON COUNTY CIRCUIT COURT
)	DIVISION 6
COUNTY OF MADISON)	CAUSE NO. _____

BOBBY BROWER,
 Party Herein Pursuant to Ind. Code: 4-21.5-5-6(d)
 Petitioner Below

vs.

INDIANA HORSE RACING COMMISSION,
 Party Herein Pursuant to I.C. 4-21.5-5-6(d)
 Respondent Below

**VERIFIED PETITION FOR A STAY OF THE ADMINISTRATIVE
 PROCEEDING**

Petitioner, Bobby Brower, by counsel, Peter J. Sacopulos, respectfully petitions this Court, for an Order staying the Indiana Horse Racing Commission’s administrative proceedings against Bobby Brower pending a final decision of his Verified Petition for Judicial Review that is being filed contemporaneously with this Verified Petition for Stay. In support of this Verified Petition for a Stay of the Administrative Proceeding, Petitioner, Bobby Brower, states:

1. The Petitioner is seeking in this Court a judicial review of the Indiana Horse Racing Commission’s failure to comply with I.C. 4-21.5-3-9(d).
2. A Verified Petition for Judicial Review has been timely filed in this Court in compliance with Indiana Code 4-21.5-5-7.
3. Petitioner has set forth, in his Verified Petition for Judicial Review, grounds to show that the Indiana Horse Racing Commission has failed to rule on Petitioner, Bobby Brower’s, Objections to Findings of Fact, Conclusions of Law and Recommended Order Denying His Motion to Disqualify Administrative Law Judge within thirty (30) days as provided for by I.C. 4-21.5-3-9(d) and that Petitioner, Bobby Brower, is entitled to judicial review of the Indiana Horse Racing Commission’s failure to act pursuant to I.C. 4-21.5-5-2 *et seq.*
4. In addition to the facts and authority referenced in his Verified Petition for Judicial Review, Petitioner, Bobby Brower, advises this Court that a stay is necessary and appropriate for the Petitioner to avoid irreparable harm for the additional following reasons:
 - a. Petitioner, Bobby Brower, is presently defending himself against allegations brought against him in the form of an Administrative Complaint that is currently pending before the Indiana Horse Racing Commission with a trial date presently scheduled for April 24, 2018. Petitioner, Bobby Brower, has a pending request for review of his Objections to Findings of Fact, Conclusions of Law, and



Recommended Order Denying His Motion to Disqualify Administrative Law Judge that has yet to be reviewed by the Indiana Horse Racing Commission. To deny a Stay would allow for the administrative proceeding against Petitioner, Bobby Brower, to proceed with a biased judge which is in derogation of his due process rights and in derogation of the AOPA and Indiana statutory law.

- b. Petitioner believes that this Verified Petition for Judicial Review has merit and in fact it will be determined that the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff has failed to comply with I.C. 4-21.5-3-9(d) and that Administrative Law Judge Pylitt is indeed biased, must be disqualified, and that a substitute ALJ is required to be appointed.
- c. That in order to avoid irreparable harm the administrative proceedings in connection therein should be stayed until the Verified Petition for Judicial Review presently pending in this Court is decided.

5. Pursuant to Indiana Code 4-21.5-5-9(a)(2), the Petitioner agrees to post a surety bond should this Verified Petition for Stay be granted.

Wherefore, Petitioner prays the Court grant the petition, enter an Order staying all administrative proceedings associated with the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff's Administrative Complaint No.:216005 and for all other just and proper relief in the premises.

VERIFICATION

Petitioner, Bobby Brower, affirms under the penalties of perjury that the foregoing allegations are true to the best of my knowledge and belief.


Bobby Brower

Respectfully submitted,

By: /s/ Peter J. Sacopulos
Peter J. Sacopulos, #14403-84
676 Ohio Street
Terre Haute, IN 47807
Telephone: (812) 238-2565
Facsimile: (812) 238-1945
Pete_sacopulos@sacopulos.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by first class U.S. Mail, postage prepaid, this 19th day of March, 2018.

Lea Ellingwood
General Counsel
Indiana Horse Racing Commission
1302 North Meridian, #175
Indianapolis, IN 46202

Office of the Attorney General
ATTN: Curtis Hill
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770

Indiana Horse Racing Commission
ATTN: Michael Smith, Executive Director
1302 N. Meridian Street, Suite 175
Indianapolis, IN 46202

Bernard L. Pylitt
Administrative Law Judge
KATZ KORIN CUNNINGHAM
The Emelie Building
334 North Senate Avenue
Indianapolis, IN 46204-1708

By: /s Peter J. Sacopulos
Peter J. Sacopulos

BEFORE AN ADMINISTRATIVE LAW JUDGE
APPOINTED BY THE INDIANA HORSE RACING COMMISSION

INDIANA HORSE RACING
COMMISSION STAFF,
Petitioner,

v.

BOBBY BROWER,
Respondent.

In Re: ADMINISTRATIVE COMPLAINT
NO. 216005

2018 APR 2 P 1:53
INDIANA
HORSE RACING COMM

NOTICE OF OPPORTUNITY TO PRESENT BRIEFS AND ORAL ARGUMENT

This matter is pending before the Indiana Horse Racing Commission (“Commission”) on the **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER DENYING BOBBY BROWER’S MOTION TO DISQUALIFY BERNARD PYLITT AS ADMINISTRATIVE LAW JUDGE** dated and issued by ALJ Pylitt on January 29, 2018. On February 9, 2018, Bobby Brower (“Respondent”) filed his objections to the administrative law judge’s Recommended Order.

Notice is hereby given that the Commission will afford both parties an opportunity to present briefs concerning this case. Any briefs filed by Respondent or the Commission **MUST** be received at the offices of the Indiana Horse Racing Commission by noon (Indianapolis time) on Monday, April 16, 2018. No briefs received after this time and date will be accepted. In addition to any hard copies filed, any briefs filed **MUST** be filed electronically at dpitman@hrc.in.gov. Briefs shall be served electronically on the opposing party.

The Commission will also consider oral argument on the objections at its meeting on April 18, 2018. The oral argument will be limited to 15 minutes per side.

SO ORDERED, 12th day of April 2018.

THE INDIANA HORSE RACING COMMISSION



By: _____
Philip Borst, D.V.M.
Chairperson
Indiana Horse Racing Commission

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF OPPORTUNITY TO PRESENT BRIEFS AND ORAL ARGUMENT** has been duly served via email and first-class United States mail, postage prepaid this 12th day of April, 2018, to the following parties of record:

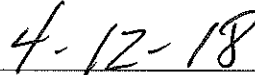
Peter Sacopulos
Sacopulos Johnson & Sacopulos
676 Ohio Street, IN 47807
Terre Haute, IN 47807
Email: pete_sacopulos@sacopulos.com

Lea Ellingwood
Indiana Horse Racing Commission
1302 North Meridian, Suite 175
Indianapolis, IN 46202
Email: lellingwood@hrc.in.gov

Service by Mail and Electronic Mail



Signature



Date

Indiana Horse Racing Commission
1302 N. Meridian, Suite 175
Indianapolis, IN 46202
(317) 233-3119
856776

**INDIANA HORSE RACING COMMISSION
BEFORE AN ADMINISTRATIVE LAW JUDGE**

INDIANA HORSE RACING COMMISSION
STAFF,

Petitioner,

v.

BOBBY BROWER,

Respondent.

Administrative Complaint No. 216005

Before the Hon. Bernard L. Pylitt,
Administrative Law Judge

INDIANA HORSE RACING COMMISSION
2018 MAR 14 2 12:29

**COMMISSION STAFF'S OPPOSITION TO RESPONDENT, BOBBY BROWER'S
SECOND MOTION FOR STAY OF PROCEEDINGS**

Respondent Bobby Brower's ("Brower") Second Motion for Stay of Proceedings is repetitive, meritless, and has no basis in fact or law. On January 4, 2018, Respondent Brower filed a Motion to Disqualify Administrative Law Judge Pylitt ("Motion to Disqualify") along with a Motion to Stay Administrative Proceedings ("First Motion to Stay") pending a resolution of his Motion to Disqualify. Brower's First Motion to Stay argued that ALJ Pylitt was not properly assigned and/or should be disqualified. On January 8, 2018, ALJ Pylitt issued an order denying Respondent's First Motion to Stay on the basis that the First Request for Stay "ignores the clear requirements of the (relevant) regulation."

On February 23, 2018, Respondent Brower filed his Second Motion for Stay of Proceedings ("Second Motion for Stay"). In his Second Motion for Stay, Brower argues that he will be "subject to further prejudice" absent a stay of proceedings insofar as "ALJ Pylitt may continue to make rulings that will adversely affect Respondent and his right to a fair and impartial hearing...". Brower does not believe ALJ Pylitt has been or will be fair or impartial.

Brower's sole evidence for this belief is the procedural posture of the case; Brower has produced no new evidence in support of his request since his First Motion for Stay was denied. In fact, Brower's Second Motion to Stay appears to be not much more than a second attempt at arguing that ALJ Pylitt should be disqualified. Staff will not address Brower's arguments regarding the ALJ's suitability to hear the matter, as that issue has already been addressed. Because Brower has not presented any legitimate support for his second motion to stay proceedings, his motion must be denied.

ARGUMENT

Pursuant to 71 IAC 10-2-10, a person who has been disciplined by a ruling of the judges may apply to the commission for a stay of the ruling, pending an action on an appeal by the commission. The commission may grant the stay on a finding of "good cause." Brower fails to meet the minimum requirements necessary for a stay. First, Brower has not been disciplined by the commission. Brower is not currently suspended and will not be suspended until the conclusion of the disciplinary process related to Administrative Complaint No. 216005¹.

Assuming, *arguendo*, that Brower has been disciplined, he has failed to show good cause that a stay should be granted. "Good cause" is not defined by the commission's administrative rules or by the Horse Racing Act; however, Black's Legal Dictionary defines good cause as "a substantial reason amounting in law to a legal excuse", or a "legally sufficient ground or reason." Citing the procedural history of the case, Brower has identified the basis of his request for a stay

¹ Brower submitted an application for 2018 licensure but his license application was refused-not denied. Pursuant to 71 IAC 5-1-12, a license refusal is not considered to be a disciplinary action. A refusal is treated as a withdrawal of a license application without prejudice and is not reported to the ARCI. An applicant whose license application is refused may reapply for a license or contest a refusal within fifteen (15) days of the refusal. Brower has done neither.

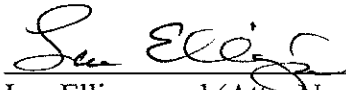
as the possibility that ALJ Pylitt may make rulings that, in Brower's estimation, will adversely affect him. Not only does Brower not identify a substantial reason or sufficient grounds for his request, he fails to identify any new information supporting his request for a stay since filing his First Motion for Stay, which was denied by the ALJ.

Furthermore, based on the fact that the commission has held its first regular business meeting of the year no later than March 7th for the past five (5) years², Petitioner has reasonable belief that the Commission will meet in late March or early April, at which time Brower's Motion to Disqualify ALJ Pylitt will be considered.

CONCLUSION

Brower has failed to identify any evidence in support of his Second Motion to Stay. Furthermore, it is reasonable to believe that the commission will meet to consider Brower's pending Motion to Disqualify within the next thirty (30) days. Therefore, his Motion should be denied.

Respectfully submitted,



Lea Ellingwood (Atty. No. 22346-49)
INDIANA HORSE RACING
COMMISSION
1302 N. Meridian, Suite 175
Indianapolis, IN 46202

*Counsel for Indiana Horse Racing
Commission Staff*

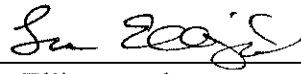
² The first regularly scheduled commission meetings from the past five years are as follows: March 2017, January and March 2016, January and March 2015, March 2014, February and April (4), 2013.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served via e-mail and deposited in the U.S. mail, first-class postage prepaid, on the 14th day of March, 2018, addressed to:

Peter J. Sacopulos
Sacopulos, Johnson & Sacopulos
676 Ohio Street
Terre Haute, IN 47807
pete_sacopulos@sacopulos.com

Bernard L. Pylitt
Administrative Law Judge
Katz & Korin, PC
334 North Senate Avenue
Indianapolis, IN 46204
BPylitt@katzkorin.com



Lea Ellingwood

**INDIANA HORSE RACING COMMISSION
BEFORE AN ADMINISTRATIVE LAW JUDGE**

INDIANA HORSE RACING COMMISSION
STAFF,

Petitioner,

v.

BOBBY BROWER,

Respondent.

Administrative Complaint No. 216005

Before the Hon. Bernard L. Pylitt,
Administrative Law Judge

INDIANA
HORSE RACING COMMISSION

2018 APR 14 P 3:03

**COMMISSION STAFF'S BRIEF IN SUPPORT OF ALJ PYLITT'S
RECOMMENDED ORDERS DENYING RESPONDENT'S
MOTION TO DISQUALIFY ALJ AND SECOND REQUEST FOR STAY**

On December 16, 2016, Indiana Horse Racing Commission (“IHRC”) Chairman Tom Weatherwax assigned ALJ Bernard Pylitt to hear the disciplinary action related to Administrative Complaint 216005. Pursuant to 71 IAC 10-3-20(d), Indiana Horse Racing Commission Staff (“Staff”) filed a Motion for Default Judgment on the basis that the appropriate pleading was not timely filed and therefore, default judgment was appropriate. Staff’s Motion for Default Judgment was granted by ALJ Pylitt and was affirmed by the IHRC at its March 7, 2017, meeting. Brower timely filed a Petition for Judicial Review in the Madison Circuit Court. In response, Commission Staff filed a Motion to Dismiss, which was denied. In its denial, the Madison Circuit Court judge found that a responsive pleading had been timely filed.

Staff and Brower then entered into a settlement agreement, the terms of which were memorialized in an Agreed Entry, approved by the Madison Circuit Court on October 17, 2017. Relevant portions of that Agreed Entry provide that:

- “[T]he parties agree to the entry of a Judgment in Favor of Brower remanding the matter to the Commission for further proceedings relating to Administrative Complaint No. 216005 issued by the Commission’s Executive Director on Nov. 14, 2016, consistent and in compliance with the Indiana Administrative Orders and Procedures Act and Commission regulations.”
- “[E]ach party reserves all rights with respect to the previous appointment of Administrative Law Judge, Bernard Pylitt, to preside over this matter.”

On January 4, 2018, Respondent Brower filed a Motion to Disqualify Administrative Law Judge Pylitt (“Motion to Disqualify”) along with a Motion to Stay Administrative Proceedings (“First Motion to Stay”) pending a resolution of his Motion to Disqualify. Brower’s First Motion to Stay argued that ALJ Pylitt was not properly assigned and/or should be disqualified. On January 8, 2018, ALJ Pylitt issued an order denying Respondent’s First Motion to Stay on the basis that the First Motion for Stay “ignores the clear requirements of the (relevant) regulation.”

On February 23, 2018, Respondent Brower filed his Second Motion for Stay of Proceedings (“Second Motion for Stay”). In his Second Motion for Stay, Brower argues that he will be “subject to further prejudice” absent a stay of proceedings insofar as “ALJ Pylitt may continue to make rulings that will adversely affect Respondent and his right to a fair and impartial hearing...”. Brower does not believe ALJ Pylitt has been or will be fair or impartial. Brower’s sole evidence for this belief is the procedural posture of the case; Brower has produced no new evidence in support of his request since his First Motion for Stay was denied. In fact, Brower’s Second Motion to Stay appears to be not much more than a third attempt at arguing that ALJ Pylitt

should be disqualified. Because Brower has not presented any legitimate support for his motions, those motions must be denied.

ARGUMENT

Motion to Disqualify

“The law presumes that a judge is unbiased and unprejudiced in the matters which come before the judge.” *Smith v. State*, 477 N.E.2d 857, 864 (Ind. 1985). Brower’s Motion to Disqualify does nothing to rebut this presumption. He simply argues that Judge Pylitt cannot preside fairly over his case because in a prior Recommended Order, he concluded that Brower was in default for failing to timely file an answer. ALJ Pylitt interpreted the rules according precedent at the time of the Recommended Order. Brower alleges that this interpretation based upon precedent evidences bias and prejudice. However, Brower fails to state *why* or *how* ALJ Pylitt showed bias or prejudice. Brower only claims that bias and prejudice are shown by the outcome, and not by the process or method used to reach the outcome. An unfavorable outcome to ones case is not evidence of bias or prejudice. There must be more, of which Brower has failed to demonstrate.

Canon 2.11 of the Indiana Code of Judicial Conduct provides:

[A] judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including...the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding[, or]... (5) The judge...has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(Emphasis added). *See also* Ind. Code § 4-21.5-3-10 (setting forth grounds for disqualification of an ALJ, which include “bias [or] prejudice,” or “any cause for which a judge of a court may be

disqualified.”). As the Canon expressly contemplates, the fact that a judge makes a statement in a court proceeding or judicial decision does not compel the judge’s disqualification, even if the statement appears to commit the judge to reach a particular result.

Interpreting Indiana case law has repeatedly reinforced this principle. As a general proposition, “[a]dverse rulings and findings do not, in and of themselves, establish a judge’s bias or prejudice.” *Brown v. State*, 684 N.E.2d 529, 534 (Ind. Ct. App. 1997). Nor does it “require a trial judge to disqualify himself although he or she presided over a co-defendant’s bench trial,” even where the prior bench trial resulted in a conviction. *Green v. State*, 676 N.E.2d 755. (citing *Jones v. State*, 416 N.E.2d 880 (Ind. Ct. App. 1981)). *See also* Ind. Code § 4-21.5-3-13(c), (d) (providing that disqualification of an ALJ is not required on the grounds that the individual made a determination of probable cause or other preliminary determination in a proceeding and authorizing an ALJ to preside at successive stages of the same proceeding).

Following Brower’s logic that a previous ruling against Brower is evidence sufficient to disqualify ALJ Pylitt from hearing the matter, the Commission itself, which held a hearing to evaluate, and subsequently adopt, ALJ Pylitt’s Recommended Order granting default judgment against Brower would also be disqualified from hearing the matter.

Every perceived evidence of bias referenced by Respondent has fallen squarely within Canon 2.11 of the Indiana Code of Judicial Conduct, which again, specifically carves out an exception for statements made by judges in court proceedings, judicial decisions, or opinions.

In short, Brower has not only failed to provide any evidence to support his spurious allegations of bias against Judge Pylitt, he has failed to acknowledge any legal authority in support of his arguments.

Second Request for Stay

Pursuant to 71 IAC 10-2-10, a person who has been disciplined by a ruling of the judges may apply to the commission for a stay of the ruling, pending an action on an appeal by the commission. The commission may grant the stay on a finding of “good cause.” Brower fails to meet the minimum requirements necessary for a stay. Brower is not suspended and will not be suspended until the conclusion of the disciplinary process related to Administrative Complaint No. 216005.

Even if Brower were suspended or disciplined, he has failed to show good cause that a stay should be granted. “Good cause” is not defined by the commission’s administrative rules or by the Horse Racing Act; however, Black’s Legal Dictionary defines good cause as “a substantial reason amounting in law to a legal excuse”, or a “legally sufficient ground or reason.” Citing the procedural history of the case, Brower has identified the basis of his request for a stay as the *possibility* that ALJ Pylitt *may* make rulings that, in Brower’s estimation, will adversely affect him. Not only does Brower not identify a substantial reason or sufficient grounds for his request, he fails to identify any new information supporting his request for a stay since filing his First Motion for Stay, which was denied by the ALJ.

CONCLUSION

Administrative law judges are “assumed to be men of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances.” *U.S. v. Morgan*, 313 U.S. 409, 421 (1941). Judge Pylitt is entitled to the benefit of that presumption, and Brower has done nothing to establish that it should be reversed in this case. Furthermore, Respondent has provided no evidence supporting his second request for a stay.

Accordingly, ALJ Pylitt's Recommended Orders Denying Brower's Motion to Disqualify Administrative Law Judge Pylitt and Denying Respondent's Second Request for Stay should be adopted.

Respectfully submitted,



Lea Ellingwood (Atty. No. 22346-49)
INDIANA HORSE RACING
COMMISSION
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*Counsel for Indiana Horse Racing
Commission Staff*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served via e-mail on the 16th day of April, 2018, addressed to:

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Lea Ellingwood

STATE OF INDIANA
INDIANA HORSE RACING COMMISSION
2018 TERM

Re: Bobby Brower
7281 S 400 W
Muncie, In 47302

ADMINISTRATIVE COMPLAINT NO.
216005

INDIANA
HORSE RACING COMMISSION
2018 APR 16 A 11:30

**I. RESPONDENT, BOBBY BROWER'S, BRIEF IN OPPOSITION OF THE ALJ'S
RECOMMENDED ORDER OF JANUARY 29, 2018 DENYING BOBBY BROWER'S
MOTION TO DISQUALIFY BERNARD PYLITT AS ADMNISTRATIVE LAW JUDGE**

Respondent, Bobby Brower, (hereinafter "Brower") files his brief in opposition to the ALJ's Recommended Order of January 29, 2018, pursuant to the Indiana Horse Racing Commission's Notice of Opportunity to Present Brief and Oral Argument issued April 12, 2018, reserving his objection relative to jurisdiction, and for the reason that having been improperly defaulted by this ALJ and this Commission, and having a Verified Petition for Judicial Review currently pending in the Madison Circuit Court 6, is concerned that this ALJ and this Commission's actions, despite their lack of jurisdiction to proceed with hearings and rulings, may result in additional actions taken against him and, in that connection, additional prejudice and bias toward him. Therefore, Brower files this brief asserting that ALJ Pylitt had no jurisdiction or authority to issue the recommended order. He also reserves, and in no way waives, his right to argue and assert his position with regard to the ALJ and the Indiana Horse Racing Commission's lack of jurisdiction in this matter while he has pending a Verified Petition for Judicial Review before an Indiana trial court.

Respondent, Brower, reminds the Commission that the Madison Circuit Court 6 denied the IHRC's Motion to Dismiss and, in doing so, remanded this matter to the IHRC not to ALJ Bernard Pylitt (a true and exact copy of the Madison Circuit Court 6's Order of July 28, 2017, is attached hereto, made a part hereof, and marked as Exhibit "A"). I.C. 4-21.5-3-9 requires the agency's ultimate authority to appoint an ALJ. That was not and has not been done subsequent to Mr. Brower's case being sent back to the IHRC on remand. Instead, and contrary to I.C. 4-21.5-3-9, the IHRC Staff Counsel, opposing counsel in this matter, incorrectly and inappropriately sent a letter to ALJ Bernard Pylitt requesting he set a hearing and ALJ Pylitt, absent proper appointment by the ultimate authority, began and continues to exercise jurisdiction in this matter.

Respondent, Brower, respectfully requests the IHRC reject that recommended order and issue an order disqualifying Bernard Pylitt as the administrative law judge in this matter and appoint another approved/qualified administrative law judge. Respondent incorporates by reference his Objections to Findings of Fact, Conclusions of Law, and Recommended Order Denying His Motion to Disqualify Administrative Law Judge as additional argument and authority for the IHRC to reject the ALJ's Recommended Order. A true and exact copy of the

same is attached hereto, made a part hereof, and marked as Exhibit "A." Further, in support of Respondent's position that the ALJ's recommended order be rejected, that Bernard Pylitt be disqualified as the administrative law judge in this matter and another approved/qualified administrative law judge be appointed, Brower states:

Before the IHRC is a recommended order issued by the very Administrative Law Judge that Brower seeks to have disqualified. This Commission must reject the recommended order; to do otherwise would allow for the administrative proceeding against Brower to proceed with a biased judge which is in derogation of his due process rights and in derogation of the AOPA, Indiana statutory law, and Brower's rights guaranteed and afforded him under both the Indiana and Federal constitutions. Administrative Law Judge Pylitt is indeed biased and must be disqualified. To reject the ALJ's recommended order, disqualify ALJ Pylitt, and appoint an impartial and unbiased administrative law judge is the correct, fair, and proper decision.

I.C. 4-21.5-3-10 provides for the disqualification of an ALJ. Specifically, this provision of the AOPA states, in pertinent part:

"Sec. 10 . (a) Any individual serving or designated to serve alone or with others as an administrative law judge is subject to disqualification for:

- (1) bias, prejudice, or interest in the outcome of a proceeding;
- (2) failure to dispose of the subject of a proceeding in an orderly and reasonably prompt manner after a written request by a party;
- (3) unless waived or extended with the written consent of all parties or for good cause shown, failure to issue an order not later than ninety (90) days after the latest of:
 - (A) the filing of a motion to dismiss or a motion for summary judgment under section 23 of this chapter that is filed after June 30, 2011;
 - (B) the conclusion of a hearing that begins after June 30, 2011; or
 - (C) the completion of any schedule set for briefing or for submittal of proposed findings of fact and conclusions of law for a disposition under clauses (A) or (B); ?or
- (4) any cause for which a judge of a court may be disqualified.

Nothing in this subsection prohibits an individual who is an employee of an agency from serving as an administrative law judge....”

(See IC 4-21.5-3-10).

Bias is defined as prejudice in favor of or against one thing, person, or group compared with another in a way considered to be unfair. ALJ Pylitt has demonstrated bias in favor of the state agency, the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff, that selected and appointed him, as well as paid him, in defaulting the Respondent, Bobby Brower, in total and disregard of his timely filed answer/response and request for hearing.

Prejudice is defined as harm or injury that results or may result from some action or judgment. The inappropriate and improper defaulting of Mr. Brower has resulted in just that; the prejudicing, harming, and injuring of Mr. Brower by the administrative law judge in recommending an order that was both inappropriate and improper. Mr. Brower has been harmed and injured. He has been harmed by being prohibited from making a living as a Standardbred trainer from March 3, 2017, to date. He has been further harmed and injured by his loss of income, loss of clientele, loss of future earnings, and the irreparable damage to his reputation as a Standardbred trainer. ALJ Pylitt has demonstrated both bias and prejudice against Bobby Brower and in doing so has abused his discretion and violated IC 4-21.5-3-10(a)(1) and should be disqualified from serving as administrative law judge in this matter.

This is because ALJ Pylitt inappropriately recommended a default judgment be entered against Mr. Brower despite Mr. Brower having filed a timely request for hearing and a timely answer denying the allegations against him. ALJ Pylitt was obligated to set the matter for a hearing on the merits and proceed accordingly but did not do so. Instead, a default judgment was inappropriately recommended and subsequently entered forcing Bobby Brower to seek and obtain an Indiana trial court ruling that ALJ Pylitt failed to follow the IHRC/IHRC Staff agency rules and ordering that Bobby Brower is entitled to a hearing on the merits.

ALJ Pylitt further must be removed pursuant to IC 4-21.5-3-10(a)(4). IC 4-21.5-3-10(a)(4) states that an ALJ is subject to disqualification for: “any cause for which a judge of a court may be disqualified.” (See I.C. 4-21.5-3-10(a)(4)). State court judges are required and the Indiana trial court rules mandate that a party that timely files a responsive pleading is entitled to a hearing. If a judge would have abused his/her discretion, as did ALJ Pylitt, and defaulted a party that had timely answered a Complaint, that Judge would be subject to disqualification.

ALJ Pylitt failed to accord Mr. Brower’s answer its true meaning—that being a request for hearing. ALJ Pylitt incorrectly and inappropriately failed to follow “the agency’s own rules” as correctly stated by Judge Dudley. The ALJ failed to follow the agency’s rules in that he inappropriately, incorrectly, and prejudicially applied the rules in favor of the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff and against Brower.

A review of Indiana case law, being those cases decided and reported by the Indiana Court of Appeals and the Indiana Supreme Court, reveal no decisions where a party has been defaulted having timely filed a responsive pleading. In short, no litigant in the history of Indiana

case law has been defaulted or recommended to be defaulted having timely filed a request for hearing/answer/responsive pleading. Any judge that would do so would be recommending or acting contrary to state law and in violation of both state and federal constitutionally guaranteed rights and would be subject to disqualification pursuant to IC 4-21.5-3-10(a)(4). ALJ Pylitt having done so, is subject to being and should be disqualified as ALJ in this matter.

On November 29, 2017, a Pre-Hearing Conference to schedule deadlines was conducted by ALJ Pylitt in this matter at the request of the IHRC's counsel, Leah Ellingwood. During said hearing, Brower's counsel, Peter J. Sacopulos and Greg Carter, clearly stated to ALJ Pylitt that said hearing was not requested by Brower and was inappropriate because ALJ Pylitt had not been appointed by the agency's ultimate authority, the Indiana Horse Race Commission, as required by I.C. 4-21.5-3-9. Whereas he may have been appointed for the initial action against Brower, that matter was concluded upon the wrongful and inappropriate entry of the Default Judgment against Brower, and subsequently presented for judicial review in the trial court. Once the trial court made its determination that Brower was entitled to a hearing and remanded same to the IHRC, the IHRC was then required to appoint an Administrative Law Judge. As of the date of this motion, the Indiana Horse Racing Commission has not appointed an ALJ.

Nevertheless, ALJ Pylitt proceeded with said hearing, setting deadlines and issuing a Pre-Conference Order. Said Order does not address if or how ALJ Pylitt was appointed or could assume jurisdiction. Further, within said Order, ALJ Pylitt exceeded his authority in a manner adverse to Bobby Brower thereby exercising additional bias and prejudice against Brower. Specifically, in said Order ALJ Pylitt states, "...If Mr. Brower fails to attend the scheduled hearing or cooperate during discovery, he may be held in default..." This language supercedes the language in I.C. 4-21.5-3-24 by adding a basis for default. This is inappropriate and further demonstrates bias and prejudice against Bobby Brower.

Prior to the November 29, 2017, hearing, Brower had not filed a Motion to Disqualify. However, ALJ Pylitt included in the Prehearing Scheduling Order statements as to a Motion to Disqualify that has not yet been filed. Those statements are self-serving and biased against Mr. Brower. Disqualification pursuant to I.C. 4-21.5-3-10 was not an issue of the Pre-Hearing Conference. Further, ALJ Pylitt's statement in the Order of November 29, 2017, that Brower's counsel: "...refused to provide any specific reason or evidence to support his claim that the ALJ is prejudiced or biased which would require his being disqualified..." is inappropriate and incorrectly implies that Mr. Brower has no basis for a Motion to Disqualify. This is incorrect.

ALJ Pylitt omits from the Relevant Procedural History of his own Order of March 21, 2018, that he allowed Brower fifteen (15) days to file his written exceptions to the Findings of Fact, Conclusions of Law, and Recommended Order Denying Bobby Brower's Motion to Disqualify Bernard Pylitt as Administrative Law Judge of January 29, 2018. This is both significant and serious. It is so because the Order allowed Brower fifteen (15) days to file his exceptions and because Brower timely filed the same. For this ALJ to issue an Order allowing the Respondent fifteen (15) days to so respond and then omit, ignore, and exclude that very Order, thereby suggesting a different timeline, is further example and evidence of his bias and prejudice against Brower and reason that he should be disqualified from serving as ALJ in this matter.

Over Brower's objections, and despite Brower having filed a Verified Petition for Judicial Review that is pending before the Madison Circuit Court 6, the ALJ, that is the subject of the motion to disqualify by way of Brower's pending Verified Petition for Judicial Review, issued rulings as to discovery issues as well as other matters all as set forth in the ALJ's Order of April 6, 2018. This order is further evidence and example of the prejudice and bias Brower is continuing to experience. The Administrative Law Judge continues, over Brower's continued objection(s), to make rulings and schedule hearings. Brower has been, is, and continues to be subject to irreparable harm, being forced, over his objections and pending Verified Petition for Judicial Review of his Motion to Disqualify this very ALJ, to have his case proceed without being afforded a ruling on his pending Verified Petition for Judicial Review that has as its basis a motion to disqualify the presiding administrative law judge

The IHRC presently has at least four ALJs it has selected, approved and assigns matters. The IHRC/IHRC Staff has sole control over the selection and compensation of the ALJ appointed. This leads to inherent conflict. If the evidence against Mr. Brower is compelling and the witnesses' testimony so convincingly in favor of the IHRC Staff, the result of a hearing on the merits will presumably result in the same outcome/result regardless of the ALJ assigned. Mr. Brower has been improperly defaulted by ALJ Pylitt and most recently received an order for the same ALJ inappropriately and without authority expanding the terms by which he may be defaulted. Obviously, an issue to which Bobby Brower is sensitive having been improperly defaulted without a hearing on the merits. Bias and prejudice against Mr. Brower by ALJ Pylitt is clear. The IHRC has other ALJs it has selected, approved, retained, etc., that it may assign to hear this matter/dispute.

For all the above reasons, ALJ Bernard Pylitt should be disqualified as administrative law judge in this matter, and one of the other Indiana Horse Racing Commission approved/qualified ALJs appointed to preside over this matter.

II. RESPONDENT, BOBBY BROWER'S, BRIEF IN OPPOSITION OF THE ALJ'S RECOMMENDED ORDER OF MARCH 21, 2018 DENYING BROWER'S SECOND MOTION FOR STAY OF PROCEEDINGS AND ORDER DENYING MOTION TO CONTINUE HEARING

Respondent, Bobby Brower, (hereinafter "Brower") files his brief in opposition to the ALJ's Recommended Order of March 21, 2018, pursuant to the Indiana Horse Racing Commission's Notice of Opportunity to Present Brief and Oral Argument issued April 12, 2018, reserving his objection relative to jurisdiction, and for the reason that having been improperly defaulted by this ALJ and this Commission, and having a Verified Petition for Judicial Review currently pending in the Madison Circuit Court 6, is concerned that this ALJ and this Commission's actions, despite their lack of jurisdiction to proceed with hearings and rulings, may result in additional actions taken against him and, in that connection, additional prejudice and bias toward him. Therefore, Brower files this brief asserting that ALJ Pylitt had no jurisdiction or authority to issue the recommended order and reserving, and in no way waiving,

his right to argue and assert his position with regard to the ALJ and the Indiana Horse Racing Commission's lack of jurisdiction in this matter while he has pending a Verified Petition for Judicial Review before an Indiana trial court.

Brower further objects to the ALJ's Recommended Order of March 21, 2018 for the reason that its effect is to frustrate and defeat Brower's motion to have him disqualified. Integrity, fairness, and equality all demand that Brower receive a final determination as to his Motion to Disqualify Administrative Law Judge that is pending, by way of his Verified Petition for Judicial Review, before the Madison Circuit Court 6 in advance of the hearing/trial presently scheduled for May 14th and 15th, 2018. The IHRC's failure and/or refusal to rule on Brower's Objections to Findings of Fact, Conclusions of Law and Recommended Order Denying His Motion to Disqualify Administrative Law Judge within the thirty (30) days allowed pursuant to I.C. 4-21.5-3-9(d), resulted in Brower timely seeking review by way of his pending Verified Petition for Judicial Review.

Respondent, Brower, respectfully requests the IHRC reject ALJ Pylitt's Recommended Order of March 21, 2018, and issue an order continuing the final hearing in this matter until such time as a decision has been made on his Petition for Judicial Review that is presently pending in Madison Circuit Court 6. Respondent incorporates by reference his Exceptions to the Recommended Order Denying His Second Motion for Stay of Proceedings and Order Denying Motion to Continue Hearing as additional argument and authority for the IHRC to reject the ALJ's Recommended Order of March 21, 2018. A true and exact copy of the same is attached hereto, made a part hereof, and marked as Exhibit "B." Further, in support of Respondent's position that the ALJ's recommended order be rejected and an order issued continuing the final hearing in this matter until such time as a decision has been made on his pending Petition for Judicial Review, Brower states:

In his Recommended Order of March 21, 2018, ALJ Pylitt puts forth an incorrect position that he (Brower) has: "...failed to offer any explanation or reason how or why he would be prejudiced..." A review of the record of proceedings in Mr. Brower's case, including the improper default judgment recommended by this ALJ that resulted in his improper exclusion from Indiana racing for an entire season, and Mr. Brower's exceptions to the Relevant Procedural History set forth in his Exceptions to the Recommended Order Denying His Second Motion for Stay of Proceedings and Order Denying Motion to Continue Hearing (see Exhibit "B") offer a multitude of explanations and reasons why he has been and continues to be the subject of bias and prejudice by this ALJ, explanation and reason why this ALJ should be disqualified, and explanation and reason why Mr. Brower's Motion for Stay of Proceedings, pending a decision by the Madison Circuit Court on his Petition for Judicial Review, should be granted.

Respondent, Brower's, Motion to Continue Hearing does provide for and set forth an unusual circumstance. That unusual circumstance is Brower's pending Petition for Judicial

Review which has as its basis his motion to disqualify the very administrative law judge that has denied the motions he has filed, to date, and that has incorrectly and improperly recommended he be defaulted after having timely filed a responsive pleading and that further recommended a career-ending penalty be imposed that consisted of a fifteen (15) year suspension and a \$40,000 fine absent any testimony and/or any evidence. All of that is unusual—very unusual. It also constitutes meritorious grounds for the continuance sought by Brower that has been denied and evidences further and additional evidence of bias and prejudice against Respondent, Brower.

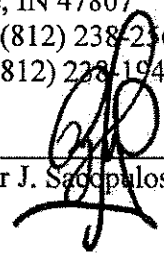
In the Recommended Order of March 21, 2018, ALJ Pylitt stated that Brower’s timely filed Verified Petition for Judicial Review “...does not render moot Brower’s Second Motion to Stay...” Pursuant to I.C. 4-21.5-3-9(d), the IHRC failed or refused to timely rule on Brower’s Objections to Findings of Fact, Conclusions of Law and Recommended Order Denying His Motion to Disqualify Administrative Law Judge resulting in Brower’s Motion to Disqualify Administrative Law Judge being ripe for judicial review. The timely filing of Brower’s Verified Petition for Judicial Review places jurisdiction with the Indiana trial court. As such, Brower’s Second Motion for Stay is moot for the reason that the ALJ and the Indiana Horse Racing Commission are without jurisdiction or authority to rule on the same.

This Commission is charged and tasked with maintaining integrity in Indiana horse racing. To do so requires that the administrative process be one that maintains integrity. This has not been the case regarding Brower. The focus of these administrative proceedings should be and is required to be on the licensee, his actions, the alleged violations, and the evidence and testimony relative to those allegations of wrongdoing. The focus in this matter has shifted from Mr. Brower to an ALJ that improperly defaulted Brower and has issued an order and deadline that Brower allegedly is not to rely on, as well as other prejudicial and biased rulings. Brower, like all licensees before this Commission, is entitled to a fair and impartial hearing before a fair and impartial ALJ and to have his case proceed through an administrative process that has, at its core, integrity.

Respectfully submitted,

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Telephone: (812) 238-2365
Facsimile: (812) 238-1945

By: _____
Peter J. Sacopolos, #14403-84



CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by email transmission on April 16, 2018 and posted via U.S. Certified Mail, postage prepaid, on the 16th day of April, 2018:

Attorney Lea Ellingwood
General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202
lellingwood@hrc.in.gov

Bernard L. Pylitt
Administrative Law Judge
Katz Korin Cunningham PC
334 North Senate Avenue
Indianapolis, IN 46204
Bylitt@kkclegal.com



Peter J. Macopulos

Brower, through his attorney, filed an answer on November 29, 2016, pursuant to 71 IAC 10-3-21. This filing is within twenty (20) days of Brower's receipt of the administrative complaint. 71 IAC 10-3-21 is titled "Settlement Procedures". Brower followed the requirements of §21 and not §20. If the IHRC filed an administrative complaint pursuant to 71 IAC 10-3-21, then the licensee shall file an answer within twenty (20) days of service of the complaint. Following the filing of an answer, the parties can enter into a settlement agreement. If a settlement agreement is not reached, then an administrative complaint may be filed under 71 IAC 10-3-20.

The twenty (20) day window expired on December 6, 2016, and Brower filed a written request for hearing on December 7, 2016. Pursuant to the IHRC's administrative procedures, it filed a Notice of Proposed Default against Brower on December 16, 2016, because he failed to file a written request for hearing in the allotted time. Brower filed his objection to the Notice of Proposed Default on December 21, 2016. The assigned administrative law judge on January 3, 2017, recommended to the IHRC that it find Brower in default. Brower filed his objection to the administrative law judge's recommendation on January 12, 2017. The IHRC voted on March 7, 2017, and issued its final order finding Brower in default on March 14, 2017. Brower filed this case seeking judicial review of a final agency action on March 31, 2017.

I.C. 4-21.5-3-24 governs the process engaged in by the parties. The statute in full reads:

(a) At any stage of a proceeding, if a party fails to:

- (1) satisfy the requirements of section 7(a) [IC 4-21.5-3-7(a)] of this chapter;
- (2) file a responsive pleading required by statute or rule;
- (3) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or
- (4) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;

the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed

default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 [IC 4-21.5-3-23] of this chapter to resolve any issue of fact.

I.C. 4-21.5-3-24 requires one of four triggers prior to an agency seeking a default judgment. Subsection (a)(1) covers personnel actions in the State's Civil Service System and is inapplicable here. Subsection (a)(2) authorizes an agency to seek a default when a party fails to file a responsive pleading. This is the subsection at issue in this case. Subsections (a)(3) and (a)(4) are not implicated by the facts of this case.

The IHRC defines a "pleading" as:

- (a) Pleadings filed with the commission include the following:
- (1) Appeals
 - (2) Applications
 - (3) Answers
 - (4) Complaints
 - (5) Exceptions
 - (6) Replies
 - (7) Motions

Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

71 IAC 10-3-3. The IHRC does not define a request for a hearing. The IHRC does differentiate between an answer and a request for hearing. *Id.* It does recognize that one is a pleading and the other is not. The court's analysis can stop at this point because the IHRC's action contravenes I.C. 4-21.5-3-24(a). Brower never failed to file a "responsive pleading required by statute or rule" and as such, the IHRC cannot meet its burden that its procedures conform to the statutory mandate.

In further support of the court's conclusion are the IHRC's own rules. Even if the court was persuaded that a request for hearing is a required pleading, Brower's answer

clearly disputed the IHRC's allegations. The IHRC tells its licensees "regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it was filed." 71 IAC 10-3-3(a). While Brower's document is titled, "Answer" its substance told the IHRC that he wished to contest the proposed fine and suspension. The IHRC must follow its own rules and accord Brower's "Answer" its true status as a timely request for a hearing. The court finds that Brower timely responded to IHRC's complaint. The parties are to contact the court to set a pretrial conference date to address the remaining issues of Brower's request to stay IHRC's suspension and his request to remand the case to the IHRC.

All of which is so ordered, this 28th day of July, 2017.



The Honorable Mark Dudley, Judge
Madison Circuit Court No. 6

Copies to:

Peter Sacopulos
John Shanks
Robin Babbitt



STATE OF INDIANA
INDIANA HORSE RACING COMMISSION
2018 TERM

Re: Bobby Brower
7281 S 400 W
Muncie, In 47302

ADMINISTRATIVE COMPLAINT NO.
216005

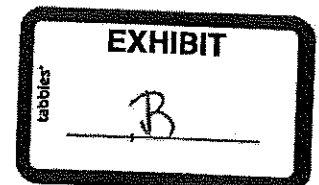
**RESPONDENT, BOBBY BROWER'S, OBJECTIONS TO FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER DENYING HIS MOTION
TO DISQUALIFY ADMINISTRATIVE LAW JUDGE**

Respondent, Bobby Brower, by counsel, Peter J. Sacopulos, pursuant to IC 4-21.5-3-29 respectfully submits his Objections and Exceptions to the ALJ's proposed Findings of Fact, Conclusions of Law, and Recommended Order of January 29, 2018 denying Mr. Brower's Motion to Disqualify Administrative Law Judge. In support of Respondent, Brower's, Verified Objections and Exceptions set forth herein, Respondent, Brower, states:

I. Respondent Bobby Brower's objections and exceptions to this Administrative Law Judge's Recommended Order of January 29, 2018, and specifically that portion of the same that is untitled and found on pages one (1) and two (2) of said Order and that precedes the section of said Order entitled "Relevant Procedural History."

1. The ALJ, in his recitation of the facts and circumstances surrounding Respondent, Brower's, filing to disqualify him as Administrative Law Judge, begins with a statement that requires clarification for purposes of accuracy. ALJ Pylitt states that Mr. Brower "emailed" the subject Motion to Disqualify on January 4, 2018. In fact, Mr. Brower properly filed said motion.

This is significant because the scheduling Order issued by ALJ Pylitt, dated November 29, 2017, is reflective of the bias and prejudice Brower has and will continue to face if Bernard Pylitt is not disqualified and removed as the Administrative Law Judge in this matter. Specifically, regarding service, it is required that both mailed/hard copies be filed with the IHRC while on the same date service be perfected by email to the Administrative Law Judge and counsel. This is not an issue for the IHRC Staff Counsel that simply walks across the office and file stamps all IHRC Staff filings and then makes a return trip across the room to a desk where a button is pushed perfecting electronic service, via email. It is another story for Mr. Brower. It is an issue for Mr. Brower. He has and continues to be required to either physically deliver the hard copy of each filing to the IHRC's office in Indianapolis, making the trip from either Anderson to Indianapolis or Terre Haute to Indianapolis, or, alternatively, incurring an additional cost to send his filings, via Federal Express, with a tracking feature to



assure mid-day deadlines that are established for filing and, upon confirmation of delivery, serving the pleadings electronically by way of email to opposing counsel and to the ALJ. This discrepancy in the time, cost and effort to file documents with the IHRC in this case has resulted and continues to result in bias and prejudice and cost to Mr. Brower, all as a direct of the ALJ's Order of 11/29/17. Had, instead, the ALJ simply referred to Indiana Trial Rule 5 and allowed electronic filing, as most county court systems, administrative agencies and our Indiana Court of Appeals accept and honor, this bias and prejudice would not have been and continued to be visited upon Mr. Brower.

2. Next, the Administrative Law Judge incorrectly states that Mr. Brower's claims of bias and prejudice are shown only by the Recommended Order of Default Judgment. That is incorrect. In fact, Mr. Brower's claims prejudice and bias not only by way of his Recommended Order, which the Madison Circuit Court 6 found to be in error, but also by way of his failure to follow defined rules, by the ALJ's failure to recognize and exercise discretion, by the ALJ's failure to assign and afford Mr. Brower's timely Answer its true meaning—a request for hearing, by the ALJ's expanding, beyond the parameters of the rule of law and his authority, the bases by which Mr. Brower may be subject to default while not equally expanding the grounds by which the IHRC/IHRC Staff's Administrative Complaint may be subject to dismissal, and by this ALJ's repeated denials of all motions and requests filed by and on behalf of Mr. Brower while, to the contrary, granting and accommodating all requests made by and on behalf of the IHRC Staff. ALJ Pylitt's bias and prejudice as to Mr. Brower is clear.
3. Next, this Administrative Law Judge takes issue, incorrectly, with Mr. Brower's position that he (the Administrative Law Judge) failed to follow the IHRC rules. Mr. Brower's position is substantiated by a review of the Madison Circuit Court 6's Order. In that Order the Honorable Mark Dudley states that the Indiana Horse Racing Commission (this ALJ) failed to follow the IHRC rules by disregarding Mr. Brower's timely filed responsive pleading and failing to give it proper status. This failure, on the part of the ALJ, resulted in a biased and prejudicial recommended order.
4. The ALJ also seems to argue that he was not the cause of Mr. Brower being excluded from the 2017 racing season and, alternatively, that it was the mistake of the Indiana Horse Racing Commission. It is a disingenuous argument advanced by the Administrative Law Judge to say he is without fault or cause for the failure of this agency to properly follow the rules that lead to the severe and ongoing economic hardship visited upon Mr. Brower by a failure to follow the IHRC rules. It is well known that the IHRC routinely grants/approves the Recommended Order of the ALJs. It was this ALJ's recommended order, in error, that on judicial review was found not to be only erroneous but contrary to the IHRC's own rules,

which it had not followed. The result of which was Bobby Brower being excluded from the Indiana racing program for the 2017 racing season and, because of reciprocity, being excluded from racing in general for that racing season.

5. Next, this ALJ attempts to deflect his error and failure to follow the IHRC rules. His attempt is to deflect the error of having recommended Mr. Brower be defaulted from his actions to those of the Indiana Horse Racing Commission. It must be remembered that it was the ALJ that failed to properly follow the Indiana Horse Racing Commission's rules and failed to give Bobby Brower timely filed Answer, its proper status. Had this ALJ followed the Indiana Horse Racing Commission's rules, rules that he was charged to fairly and uniformly enforce, the only proper recommended order in response to the IHRC Staff's Motion for Default Judgment would have been one of denial.
6. Further, this ALJ is apparently of the practice and belief that bias and prejudice may only be visited upon a person in person or via direct communication. That, of course, is not the case and was not the case here.
7. Finally, this ALJ incorrectly states that Mr. Brower offered no additional "facts" by way of his Reply brief to show bias or prejudice. That too is incorrect: Respondent, Brower's, reply brief does, in fact, offer additional facts evidencing bias and prejudice against him and his reply brief speaks for itself.

II. RESPONDENT, BOBBY BROWER'S, OBJECTIONS AND EXCEPTIONS TO THE SECTION OF ALJ PYLITT'S RECOMMENDED ORDER OF JANUARY 29, 2018 ENTITLED "RELEVANT PROCEDURAL HISTORY"

Respondent, Bobby Brower, objects to ALJ Pylitt's account of the relevant procedural history of this matter. He does so because it is both incomplete and inaccurate. This is because Mr. Brower timely filed an Answer, pursuant to 71 IAC 10-3-21(a) denying the allegations set forth in the IHRC Staff's Administrative Complaint. Additionally, said history is incomplete in that it fails to reference Respondent's request for modification of the ALJ's Order of November 29, 2017.

The history presented by ALJ Pylitt is incomplete and inaccurate because it fails to include the fact that Respondent timely filed an Answer denying the allegations set forth in the IHRC/IHRC Staff's Administrative Complaint. This is not only significant, it is astonishing given the Order issued by the Madison Circuit Court 6, a copy of which was provided to the ALJ, and that states this ALJ failed to follow the IHRC's rules in improperly recommending that Mr. Brower be defaulted. It was Mr. Brower's timely filed Answer that ALJ Pylitt ignored in improperly recommending Mr. Brower be defaulted. ALJ Pylitt likewise ignores the fact that Mr. Brower timely filed an Answer in his Recommended Order of January 29, 2018. This is further evidence of the bias and prejudice that this ALJ has visited upon Mr. Brower and further reason

why he should be disqualified as ALJ sitting in judgment of Mr. Brower's case.

Respondent, Bobby Brower, further objects and takes exception to this ALJ's position that he is properly appointed. This is because I.C. 4-21.5-3-9 requires that an ALJ be appointed by the agency's ultimate authority. While true that the ALJ was properly appointed by former IHRC Chairman, Tom Weatherwax, on December 16, 2016, he was not so properly appointed following Respondent's successful Petition for Judicial Review and remand of this matter to the IHRC. Upon remand to this agency (IHRC), I.C. 4-21.5-3-9 requires appointment of an Administrative Law Judge by its ultimate authority. Subsequent to being remanded, opposing counsel in this case issued a letter, dated November 16, 2017, requesting ALJ Pylitt conduct a hearing. Opposing counsel's letter attempting to "reappoint" (without involving the ultimate authority) ALJ Pylitt did not and does not comply with I.C. 4-21.5-3-9. Respondent, Bobby Brower, therefore objects and takes exception, as he did prior to, during and after the November 29, 2017, hearing that ALJ Pylitt has been properly appointed and has authority to rule and/or preside over Mr. Brower's defense.

On Monday, February 5, 2018, the IHRC Staff served responses to Mr. Brower's Request for Production of Documents. Included in those responses and production is a letter authored by IHRC Staff General Counsel, Lea Ellingwood, to former IHRC Chairman, Tom Weatherwax, dated December 9, 2016. This letter is significant for the reason that General Counsel, who in the case of Mr. Brower is opposing counsel, is selecting the ALJ and requesting confirmation. A true and exact copy of General Counsel, Ellingwood's, letter to former Chairman Weatherwax of December 9, 2016, is attached hereto, made a part hereof, and marked as Exhibit "A." Given the ALJs are appointed by the Indiana Horse Racing Commission, paid by the Indiana Horse Racing Commission, retained by the Indiana Horse Racing Commission, the selection of the ALJ by the opposing attorney seems, at the very least, a conflict of interest for the IHRC/IHRC Staff/ALJ. Unquestionably, the selection of the ALJ by the opposing attorney is not in the spirit of IC 4-21.5-3-9 that requires the appointment of the ALJ by the agency's ultimate authority. Additionally, opposing counsel's selection of the trier of fact, when the Respondent is not afforded the opportunity to move for a change of ALJ, brings into clear focus, issues of integrity and fairness. Additionally, the Indiana Horse Racing Commission and the Indiana Horse Racing Commission Staff have historically refused and denied requests for mediation pursuant to the Administrative Orders and Procedures Act. In short, the system of appointing the ALJ is biased, prejudiced and without integrity when the opposing attorney selects the judge.

Mr. Brower further objects and takes exception with this ALJ's statement that the undersigned counsel's correspondence of November 20, 2017, had as its purpose finding: "...a mutually agreeable date to reschedule the Prehearing Conference...." The purpose of said correspondence was to inform this ALJ that the Respondent questioned his appointment and authority to conduct the Prehearing Conference requested by opposing counsel and to advise this ALJ of his intention of filing a Motion for Disqualification of the ALJ pursuant to I.C. 4-21.5-3-10, a motion that Respondent, Bobby Brower, filed of record on January 4, 2018.

Additionally, Respondent, Bobby Brower, objects and takes exception to ALJ Pylitt's statement that: "...when asked by the ALJ during the Telephonic Prehearing Conference to provide any specific reason or evidence to support his claim that the ALJ is prejudiced or biased which would require disqualification, counsel provided none...." Mr. Brower does so for two reasons. First, for the reason that it misstates counsel's position on this issue during the November 29, 2017, Telephonic Prehearing Conference. The undersigned counsel was asked by the ALJ if he/they would share, at that time, the basis for Mr. Brower's future motion to disqualify him pursuant to I.C. 4-21.5-3-10. The undersigned counsel advised/responded that they elected not to discuss or share the bases for disqualification at that time. Counsel's position not to share or provide a position on behalf of their client in advance of filing a motion to disqualify does not equate to Mr. Brower not having a basis for disqualification as implied by this ALJ in his Recommended Order of January 29, 2018. The second reason, Respondent, Bobby Brower, takes exception and objects to such statement is that he had not, as of November 29, 2017, filed his motion to disqualify ALJ Pylitt and, therefore, the same was not an issue or ripe for discussion during the November 29, 2017, hearing.

The fact that the Administrative Law Judge chose to imply that Mr. Brower/Respondent's counsel did not have, as of November 29, 2017, a basis for a motion to disqualify him as Administrative Law Judge further reflects his bias and prejudice as to Mr. Brower.

While the ALJ includes in his "relevant procedural history" counsel's correspondence of November 20, 2017, he omits a second and significant letter from counsel to the ALJ. A true and exact copy of the undersigned counsel's email to this ALJ of December 15, 2017, addressing issues and exceptions relative to his Order of November 29, 2017 and the ALJ's disingenuous response are attached hereto, made a part hereof, and marked as Exhibits "B" and "C." Counsel's correspondence to the ALJ of December 15, 2017 (Exhibit "B") points out issues and exceptions Mr. Brower had/has relative to factual accuracy, concerns over the ALJ expanding, without authority, the basis for which Respondent may be defaulted and his inappropriate comment relative to a future motion to default. ALJ Pylitt's response of the same date fails to address Respondent's written request that a nunc pro tunc order be issued to reflect those inaccuracies. Instead, the ALJ's response to Mr. Brower was/is that his order "...remains as is...." (*See Exhibit "C"*)

Exhibits "B" and "C" are significant in showing and establishing prejudice and bias on the part of the ALJ as to Mr. Brower for two reasons. First, it was prejudicial to the Respondent to use an Order that contains only a portion of the "Relevant Procedural History." The selective omission of Exhibits "B" and "C" supports Mr. Brower's argument that this ALJ must be disqualified and further evidence of prejudice and bias. Secondly, the ALJ's dismissive response, a response that fails to address the issues raised in counsel's correspondence of December 15, 2017, is further evidence of this ALJ's prejudice and bias as to Brower.

Next, this Administrative Law Judge incorrectly suggests that having never personally met or spoken with Mr. Brower is somehow proof that he (ALJ Pylitt) is incapable of being

biased or prejudiced against Mr. Brower. That, of course, is not correct. Nor is the ALJ's statement that "nothing in the record" demonstrates prejudice and bias against Mr. Brower. ALJ Pylitt's statement is extremely self-serving and it should be noted that ALJ Pylitt is paid by the IHRC/IHRC Staff and that he (Pylitt) has an economic incentive to continue serving as ALJ in this case. A review of the administrative record includes a timely filed Answer denying the allegations set forth in the Administrative Complaint. A review of reported case law in Indiana reveals that at no time in Indiana recorded case history has a party that timely filed a responsive pleading has been defaulted. Contrary to this ALJ's belief that "nothing in the record" suggests prejudice or bias, the administrative record itself is compelling evidence of just the opposite.

RELEVANT STATUTES

Respondent, Bobby Brower, has no objection to this ALJ's recitation of the relevant statute, that being I.C. 4-21.5-3-10.

RESPONDENT, BOBBY BROWER'S OBJECTIONS AND EXCEPTIONS TO THE ALJ'S RECOMMENDED ORDER OF JANUARY 29, 2018, AND SPECIFICALLY THE SECTION ENTITLED "REASONS FOR DETERMINATION AND RECOMMENDED ORDER DENYING BROWER'S MOTION TO DISQUALIFY ALJ PYLITT"

Respondent, Bobby Brower, agrees that he was not afforded the opportunity or right to request a change of judge. He further agrees that he bears the burden of proving this Administrative Law Judge should be disqualified pursuant to I.C. 4-21.5-3-10. However, he objects to this ALJ's statement that he has offered no evidence of bias or prejudice. A review of Respondent, Brower's, Motion to Disqualify Administrative Law Judge and Reply Brief together with corresponding exhibits to the same and the arguments set forth in this Petition, clearly and convincingly show just the opposite.

FINDINGS OF FACT

1. Respondent does not object to Finding of Fact number one (1).
2. Respondent does not object to Finding of Fact number two (2).
3. Respondent, Brower, objects to Finding of Fact number three (3) for the reason that it fails to consider and acknowledge that Respondent, Brower, had timely filed a responsive pleading/answer and that pursuant to 71 IAC 10-3-21(a), he was entitled to a hearing. Respondent, Brower's, timely filed Answer does address the merits of this case by denying the allegations against him. As such, there was mention of the merits by way of Respondent, Brower's, Answer and the same occurred during ALJ Pylitt's involvement in this matter and in advance of his inappropriate Order recommending default of Mr. Brower.

4. Respondent does not object to Finding of Fact number four (4).
5. Respondent does not object to Finding of Fact number five (5)
6. Respondent does not object to Finding of Fact number six (6).
7. Respondent, Brower, objects to Finding of Fact number seven (7) for the reason that the Honorable Mark Dudley, Judge of Madison Circuit Court 6, did hold/state that the IHRC failed to follow its own rules and, in doing so, held that this ALJ incorrectly and inappropriately failed to follow the IHRC's rules by defaulting a licensee that had timely filed a responsive pleading. Further, Judge Dudley's Order denying the IHRC's Motion to Dismiss is attached hereto, made a part hereof, and marked as Exhibit "D." (Respondent, Brower, calls the IHRC/Commissioner's attention to page four (4), line 5 of said exhibit).
8. Respondent, Brower, objects to Finding of Fact number eight (8) for the same reasons as set forth in his objection to the preceding Finding of Fact number seven (7) and incorporates by reference his response and objection to the same.
9. Respondent, Brower, does not object to Finding of Fact number nine (9).
10. Respondent, Brower, does not object to Finding of Fact number ten (10).
11. Respondent, Brower, does not object to Finding of Fact number eleven (11).
12. Respondent, Brower, does not object to Finding of Fact number twelve (12).
13. Respondent, Brower, does not object to Finding of Fact number thirteen (13).

CONCLUSIONS OF LAW

1. Respondent, Brower, objects to Conclusion of Law number one (1). Respondent, Bobby Brower both objects and takes exception to this Administrative Law Judge's position that he has been/is properly appointed. This is because I.C. 4-21.5-3-9 requires that an ALJ be appointed by the agency's ultimate authority. ALJ Pylitt was not properly appointed following Respondent, Brower's, successful Petition for Judicial Review and remand of this matter to the IHRC. This is because the matter was remanded to the agency (IHRC) and not to ALJ Pylitt. IC 4-21.5-3-9 requires appointment of an ALJ by the agency's ultimate authority. The ultimate authority in this case is the Indiana Horse Racing Commission and/or its Chairman. Instead of the ultimate authority, opposing counsel issued a letter dated November 16, 2017, requesting that ALJ Pylitt conduct a hearing. That letter was not and is not a proper appointment of ALJ Pylitt pursuant to I.C. 4-21.5-3-9 following remand of this matter to the Indiana

Horse Racing Commission. Respondent, Bobby Brower, therefore objects and takes exception to the position that this ALJ has authority, because he has not been properly re-appointed subsequent to the matter being remanded to the agency by the Madison Circuit Court 6.

2. Respondent, Brower, admits that the initial appointment by way of former IHRC Chairman, Tom Weatherwax, dated December 16, 2016, has not, to the best of his knowledge, been modified, withdrawn, or revoked. Respondent, Brower, does object to the extent that Conclusion of Law number two (2) suggests that this ALJ was properly appointed subsequent to this matter being remanded by the Madison Circuit Court 6 to the IHRC. Respondent, Brower, incorporates by reference his objection to Conclusion of Law number one (1).
3. Respondent, Brower, has no objection to Conclusion of Law number three (3).
4. Respondent, Brower, has no objection to Conclusion of Law number four (4).
5. Respondent, Brower, has no objection to Conclusion of Law number five (5).
6. Respondent, Brower, objects to Conclusion of Law number six (6). For his objection to Conclusion of Law number six (6), Respondent, Brower, incorporates his objections set forth in this petition and all of them as well as the evidence in set forth in his Motion to Disqualify Administrative Law Judge and his Reply Brief and all exhibits to each as well as the exhibits to this Petition.
7. Respondent, Brower, has no objection to Conclusion of Law number seven (7).
8. Respondent, Brower, objects to Conclusion of Law number eight (8) for the reason that this Conclusion of Law suggests and implies that this ALJ was properly appointed subsequent to the denial of the IHRC's Motion to Dismiss Respondent, Brower's, Petition for Judicial Review and this matter being remanded to the IHRC. Further, Respondent, Brower, incorporates by reference his objections to Conclusions of Law numbers 2 and 6 as set forth above.
9. Respondent, Brower, does not object to Conclusion of Law number nine (9).

ULTIMATE FINDING OF FACT

Respondent, Bobby Brower, objects to the Ultimate Finding of Fact. Respondent, Brower's, basis for his objection to the Ultimate Finding of Fact is the argument, evidence, statutory provision, case law, and objections set forth in his January 4, 2018, Motion to Disqualify Administrative Law Judge as well as his subsequently filed Reply Brief and this Petition for Review and Denial of ALJ Pylitt's Recommended Order of January 29, 2018, as well

as all exhibits to the same.

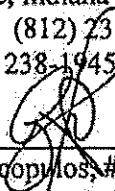
CONCLUSION

The IHRC has as its charge promoting integrity in Indiana horse racing and fairly and uniformly enforcing the rules and regulations governing participants in our state's racing program. Integrity, fairness and impartiality are present when all steps are taken to ensure licensees, such as Bobby Brower, are afforded a fair hearing before an unbiased trier of fact. Participants/licensees' rights pursuant to Indiana state law and the AOPA are an important component to ensuring integrity in our program. The impartial and unbiased adjudication of cases is equally critical to the integrity of the Indiana horse racing program.

Respondent, Brower, has met his burden of proof in establishing prejudice and bias on the part of the ALJ. Bernard Pylitt should be disqualified and replaced by another IHRC-approved and selected Administrative Law Judge. ALJ Pylitt's recommendation to default Respondent, Brower, in the face of a timely filed Answer, his denial of Mr. Brower's request for additional time to serve third party discovery, his refusal to amend, correct, complete and enter a nunc pro tunc order relative to the incorrect, inaccurate, incomplete and bias scheduling order of November 29, 2017, as evidenced by the undersigned counsel's letter of December 15, 2017, and ALJ Pylitt's dismissive response of December 15, 2017, his expanding the grounds and basis, beyond Indiana law and his authority, to potentially default Mr. Brower in his Order of November 29, 2017, his recommendation of a lifetime ban from Indiana racing (effectively all racing) for fifteen (15) years, as well as a punitive fine of \$40,000, without any evidence or any testimony, is all evidence advanced by Respondent, Brower, in establishing his position that the IHRC must disqualify Bernard Pylitt and appoint, pursuant to I.C. 4-21.5-3-9 a fair, impartial, unbiased and unprejudicial ALJ to decide this matter.

Respectfully submitted,

SACOPULOS JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, Indiana 47807
Telephone: (812) 238-2565
Fax: (812) 238-1945

By: 
Peter J. Sacopulos, #14403-84
ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by email transmission and Certified U.S. Mail, postage prepaid, this 9th day of February, 2018:

Attorney Lea Ellingwood
General Counsel
Indiana Horse Racing Commission
1302 North Meridian
Indianapolis, IN 46202
lellingwood@hrc.in.gov

Bernard L. Pylitt
Administrative Law Judge
Katz Korin Cunningham PC
334 North Senate Avenue
Indianapolis, IN 46204
Bylitt@kkclegal.com



Peter V. Sacopulos

From: Ellingwood, Lea
To: Pennycuff, Dale L
Subject: FW: ALJ Assignments
Date: Friday, February 02, 2018 9:48:53 AM

From: Tkwx [mailto:tkwx@comcast.net]
Sent: Friday, December 09, 2016 6:46 PM
To: Ellingwood, Lea
Cc: Smith, Michael D
Subject: Re: ALJ Assignments

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Good choices , please proceed as requested.

Chairman

Sent from my iPad

On Dec 9, 2016, at 11:34 AM, Ellingwood, Lea <LEllingwood@hrc.IN.gov> wrote:

Good morning, Tom!

I hate to bother you while you're taking care of Kay, but we need to assign an ALJ to two pending cases. Based on the schedule of each judge, we'd recommend assigning the first (which is a complaint against [REDACTED]) to Judge Ernie Yelton and the second (which is a complaint against Bobby Brower) to Judge Buddy Pylitt. Can you confirm these assignments?

Best,
Lea

Lea Ellingwood
General Counsel
Indiana Horse Racing Commission
1302 N. Meridian St.
Suite 175
Indianapolis, IN 46202
317-233-3119

BATES NO. IHRC00072



PLA

From: PLA
Sent: Friday, December 15, 2017 11:00 AM
To: 'Bernard Pylitt'
Subject: IHRC/IHRC Staff v. Bobby Brower

Dear ALJ Pylitt:

I am writing to address issues and exceptions my client, Bobby Brower, Attorney Greg Carter and I have relative to the Prehearing Order of November 29, 2017. I apologize for not addressing these issues more promptly but have been out of my office on other business matters. These issues are:

1. Your Order states: "...Bernard L. Pylitt, was requested to conduct a prehearing conference and schedule deadlines...." This suggests that Mr. Brower requested or jointly requested the same. That is not the case. In fact, Mr. Brower has challenged whether you have been appointed to serve as ALJ in this matter. The Madison Circuit Court remanded this matter to the Indiana Horse Racing Commission. I.C. 4-21.5-3-9 requires an Administrative Law Judge be appointed by the agency's (IHRC) ultimate authority. Subsequent to the trial court's Order, no such notice of your appointment has been provided or received.
2. The final paragraph of your Order adds a basis of default relative to Mr. Brower only that is not set forth or included in I.C. 4-21.5-3-24, specifically, your statement is: "...If Mr. Brower fails to attend the scheduled hearing or cooperate during discovery, he may be held in default...." Your statement supersedes the statute governing default by adding a basis for default.
3. The Order does not resolve or decide the disputed issue of whether you have properly been appointed and have jurisdiction over this matter. The Order summarizes Mr. Brower's position as well as that of the Agency but stops short of setting forth why you have jurisdiction pursuant to Chapter 9 and/or Chapter 15. My client requests clarification of this issue.
4. Mr. Brower, prior to November 29, 2017, had not filed a Motion to Disqualify. You have included, in the Prehearing Scheduling Order statements as to a Motion to Disqualify that has not yet been filed. Those statements are biased against Mr. Brower. Disqualification pursuant to I.C. 4-21.5-3-10 was not an issue of the Pre-Hearing Conference. Further, your statement that Mr. Carter: "...refused to provide any specific reason or evidence to support his claim that the ALJ is prejudiced or biased which would require his being disqualified..." is inappropriate and incorrectly implies that Mr. Brower has no basis for a Motion to Disqualify. That is not the case. Mr. Brower, Attorney Carter, and I take exception to the same and request that that statement be removed from the Order.

My client, Bobby Brower, respectfully requests that the Prehearing Order of November 29, 2017, be re-issued to reflect the modifications, changes, and deletions referenced above.

Yours Sincerely,

Peter J. Sacopulos
SACOPULOS, JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, IN 47807
Telephone: (812) 238-2565
Facsimile: (812) 238-1945
pete_sacopulos@sacopulos.com

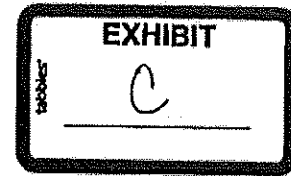


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PLA

From: Bernard Pylitt <bylitt@kkclegal.com>
Sent: Friday, December 15, 2017 1:13 PM
To: PLA
Cc: Lea Ellingwood
Subject: Re: IHRC/IHRC Staff v. Bobby Brower



It does not appear that you copied Lea so I am including her with my response. Please refrain from any future ex parte communications.

My Prehearing Order needs no clarification and remains as is.

If you intend to file a Motion to Disqualify me as ALJ in this matter, please do so without delay so the issue may be resolved given the pending deadlines.

On Dec 15, 2017, at 11:00 AM, PLA <pla@sacopulos.com> wrote:

Dear ALJ Pylitt:

I am writing to address issues and exceptions my client, Bobby Brower, Attorney Greg Carter and I have relative to the Prehearing Order of November 29, 2017. I apologize for not addressing these issues more promptly but have been out of my office on other business matters. These issues are:

1. Your Order states: "...Bernard L. Pylitt, was requested to conduct a prehearing conference and schedule deadlines...." This suggests that Mr. Brower requested or jointly requested the same. That is not the case. In fact, Mr. Brower has challenged whether you have been appointed to serve as ALJ in this matter. The Madison Circuit Court remanded this matter to the Indiana Horse Racing Commission. I.C. 4-21.5-3-9 requires an Administrative Law Judge be appointed by the agency's (IHRC) ultimate authority. Subsequent to the trial court's Order, no such notice of your appointment has been provided or received.
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3. The Order does not resolve or decide the disputed issue of whether you have properly been appointed and have jurisdiction over this matter. The Order summarizes Mr. Brower's position as well as that of the Agency but stops short of setting forth why you have jurisdiction pursuant to Chapter 9 and/or Chapter 15. My client requests clarification of this issue.
4. Mr. Brower, prior to November 29, 2017, had not filed a Motion to Disqualify. You have included, in the Prehearing Scheduling Order statements as to a Motion to Disqualify that has not yet been filed. Those statements are biased against Mr. Brower. Disqualification pursuant to I.C. 4-21.5-3-10 was not an issue of the Pre-Hearing Conference. Further, your statement that Mr. Carter: "...refused to provide any specific reason or evidence to support his claim that the ALJ is prejudiced or biased which would

require his being disqualified..." is inappropriate and incorrectly implies that Mr. Brower has no basis for a Motion to Disqualify. That is not the case. Mr. Brower, Attorney Carter, and I take exception to the same and request that that statement be removed from the Order.

My client, Bobby Brower, respectfully requests that the Prehearing Order of November 29, 2017, be re-issued to reflect the modifications, changes, and deletions referenced above.

Yours Sincerely,

Peter J. Sacopulos
SACOPULOS, JOHNSON & SACOPULOS
676 Ohio Street
Terre Haute, IN 47807
Telephone: (812) 238-2565
Facsimile: (812) 238-1945
pete_sacopulos@sacopulos.com

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STATE OF INDIANA
COUNTY OF MADISON
BOBBY BROWER
Plaintiff

IN THE MADISON CIRCUIT COURT
DIVISION 6

2017 TERM

CAUSE NO. 48C06-1703-MI-279

VS.

INDIANA HORSE RACING COMMISSION,
INDIANA HORSE RACING COMMISSION
STAFF

Defendants

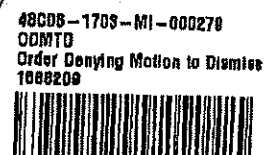
ORDER DENYING DEFENDANTS' MOTION TO DISMISS

The parties appeared in person and by counsel on June 16, 2017, for a hearing on Defendants, Indiana Horse Racing Commission and Indiana Horse Racing Commission Staff's (collectively "IHRC"), Motion to Dismiss. The parties fully briefed the issue.

The issue is whether this court has jurisdiction to hear plaintiff, Bobby Brower's ("Brower"), Petition for Judicial Review. Brower is a horse trainer licensed by the State of Indiana and subject to administrative oversight by IHRC. On November 4, 2016, the IHRC filed an administrative complaint pursuant to 71 IAC 10-3-20 against Brower alleging he mistreated a horse. Brower received the administrative complaint on November 16, 2016. 71 IAC 10-3-20 requires a licensee to request a hearing within twenty (20) days if he wishes to contest the administrative complaint. The language of 71 IAC 10-3-20(d) reads:

(d) Not later than the twentieth day after the date on which the executive director delivers or sends the administrative complaint, the person charged may make a written request for a hearing or may remit the amount of the administrative penalty to the commission. Failure to request a hearing or to remit the amount of the administrative penalty within the period prescribed by this subsection results in a waiver of a right to a hearing on the administrative penalty as well as any right to judicial review. If the person charged requests a hearing, the hearing shall be conducted in the same manner as other hearings conducted by the commission pursuant to this article.

The administrative code covering the IHRC does not provide a specific form for making a written request for a hearing.



Brower, through his attorney, filed an answer on November 29, 2016, pursuant to 71 IAC 10-3-21. This filing is within twenty (20) days of Brower's receipt of the administrative complaint. 71 IAC 10-3-21 is titled "Settlement Procedures". Brower followed the requirements of §21 and not §20. If the IHRC filed an administrative complaint pursuant to 71 IAC 10-3-21, then the licensee shall file an answer within twenty (20) days of service of the complaint. Following the filing of an answer, the parties can enter into a settlement agreement. If a settlement agreement is not reached, then an administrative complaint may be filed under 71 IAC 10-3-20.

The twenty (20) day window expired on December 6, 2016, and Brower filed a written request for hearing on December 7, 2016. Pursuant to the IHRC's administrative procedures, it filed a Notice of Proposed Default against Brower on December 16, 2016, because he failed to file a written request for hearing in the allotted time. Brower filed his objection to the Notice of Proposed Default on December 21, 2016. The assigned administrative law judge on January 3, 2017, recommended to the IHRC that it find Brower in default. Brower filed his objection to the administrative law judge's recommendation on January 12, 2017. The IHRC voted on March 7, 2017, and issued its final order finding Brower in default on March 14, 2017. Brower filed this case seeking judicial review of a final agency action on March 31, 2017.

I.C. 4-21.5-3-24 governs the process engaged in by the parties. The statute in full reads:

(a) At any stage of a proceeding, if a party fails to:

- (1) satisfy the requirements of section 7(a) [IC 4-21.5-3-7(a)] of this chapter;
- (2) file a responsive pleading required by statute or rule;
- (3) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or
- (4) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;

the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed

default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 [IC 4-21.5-3-23] of this chapter to resolve any issue of fact.

I.C. 4-21.5-3-24 requires one of four triggers prior to an agency seeking a default judgment. Subsection (a)(1) covers personnel actions in the State's Civil Service System and is inapplicable here. Subsection (a)(2) authorizes an agency to seek a default when a party fails to file a responsive pleading. This is the subsection at issue in this case. Subsections (a)(3) and (a)(4) are not implicated by the facts of this case.

The IHRC defines a "pleading" as:

- (a) Pleadings filed with the commission include the following:
- (1) Appeals
 - (2) Applications
 - (3) Answers
 - (4) Complaints
 - (5) Exceptions
 - (6) Replies
 - (7) Motions


Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

71 IAC 10-3-3. The IHRC does not define a request for a hearing. The IHRC does differentiate between an answer and a request for hearing. *Id.* It does recognize that one is a pleading and the other is not. The court's analysis can stop at this point because the IHRC's action contravenes I.C. 4-21.5-3-24(a). Brower never failed to file a "responsive pleading required by statute or rule" and as such, the IHRC cannot meet its burden that its procedures conform to the statutory mandate.

In further support of the court's conclusion are the IHRC's own rules. Even if the court was persuaded that a request for hearing is a required pleading, Brower's answer

clearly disputed the IHRC's allegations. The IHRC tells its licensees "regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it was filed." 71 IAC 10-3-3(a). While Brower's document is titled, "Answer" its substance told the IHRC that he wished to contest the proposed fine and suspension. The IHRC must follow its own rules and accord Brower's "Answer" its true status as a timely request for a hearing. The court finds that Brower timely responded to IHRC's complaint. The parties are to contact the court to set a pretrial conference date to address the remaining issues of Brower's request to stay IHRC's suspension and his request to remand the case to the IHRC.

All of which is so ordered, this 2^{5th} day of July, 2017.


The Honorable Mark Dudley, Judge
Madison Circuit Court No. 6



Copies to:

Peter Sacopulos
John Shanks
Robin Babbitt

STATE OF INDIANA
INDIANA HORSE RACING COMMISSION
2018 TERM

Re: Bobby Brower
7281 S 400 W
Muncie, In 47302

ADMINISTRATIVE COMPLAINT NO.
216005

**RESPONDENT, BOBBY BROWER'S, EXCEPTIONS TO THE RECOMMENDED
ORDER DENYING HIS SECOND MOTION FOR STAY OF PROCEEDINGS AND
ORDER DENYING MOTION TO CONTINUE HEARING**

Respondent, Bobby Brower (hereinafter "Brower"), by counsel, Peter J. Sacopulos, pursuant to and in compliance with ALJ Pylitt's Order of March 21, 2018, timely submits and files his written exceptions to the Recommended Order Denying His Second Motion for Stay of Proceedings and Order Denying Motion to Continue Hearing and states as follows:

**I. The Recommended Order of March 21, 2018, Was Issued Subsequent to
Respondent, Bobby Brower, Filing a Verified Petition for Judicial Review That is Pending
Before the Madison Circuit Court 6. Upon Brower's Filing of his Verified Petition for
Judicial Review, Jurisdiction of this Matter Shifted from Administrative Law Judge
Pylitt/the Indiana Horse Racing Commission to the Indiana Trial Court. The ALJ's
Recommended Order of March 21, 2018, Was Rendered/Issued Without Authority or
Authorization.**

Respondent, Brower, files his Exceptions to the Recommended Order of March 21, 2018, reserving his objection relative to jurisdiction, and for the reason that having been improperly defaulted by this ALJ and this Commission, is concerned that this ALJ and this Commission's actions, despite their lack of jurisdiction to proceed with hearings and rulings, may result in additional actions taken against him and, in that connection, additional prejudice and bias toward him. Therefore, Brower files these Exceptions asserting that ALJ Pylitt had no jurisdiction or authority to enter the same reserving, and in no way waiving, his right to argue and assert his position with regard to the ALJ and the Indiana Horse Racing Commission's lack of jurisdiction in this matter while he has pending a Verified Petition for Judicial Review before an Indiana trial court.

Brower further objects to the ALJ's Recommended Order for the reason that its effect is to frustrate and defeat Brower's motion to have him disqualified. Integrity, fairness, and equality all demand that Brower receive a final determination as to his Motion to Disqualify Administrative Law Judge that is pending, by way of his Verified Petition for Judicial Review, before the Madison Circuit Court 6 in advance of the hearing/trial presently scheduled for April 24th and 25th, 2018. The IHRC's failure and/or refusal to rule on Brower's Objections to Findings of Fact, Conclusions of Law and Recommended Order Denying His Motion to Disqualify Administrative Law Judge has, pursuant to I.C. 4-21.5-3-9(d), resulted in Brower timely seeking review by way of his pending Verified Petition for Judicial Review.



II. Exceptions to the “Relevant Procedural History” Section of the Recommended Order Denying Second Motion to Stay of Proceeding and Order Denying Motion to Continue Hearing.

Respondent, Brower, agrees with the Relevant Procedural History set forth in the first three (3) rhetorical paragraphs of this section and, specifically, that procedural history that purports to cover the period of November 4, 2016, to March 7, 2017.

Brower agrees that he timely filed a Verified Petition for Judicial Review with the Madison Circuit Court 6 on April 4, 2017. However, the Relevant Procedural History fails to include that the IHRC filed a Motion to Dismiss Brower’s Verified Petition for Judicial Review and that the same was DENIED. A true and exact copy of the Honorable Mark Dudley’s Order of July 28, 2017, **DENYING** the IHRC’s Motion to Dismiss is attached hereto, made a part hereof, and marked as Exhibit “A.” It was only after Brower was successful in opposing the IHRC’s Motion to Dismiss, that the “Agreed Entry” was reached and entered.

Brower agrees that pursuant to the Agreed Entry of October 17, 2017, this matter was: “...remanded to the IHRC...” Brower disagrees and takes exception with the ALJ and the IHRC/IHRC Staff’s position that ALJ Pylitt was properly appointed, upon remand, and that he has authority to sit in judgment of this cause. This is because this matter was remanded by the trial court to the Indiana Horse Racing Commission, not to ALJ Pylitt. Despite having been remanded to the IHRC, pursuant to I.C. 4-21.5-3-9(a), that requires appointment by the ultimate authority, there was no appointment of ALJ Pylitt upon remand. Instead, opposing counsel, an employee for the Indiana Horse Racing Commission Staff, simply requested that the former ALJ re-engage in the process. In fact, ALJ Pylitt states this in his Relevant Procedural History when he states that he was “requested by counsel for the IHRC” to re-engage.

I.C. 4-21.5-3-9(a) requires the ultimate authority, the Indiana Horse Racing Commission, not opposing counsel, to appoint an ALJ. The trial court Order, via the October 17, 2017, Agreed Entry, remands the matter to the IHRC and not to ALJ Pylitt. As such, the IHRC was required to appoint an ALJ. This has not been done and, as such, Brower has and continues to challenge ALJ Pylitt and the IHRC Staff’s position that he has been properly appointed and has authority over this matter.

Brower also takes exception to the Relevant Procedural History in that it inaccurately and incorrectly suggests that the time expired between the alleged incident of August 18, 2016, and the currently scheduled hearing was/is the result of his actions. That is not the case.

The delay that has resulted in Brower’s exclusion from Indiana racing and his ability to earn a living was/is the result of the Indiana Horse Racing Commission/Indiana Horse Racing Commission Staff’s improper seeking and entry of a default judgment after Brower had timely filed an Answer denying the material allegations set forth in the Administrative Complaint. This resulted in Brower incurring not only exclusion from Indiana racing (and because of reciprocity, racing in other jurisdictions) but considerable expense in filing and pursuing a successful Verified Petition for Judicial Review. For almost “two years”, as stated in the Recommended Order that is the subject of these exceptions, and specifically on page three (3) at line two (2),

Brower has sought a hearing on the merits to be conducted by an impartial and fair administrative law judge. His efforts, thus far, are continuing and ongoing.

Brower further takes exception with the relevant procedural history that suggests, incorrectly, that there are not “unusual circumstances” that meet the requirements of a stay. Certainly, there are. Brower has pending a Verified Petition for Judicial Review to remove the very administrative law judge that recommended, incorrectly and improperly, his default and issued a career-ending penalty, that having been fifteen (15) years and a \$40,000 fine, without any testimony or evidence.

It is further an “unusual circumstance” that this ALJ recommended Brower be defaulted when, in the history of Indiana recorded case law, civil and administrative, no party defendant/respondent/licensee has been defaulted when he/she/or it timely filed a responsive pleading. Additionally, it is unusual that an ALJ not properly appointed, continues to sit in judgment and make rulings when there is pending a motion to disqualify him and said motion is pending before an Indiana trial court in the form of a Verified Petition for Judicial Review. It is not only unusual, it is improper not to stay the proceedings until there is a determination of such a petition.

Brower further takes exception to this ALJ’s position/opinion in the Relevant Procedural History that implies Brower’s delay of thirty-five (35) days in filing a motion to disqualify delayed the process. It did not. In fact, the issue of the ALJ’s disqualification was not a proper issue for review or discussion during the November 29, 2017, Pre-Hearing Conference. Even assuming, arguendo, that Brower immediately filed his Motion to Disqualify Administrative Law Judge on the date of that hearing, November 29, 2017, there would not have been adequate time for the IHRC Staff to respond, Brower to reply, the ALJ to issue a Recommended Order, Brower to file his Exceptions and request for review, the IHRC to issue Notice of Opportunity to Present Briefs, and Brower and the IHRC Staff to prepare and file briefs, all in advance of a Commission meeting that occurred one (1) week following the Prehearing Conference of November 29, 2017.¹ Therefore, the ALJ’s opinion that Brower’s January 4, 2018, filing of his Motion to Disqualify Administrative Law Judge somehow delayed the proceedings, is not only incorrect, it is further evidence of this ALJ’s bias and prejudice towards Bobby Brower and further evidence that this ALJ should be disqualified.

Brower further takes exception to the ALJ’s Relevant Procedural History and specifically the ALJ’s statement: “...a review of the Minutes of the IHRC December 6, 2017 meeting, as posted on its website, indicates that no objection to ALJ Pylitt continuing to serve as the ALJ was raised by Brower during that meeting...” This statement offered, apparently, to suggest waiver, is misleading and further evidence of the continued and ongoing prejudice and bias shown by this ALJ as to Respondent, Brower. This is because of the following:

(1) This assumes, incorrectly, that Respondent, Brower, and/or his counsel were permitted to address the IHRC during its December 6, 2017, meeting. That is not the

¹ The December 6, 2017, meeting of the Indiana Horse Racing Commission was the most recent and last meeting held by the IHRC as of this date. Further, as of this date, the IHRC has not yet scheduled a meeting for or in 2018.

case. In fact, there is no opportunity for a Respondent to discuss aspects of his or her pending matter that is not an agenda matter. Procedurally, if the item is not on the agenda, it may not be addressed.

(2) As set forth, supra, even had Brower filed a motion to disqualify ALJ Pylitt on November 29, 2017, immediately following the Pre-Hearing Conference, there would not have been adequate time to place the item on the agenda for the December 6, 2017, meeting of the IHRC.

(3) A review of I.C. 4-21.5-3-9(d) reflects that the initial review and determination does not reside with the ultimate authority but with the ALJ. Therefore, I.C. 4-21.5-3-9(d), would preclude Brower or any other licensee/respondent from filing a motion to disqualify an ALJ directly with the Indiana Horse Racing Commission. The same above argument applies to and is reflective of the bias and prejudice Brower has experienced relative to the review and determination of his Motion to Stay Proceedings.

Brower agrees that ALJ Pylitt recommended that he (ALJ Pylitt) not be disqualified. Brower also agrees that he (Brower) filed his written exceptions in accordance with ALJ Pylitt's Order of January 29, 2018, on February 11, 2018.

Brower, however, takes exception to the ALJ's incorrect statement that: "...it does not appear that a Petition for Review of ruling on Disqualification was filed in a timely manner, and the ALJ's Recommended Order recommending the denial of Brower's Motion to Disqualify remains pending before the IHRC..." That statement is incorrect, inaccurate, and misstates the record. Further, this ALJ ignores and omits, including in the Relevant Procedural History, his own Order of January 29, 2018, that allows Brower fifteen (15) days to file his exceptions. A true and exact copy of ALJ Pylitt's Order of January 29, 2018, is attached hereto, made a part hereof, and marked as Exhibit "B." Brower takes exception in this regard for the following specific reasons, all of which evidence the existing and ongoing prejudice and bias this ALJ has demonstrated toward this licensee:

(1) On January 29, 2018, ALJ Pylitt issued an Order that specifically states: "...either party may petition the Indiana Horse Racing Commission as the ultimate authority, in writing, for review of this Recommended Order within 15 days after notice of the ruling is served, or by no later than February 13, 2018..." See Exhibit "B."

(2) The time allowed Brower to file his exceptions is not "recommended" rather it is ordered. As such, Brower had fifteen (15) days from January 29, 2018, to file his written exceptions to the Findings of Fact, Conclusions of Law, and Recommended Order Denying Bobby Brower's Motion to Disqualify Bernard Pylitt as Administrative Law Judge of January 29, 2018. Brower timely did so on February 11, 2018. As such, the ALJ's suggestion that Brower's filing was/is not timely is incorrect, inaccurate, and misstates the record.

(3) I.C. 4-21.5-3-9(d) allows a Respondent to file written exceptions within ten (10) days. However, ALJ Pylitt, by way of his Order of January 29, 2018, specifically ordered that Brower have: "...fifteen (15) days after notice of the ruling is served, or by no later than February 13, 2018...." See Exhibit "B." No request for a Nunc Pro Tunc Order has ever been made by the IHRC Staff and, to date, the IHRC Staff has not asserted that Brower's response was not/is not timely. To the contrary, this suggestion is made by the very ALJ that Mr. Brower has moved to have disqualified. His suggestion crosses the line from that of an independent trier of fact to an advocate and is inappropriate in addition to being inaccurate.

(4) Further, I.C. 4-21.5-3-3(c)(2) states: "An order is effective when it is issued as a final order under this chapter, except to the extent that: ... (2) a later date is set by an agency in its order...." Therefore, even assuming, arguendo, that Brower should have had ten (10) days, his filing was timely because he is justified in relying upon an Order by the ALJ giving him fifteen (15) days and because of the rules/regulations set forth in I.C. 4-21.5-3-3.

(5) Additionally, it is the long-settled practice in this state that parties and counsel are entitled to rely on orders issued by judges.

(6) Further, Brower takes exception to this ALJ's reference to an Order/Ruling in the matter involving Dr. Ross Russell. The same is/are irrelevant relative to this ALJ's Order of January 29, 2018.

(7) Additionally, ALJ Pylitt's omission from the Relevant Procedural History of his own Order allowing Brower fifteen (15) days to file his written exceptions to the Findings of Fact, Conclusions of Law, and Recommended Order Denying Bobby Brower's Motion to Disqualify Bernard Pylitt as Administrative Law Judge of January 29, 2018 is both significant and serious. It is so because the Order allows Brower fifteen (15) days to file his exceptions and because Brower timely filed the same. For this ALJ to issue an Order allowing the Respondent fifteen (15) days to so respond and then omit, ignore, and exclude that very Order, thereby suggesting a different timeline, is further example and evidence of his bias and prejudice against Brower and reason that he should be disqualified from serving as ALJ in this matter.

(8) Brower further takes exception to this statement for the reason that I.C. 4-21.5-3-9(d) clearly states that should the ultimate authority not act on a respondent's/licensee's petition to review a ruling on a motion to disqualify within thirty (30) days, then the respondent's/licensee's petition to review a ruling on a motion to disqualify is ripe for judicial review. Respondent, Brower, has timely filed his Verified Petition for Judicial Review, having done so on March 19, 2018. Brower's Objections to ALJ Pylitt's Findings of Fact, Conclusions of Law and Recommended Order Denying His Motion to Disqualify Administrative Law Judge does not "remain pending before the IHRC" as incorrectly stated by the ALJ in his Recommended Order. In fact, it is pending before the Madison Circuit Court 6. A true and exact copy of Brower's timely filed

Verified Petition for Judicial Review and Verified Motion for Stay are attached hereto, made a part hereof, and marked as Exhibits "C" and "D."

II. Summary of Brower's Argument

Brower further takes exception with ALJ Pylitt's incorrect position that he has: "...failed to offer any explanation or reason how or why he would be prejudiced...." A review of the record of proceedings in Mr. Brower's case, including the improper default judgment recommended by this ALJ that resulted in his improper exclusion from Indiana racing for an entire season, and Mr. Brower's exceptions to the Relevant Procedural History set forth, *supra*, offer a multitude of explanations and reasons why he has been and continues to be the subject of bias and prejudice by this ALJ, explanation and reason why this ALJ should be disqualified, and explanation and reason why Mr. Brower's Motion for Stay of Proceedings, pending a decision by the ultimate authority on his motion to disqualify this ALJ, should be granted.

Respondent, Brower, further takes exception to ALJ Pylitt's "summary" of his argument for the reason that Brower's Motion to Continue Hearing does provide for and set forth an unusual circumstance. That unusual circumstance is Brower's pending motion to disqualify the very administrative law judge that has denied the motions he has filed, to date, and that has incorrectly and improperly recommended he be defaulted after having timely filed a responsive pleading and that further recommended a career-ending penalty be imposed that consisted of a fifteen (15) year suspension and a \$40,000 fine absent any testimony and/or any evidence. All of that is unusual—very unusual. It also constitutes meritorious grounds for the continuance sought by Brower that has been denied and evidences further and additional evidence of bias and prejudice against Respondent, Brower.

IV. IHRC Staff's Response and Opposition

Brower agrees that this section of the ALJ's Recommended Order provides a summary of the Staff's response. Brower disagrees with and takes exception with the Staff's position.

V. Brower's Reply to IHRC Staff's Opposition to Second Motion to Stay

Brower takes exception with the ALJ's statement that his timely filed Verified Petition for Judicial Review and Petition for Stay that is pending before the Madison Circuit Court 6 (see Exhibits C and D): does not render moot Brower's Second Motion to Stay."

Pursuant to I.C. 4-21.5-3-9(d), the IHRC failed or refused to timely rule on Brower's Objections to Findings of Fact, Conclusions of Law and Recommended Order Denying His Motion to Disqualify Administrative Law Judge resulting in Brower's Motion to Disqualify Administrative Law Judge being ripe for judicial review. The timely filing of Brower's Verified Petition for Judicial Review places jurisdiction with the Indiana trial court. As such, Brower's Second Motion for Stay is moot for the reason that the ALJ is without jurisdiction or authority to rule on the same.

Brower also takes exception with ALJ Pylitt's statement and suggestion that absent a ruling by the trial court, he does have jurisdiction and authority to rule on the Motion to Stay and Motion to Continue Hearing. ALJ Pylitt does not.

VI. Relevant IHRC Regulation Regarding Granting Stay

Brower agrees that 71 IAC 10-2-10(a) (not 710 IAC 10-2-10(a)) addresses a licensee's right to pursue a stay of proceedings. Further, said section/regulation speaks for itself.

VII. Recommended Order Denying Brower's Motion to Stay

Brower takes exception with the ALJ's statement that he (Brower) has offered no factual basis which mandates his (Pylitt) disqualification. In fact, Brower has done so. A review of the record in this case, including the Honorable Mark Dudley's Order of July 28, 2017, (See Exhibit "A") as well as the arguments and bases set forth herein, presents both evidence and bases for a stay of these proceedings until such time as the trial court rules on Brower's pending Verified Petition for Judicial Review.

Brower further takes exception with ALJ Pylitt's outrageous and incorrect statement that he: "...has not been disciplined..." Brower, indeed, has been disciplined. That discipline includes exclusion from Indiana racing and all other racing programs from March 13, 2017, until the Indiana trial court ruled that ALJ Pylitt and the IHRC incorrectly recommended/defaulted Brower and that Brower is entitled to a hearing on the merits. Further, 71 IAC 10-2-10(a) (incorrectly cited in the Recommended Order as 710 IAC 10-2-10(a)) does not limit a licensee's right to stay as suggested by this ALJ.

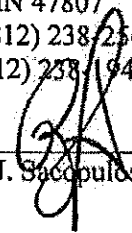
VIII. Order Denying Motion to Continue April 24, 2018 Hearing

As this is an Order, as opposed to a Recommended Order, Respondent, Brower, offers no exception but does respectfully disagree with the same.

WHEREFORE, Respondent, Bobby Brower, having reserved his right to contest authority and jurisdiction based on his pending Verified Petition for Judicial Review to disqualify ALJ Pylitt, respectfully prays the Indiana Horse Racing Commission reject the Recommended Order, that the Indiana Horse Racing Commission enter an Order staying all proceedings relative to Mr. Brower until such time as the Indiana trial court and specifically the Madison Circuit Court 6, rules on Respondent, Brower's, pending Verified Petition for Judicial Review and Petition for Stay, and for all other just and proper relief in the premises.

Respectfully submitted,

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By: 
Peter J. Sacopulos, #14403-84

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon the following counsel of record by email transmission on March 29, 2018 and posted via U.S. Certified Mail, postage prepaid, on the 28th day of March, 2018:

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Bernard L. Pylitt
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