

Agenda item # 1 (b)

II. THE ADMINISTRATIVE LAW JUDGE ERRED IN FINDING THAT JOEL VILLALTA CONSISTENTLY TESTIFIED THAT HE WAS NOT IN STALL 31, BARN 7.

Appellants' witnesses, Dr. Ross Russell, Stephanie Burchette, and Callie Ramey, all testified that the interaction with Barn Walker, Jamie Kolls occurred in Barn 7, at Stall 31, rather than Kolls' assertion of the encounter occurring in Barn 6, Stall 61. All three (3) testified that Joel Villalta, a Groom in the employ of Trainer Kim Hammond, was holding the horse known as Moonlight Success, in Stall 31, of Barn 7, while Dr. Russell was drawing blood, and when the Ms. Kolls approached. The Administrative Law Judge relied heavily on the testimony of Joel Villalta to discredit the testimony of Dr. Russell, Ms. Burchette and Ms. Ramey, finding that Villalta consistently testified that he was not in Stall 31, of Barn 7, and that Villalta was not in the stall at the time the blood was drawn by Dr. Russell on the morning of September 19, 2014.

To find that Villalta consistently testified that he was not in this stall, is contrary to the testimony given by Villalta at the both the Stewards' Hearing on October 31, 2014, and at hearing in this matter. At both hearings, Mr. Villalta acknowledged signing a statement which read "I remember holding a horse for Dr. Russell, in my employer, Kim Hammond's barn, while he was pulling blood and a security barn walker asked his assistant where their Vet Shadower was. This was around 10:00 or 10:30". At both hearings, Mr. Villalta testified that he agreed with the contents of the statements. At the Stewards' Hearing on October 31, 2014, Mr. Villalta testified that he agreed with what

the statement says "because he was there, and he was the one that held the horses for the vet to give them the jug, and to pull blood".

At the instant hearing, during direct examination by Commission Counsel, Mr. Villalta testified that he was never in Stall 31 holding a horse for Dr. Russell while he pulled blood, nor was in he in any other stall while Dr. Russell was pulling blood from a horse. Mr. Villalta further testified in direct exam that he remembered holding a horse in Barn 7, Stall 43, while Dr. Russell administered a vitamin jug.

Upon cross examination by Appellants' Counsel, Mr. Villalta testified that he remembered being read the statement he signed at the time of the Stewards' Hearing on October 31, 2014, and stating that he agreed with what it says. Mr. Villalta went on to testify that "the jug part of the statement was correct, but, honestly the blood draw part, I don't really remember." When asked "you don't have a specific memory as to whether you held a horse for a blood draw for Dr. Russell?", Mr. Villalta's response was "for a blood draw, no, I don't remember". When asked further "is it possible you did and don't remember?", Mr. Villalta responded "could be, but I don't remember. Honestly, I just don't know." Mr. Villalta was then asked "do you remember Dr. Russell giving vitamin jugs to horses?" Mr. Villalta responded "yes, I do remember that." Mr. Villalta was further asked "and you were there when that was happening?" He responded "when he gave her the jug, yes, I was there when he gave the mare the jug". These contrary statements made by Mr. Villalta at each hearing, in turn, contradicts the Administrative Law Judge's finding that Villalta consistently testified that he was not in Stall 31 on September 19, 2014.

Despite the inconsistencies as to being in Stall 31 and holding the horse for Dr. Russell's blood draw, Mr. Villalta, through his testimony, does establish a crucial fact. His testimony confirms that Dr. Russell and his staff were in Barn 7, and in stalls including Stall 31, on September 19, 2014. These undisputed facts corroborate the testimony of Dr. Russell, Burchette, and Ramey, and lend credibility to their testimony as the version of events which occurred as to their encounter with Mr. Kolls on September 19, 2014.

Appellants respectfully assert that one other crucial fact testified to by Mr. Villalta during the process of these proceedings was overlooked, or disregarded, by the Administrative Law Judge. At the time of the Stewards' Hearing on October 31, 2014, Mr. Villalta was questioned about his knowledge of barn walkers at Indiana Grand. Mr. Villalta testified that he was aware of barn walkers, referring to them as security. Mr. Villalta testified that, at the time Dr. Russell was in Barn 7 on September 19, 2014, "he saw security with the vet". Even without a question being before him, Mr. Villalta testified "that day when he give the horse the jug, and pulled blood, he did see someone with Security or someone(inaudible)." Appellants assert that this testimony is a crucial fact that further substantiates the testimony of Dr. Russell, Burchette and Ramey, and lends substantial credibility to their version of events described by each, under oath, at the time of the instant hearing in this matter.

III. THE ADMINISTRATIVE LAW JUDGE ERRED IN FINDING THE TESTIMONY OF JAMIE KOLLS TO BE SUBSTANTIAL, CREDIBLE AND RELIABLE.

The Administrative Law Judge relies substantially on the testimony of Ms. Jamie Kolls, the barn walker employed by Indiana Grand on September 19, 2014, and who alleged observing Dr. Ross Russell administering an injection to a horse, later identified as Tam Tuff, in Barn 6, Stall 61, on race day. The Administrative Law Judge went to great lengths to find Ms. Kolls' testimony to be substantial, credible and reliable in upholding the rulings of the Stewards rendered against Appellants on November 19, 2014.

Appellants respectfully assert that the testimony and evidence offered by, or through Ms. Kolls, has been suspect, and tinged with uncertainty, as well as questionable credibility, since the alleged incident was first reported on September 20, 2014. Ms. Kolls testified, at both Stewards' Hearing and the instant hearing, that she made no written notations of her alleged observations on September 19, 2014, and did not take any actions to report the alleged incidents on that date.

Ms. Kolls further testified that after first discussing the incident with her supervisor, Dee Thoman, on the morning of September 20, 2014, Ms. Thoman and herself rewalked her September 19, 2014, before she filled out the incident report. Ms. Kolls testified that Ms. Thoman and her "went to the stall so she could see Barn 6, where I saw the horse, and then we went and filled out the incident report". When questioned about Ms. Thoman and her walking other barns, Ms. Kolls testified "No, I don't recall being in any other barns with her". When questioned as to how many times Ms. Thoman

and herself rewalked her September 19, 2014, route, Ms. Kolls testified “we walked it 2 to 3 times, maybe 3 to 4, I don’t remember”.

During hearing before the Stewards on October 31, 2014, Ms. Kolls testified that Ms. Thoman and herself rewalked her September 19, 2014, route, twice. When asked why there was a need to walk it more than once, her response was “I wanted to make sure that I was giving the truth, that I had made sure that’s the area I was in”. When questioned as to why one time of walking it did not make her sure, Ms. Kolls testified “I walked it as many as I felt comfortable before filling out the incident report”. When asked “so it took more than one walk to make you confident that you were where you were on the 19th when you observed this alleged behavior?”, Ms. Kolls responded “not necessarily. I wanted to see exactly where I was walking that day, and how I was walking because of where the location of 61 was and the barns that I had already walked.”

The barn walker log sheet utilized by barn walker log sheet utilized by Ms. Kolls on September 19, 2014, stipulated into evidence by the parties, demonstrates that Ms. Kolls had been in no other barns prior to being in Barn 6, on September 19, 2014. In fact, said barn walker log sheet demonstrates that she checked Stall 61, in Barn 6, twelve (12) minutes after beginning her work shift, with the horse in Stall 61 being the third horse that she observed after beginning her rounds.

Contrary to Ms. Kolls testimony, Ms. Dee Thoman testified at hearing that, after being advised by Ms. Kolls of what she allegedly observed, Ms. Kolls and herself walked the circumference of both Barns 6 and 7, on two (2) successive trips. Ms. Thoman

further testified that, after walking both barns, two (2) times, she provided Ms. Kolls with an incident report to fill out.

The discrepancy in the testimony of Ms. Kolls, relative to Ms. Thoman, as to the route walked, particularly the inclusion of Barn 7 on the successive walks, raises question as to the reliability of Ms. Kolls recollection as to where she claims this alleged incident occurred. If Ms. Kolls was so certain that this alleged incident occurred in Barn 6, why was it necessary for Ms. Thoman and Ms. Kolls to walk Barn 7, two (2) times, as well? There was no evidence offered at hearing that would demonstrate that Barn 7 was an issue known to Ms. Thoman or Ms. Kolls, on September 19th or 20th, 2014. The issue of Barn 7 being involved in this matter was not brought to light until several days later, when Ms. Burchette, Ms. Ramey, and Mr. Villalta submitted sworn statements in response to Ms. Kolls allegations. Further, there was no evidence presented at hearing that would indicate that Dr. Russell, Ms. Burchette, and/or Ms. Ramey had any knowledge that Ms. Kolls was assigned to walk Barn 7 on September 19, 2014, so as to allow for a story or alibi to be fabricated in defense of her allegation.

The incident report submitted by Ms. Kolls indicated a timeline in observing this alleged incident as being between 10:00 a.m. and 11:00 a.m. The incident report further stated that she observed Dr. Russell entering the stall with 2-3 shots in his hand. With regard to the certainty and reliability of Ms. Kolls' testimony, Appellants question why such a general timeline was indicated in the incident report by Ms. Kolls, when her barn walker log sheets indicated this incident would have occurred within Twelve (12) minutes of beginning her shift, and with the third horse she observed that entire day. Ms.

Kolls testified at hearing that she saw Dr. Russell with “a handful” of shots, then later testified that she saw “2 shots” in Dr. Russell’s hands.

At the time of hearing, Ms. Kolls was asked by Commission Counsel if she could describe the shots Dr. Russell was holding. Ms. Kolls’ response was “Yes. Do you have examples?”. During the Stewards’ Hearing, Ms. Kolls testified that the shots she observed in Dr. Russell’s hands were “clear, they were clear syringes”. “I could see through them”. At the time of instant hearing, when the “examples” of syringes were shown to Ms. Kolls, Ms. Kolls testified that the syringes she identified as appearing to be the same Dr. Russell had in his hands on September 19, 2014, were not clear.

Upon cross examination, Appellants’ Counsel questioned Ms. Kolls about why she asked if Commission Counsel had “examples”. Appellants’ Counsel proceeded to question Ms. Kolls, as to having ever seen the “examples” prior to that day. Ms. Kolls responded “no I haven’t”. Later, in redirect examination of Ms. Kolls by Commission Counsel, and in an apparent attempt to remediate Ms. Kolls’ testimony, Ms. Kolls finally admitted to having seen the instruments prior to hearing. Subsequently, both Appellants’ Counsel, as well as the Administrative Law Judge, questioned Ms. Kolls specifically about when she first had seen these syringes, and the number of occasion she had seen them. Ms. Kolls continued with evasive testimony as to when she first saw them, the number of times she had seen them, as well as the identity of persons who were also present when she had observed them previously. The only conclusion that can be drawn from this was that Ms. Kolls’ testimony, and ability to make positive identification of these instruments, was either practiced or coached. In spite of Ms. Kolls untruthfulness,

and continued efforts to evade giving specific answers about having seen these instruments prior, the Administrative Law Judge, nonetheless, deemed her testimony to be credible and reliable.

IV. ADMINISTRATIVE LAW JUDGE ERRED IN FINDING THE TESTIMONY OF DR. RUSSELL, STEPHANIE BURCHETTE AND CALLIE RAMEY TO BE LESS THAN CREDIBLE AND UNRELIABLE.

In rendering his Findings of Fact, the Administrative Law Judge wasted no time in stating the version of events from Appellants' witnesses, and testimony offered through said witnesses, lacked creditability and reliability. A review of the Administrative Law Judge proposed Findings of Fact demonstrate that Dr. Russell is currently facing disciplinary proceedings that partially involve the matters at issue in this proceeding, and that exoneration of Appellants would help Dr. Russell's disciplinary case. The Administrative Law Judge further questioned the credibility of Stephanie Burchette and Callie Ramey, Dr. Russell's Veterinarian Assistants, based on the fact that both Ms. Burchette and Ms. Ramey were on Dr. Russell's payroll and were continued to be paid after Dr. Russell's summary suspension on September 20, 2014.

Further, the Administrative Law Judge, in more than one (1) of his proposed Findings, deemed the daysheet kept by Dr. Russell on September 19, 2014, as having been kept in an illogical order. Specifically, Dr. Russell, for purposes of record keeping and billing, filled out a sheet which identified the name of the trainer, name of the horse, service provided and time of service. Dr. Russell's daysheet for September 19, 2014, was stipulated into evidence prior to the commencement of hearing.

Appellants respectfully assert that, other than the entries on this daysheet for administration of Lasix, all of the entries as reflected for September 19, 2014, were in chronological order with respect to time, client, horse, and nature of service. Ms. Burchette testified that she was responsible for making entries on the daysheet after beginning her work shift at approximately 9:00 a.m. on September 19, 2014, and that the time entries for each service provided were recorded by her either at the time the service was provided, or immediately thereafter upon returning to Dr. Russell's work truck.

Ms. Burchette further testified that the entries with respect to administration of Lasix did not include a specific time, or chronological order, for the reason that said records were kept by Track Security, who accompany Dr. Russell for observation of Lasix administration. Ms. Burchette testified that the time, client, and horse identification are kept separately by Track Security. This requires Dr. Russell to only identify the trainer and horse on his daysheet, for purposes of records and billing.

Dr. Russell, Ms. Burchette, and Ms. Ramey all three (3) testified consistently as to the work activities engaged in by each upon arriving at Indiana Grand on September 19, 2014, with said testimony not only being consistent with each other, but consistent with the entries and timeline listed on Dr. Russell's daysheet. Ms. Burchette testified that, upon completion of the work for Trainer Kim Hammond, in Barn 7, which included blood draw from the horse known as Moonlight Success, in Stall 31, the services performed were recorded immediately after leaving Barn 7. The time reflected on the daysheet indicates 10:20 a.m.

With the exception of Ms. Burchette's lack of understanding as to the nature and elements of a sworn statement, as well as Ms. Ramey's mistaken reference to herself as a "vet tech", instead of a "vet helper", no other evidence was presented that would attack or impeach the credibility or trustworthiness of Dr. Russell, Ms. Burchette, or Ms. Ramey.

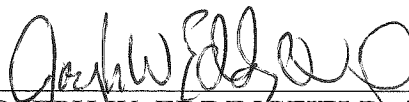
V. THE ADMINISTRATIVE LAW JUDGE ERRED IN ORDERING DISQUALIFICATION OF TAM TUFF, AND FORFEITURE OF PURSE MONEY EARNED.

No conclusions of law entered by the Administrative Law Judge in his recommended Order stated that a violation of 71 IAC 8.5-1-2(a) or (b) had occurred. This makes sense, in light of the negative test results rendered from the samples taken from Tam Tuff's blood and urine on September 19, 2014, and certified to by Industrial Laboratories. The Administrative Law Judge, therefore, has no legal authority to order the disqualification of Tam Tuff from her finish in Race 6 at Indiana Grand on September 19, 2014, or forfeiture of any purse money earned by Tam Tuff on that date.

WHEREFORE, based upon the foregoing stated exceptions, Richard Estvanko and Anthony Granitz, Petitioners-Appellants, by and through their Counsel, respectfully request this Honorable Commission to set aside the proposed Findings, Conclusions, and Recommended Order issued by the Honorable Judge Bernard Pylitt on July 28, 2015, as well as set aside and vacate the Stewards' Rulings Numbers 14694 and 14695,

respectively, and enter findings of no violations, as to either Appellant, as well as all other relief further and proper in the premises.

Respectfully submitted,



JOSEPH W. EDDINGFIELD, #8421-85
Attorney For Petitioners-Appellants, Richard
Estvanko and Anthony Granitz
84 West Market Street
P.O. Box 294
Wabash, Indiana 46992
(260) 563-1154


CERTIFICATE OF SERVICE

This is to certify that that a copy of the above and foregoing was served upon the following counsel of record this 12th day of August, 2015:

Holly Newell
Indiana Horse Racing Commission
1302 North Meridian, Suite 175
Indianapolis, IN 46202

Robin L. Babbitt
ICE MILLER LLP
One American Square, Suite 2900
Indianapolis, IN 46282

Mr. Joe Gorajec, Executive Director
Indiana Horse Racing Commission
1302 North Meridian Street, Suite 175
Indianapolis, IN 46202



JOSEPH W. EDDINGFIELD

Estvanko was summarily suspended on September 20, 2014¹.

The IHRC Stewards scheduled a hearing on the matter relating to Tam Tuff's injection for October 31, 2014. Estvanko and Granitz appeared at the hearing, and were represented by counsel Joe Eddingfield. The Stewards conducted a multi-hour hearing, heard witnesses, viewed evidence, and ultimately issued rulings and findings that concluded that Tam Tuff had been improperly injected, and that Estvanko and Granitz had accordingly violated certain IHRC regulations. Estvanko and Granitz appealed, and the matter was scheduled to be heard by the honorable Administrative Law Judge Bernard Pylitt.

ALJ Pylitt conducted a hearing on June 23 and June 24, 2015, at which time he considered witness testimony and reviewed evidence. The ALJ was able to observe the demeanor of each of the many witnesses. He was able to make inquiries of the witnesses as appropriate. He was able to closely and methodically review every piece of evidence presented. After doing so, he thoughtfully determined that Estvanko and Granitz had not met the burden of their appeal, and appropriately upheld the Stewards' rulings and conclusions.

II. RELEVANT LAW

The Indiana Horse Racing enabling statute is at Title 4, Article 31 of the Indiana Code (Pari-mutuel Wagering on Horse Races). Pursuant to the authority established in Title 4, Article 31, the IHRC has promulgated rules to regulate horse racing in Indiana. Those rules are codified at Title 71 of the Indiana Administrative Code. As an administrative agency, the IHRC also derives authority from and is restricted by the Administrative Orders and Procedures Act ("AOPA") (Indiana Code Title 4, Article 21.5).

¹ Estvanko received a hearing on the summary suspension matter on October 1, 2015, at which time the stewards upheld the summary suspension. Estvanko did not appeal the stewards' decision on the summary suspension.

In 1989, the Indiana state legislature charged the IHRC with ensuring that pari-mutuel wagering on horse races in Indiana would be conducted with the highest of standards and the greatest level of integrity. (*See* I.C. 4-31-1-2).

Pursuant to AOPA, as the appellants, Estvanko and Granitz had the burden of persuasion and the burden of moving forward with the proof of their request that the Steward's decision be set aside. (*See* I.C. 4-21.5-3-14).

After careful consideration of many hours of testimony, the ALJ utilized his considerable skills and experience (consistent with I.C. 4-21.5-3-27(d)) and determined that the substantial and reliable evidence led to the conclusion that Estvanko and Granitz had violated multiple trainer responsibility rules, and the rules prohibiting injections and unrestricted veterinarian contact with a horse within 24 hours of race time.

III. ANALYSIS

When Estvanko and Granitz applied for their Indiana Horse Racing Commission licenses in 2014, they knowingly and willingly subjected themselves to the jurisdiction of the Indiana Horse Racing Commission, and explicitly agreed to abide by the rules of pari-mutuel horse racing in Indiana. Despite accepting the privilege of licensure, the men disregarded the rules, and one horse they trained, Tam Tuff, received an impermissible race-day injection.

The trainers had the burden of moving forward with their appeal, and failed to meet their burden of establishing that the Stewards' Findings and Conclusions were not based on substantial, credible, and reliable evidence or were somehow not in accordance with Indiana law.

IV. ARGUMENT

Estvanko and Granitz timely filed objections to the ALJ's recommended order. The trainers attempt to point to a variety of factors they consider to be relevant to the Commission's review. However, the mere fact that Estvanko and Granitz disagree with ALJ Pylitt's well-

reasoned conclusions is not reason enough for the Commission to amend the ALJ's recommendation or remand the matter for further proceedings. (*See, Ind. State Board of Health Facility Adm'rs v. Werner*, 841 N.E.2d 1196 (Ind. Ct. App. 2006), *aff'd on reh'g.* at 846 N.E.2d 669 (Ind. Ct. App. 2006); any deviation from an ALJ's findings must be supported by specific reference to evidence in the record.) It is respectfully submitted that the appropriate action for the Commission to take at this point is to affirm the ALJ's recommended order.

A. Tam Tuff's Clean Test is Not Dispositive

The trainers were found to have violated of 71 IAC 8.5-1-1.5 ("Medication"), which provides in its entirety as follows:

(a) No horse participating in a race or entered in a race shall carry in its body any foreign substance as defined in 71 IAC 1.5 or IC 4-31-2, except as provided for in this rule.

(b) No substance, foreign or otherwise, shall be administered to a horse entered to race by:

- (1) injection;
- (2) jugging;
- (3) oral administration;
- (4) tube;
- (5) rectal infusion or suppository;
- (6) inhalation; or
- (7) any other means;

within twenty-four (24) hours prior to the scheduled post time for the first race except furosemide as provided for in this rule. The prohibitions in this section include, but are not limited to, injection or jugging of vitamins, electrolyte solutions, and amino acid solutions. The prohibition also includes, but is not limited to, the topical, oral, or nasal administration of compounds, such as Traileze, Vapol, Vicks vapor-rub, wind-aid, exhale ease, or containing methylsalicylate, camphor, potassium iodide, or products containing "caine" derivatives or dimethylsulfoxide (DMSO).

...

71 IAC 8.5-1-1.5 (emphasis added). The conduct proscribed by the rule is not limited to the administration of "foreign substances." Instead, it is a violation of the rules to administer any substance – "foreign or otherwise" – to a horse "within twenty-four (24) hours prior to the scheduled post time for the first race except furosemide[.]" *Id.* In other words, Estvanko and

Granitz's argument that a "foreign substance" must not have been administered because Tam Tuff's samples did not test positive for any such known substances, misses the point. A barn walker **was an eye witness** to Tam Tuff being injected with a substance (foreign or otherwise) within 24 hours of the time the filly was scheduled to race on September 19, 2014.

The misplaced contention that the Commission cannot pursue eye witness violations of 71 IAC 8.5-1-2(a) if no substance is ultimately detected in post-race samples would lead to absurd results. It would permit those responsible for the care of a horse to intentionally and openly administer substances other than furosemide to the horse just prior to a race with complete impunity, so long as the substance is not detected in a post-race test.

B. Villalta Testimony Supports the Stewards and ALJ Findings

Joel Villalta is a groom who was licensed by the Commission in 2014. He speaks very little English. So little, in fact, that he required a translator for his hearing testimony. He was manipulated into signing a false affidavit (*written in English*) presented to him by his boss (who did not speak Spanish), which attempted to establish an alibi for the veterinarian who injected Tam Tuff. However, once an Indiana court approved translator became involved, it became very clear that Villalta would not offer any sort of alibi to the veterinarian who injected Tam Tuff on September 19, 2014, just hours prior to race time. That was true because Villalta simply was not present in the stall (much less doing what he was said to be doing) as alleged by the "interested" witnesses. It is also notable that Villalta does not have an interest in the outcome of this matter.

C. Kolls testimony was Substantial, Credible, and Reliable

Estvanko and Granitz attempt to attack the testimony of Jamie Kolls, failing to note that Kolls is arguably the most disinterested person involved in this matter. Kolls was simply a woman who reported misconduct, and has not wavered from her story, despite being aggressively cross-examined on multiple occasions and being required to take the time to appear

to testify in two hearings and a deposition. Jamie Kolls **saw** Tam Tuff being injected. She never wavered in her account of what she observed in the stall of the in-today horse. Estvanko and Granitz have presented no evidence that suggests that Kolls' testimony was not substantial, credible, and reliable. Judge Pylitt and the Stewards were in the room when Kolls appeared for and provided her sworn testimony. Judge Pylitt and the Stewards were able to judge her demeanor, and make a determination of her credibility. They rightfully found her credible.

D. Russell, Burchette, Ramey Testimony Did Lack Credibility

On the flipside, Estvanko and Granitz attempt to bolster the credibility of Russell, Burchette, and Ramey. Each of these witnesses had an interest in the outcome of the proceedings. All three were involved, directly or indirectly, with the incident at issue. All three are friends and past (or present) business colleagues. All three lost work and income after the Commission Staff took action on the report that Tam Tuff had received a race-day injection. The ALJ found after scrutiny of their testimony (and in light of the substantial evidence presented by the Commission Staff) that their story had multiple holes. It simply did not add up. Accordingly, the ALJ's well-founded and thoughtful conclusions should not be cast aside.

E. Disqualification and Purse Forfeiture are Appropriate Sanctions

Purse redistributions are mandatory in the event that a rule is violated. (*See* 71 IAC 7.5-7-4). In this case, it has been established that multiple rules were violated. The race-day prohibited conduct with and injection of Tam Tuff violated some of Indiana's most important integrity rules. The violation of these rules appropriately resulted in Tam Tuff's disqualification and associated purse redistribution.

V. CONCLUSION

The ALJ's Recommended Order is both well-reasoned and amply supported by the substantial, credible and reliable evidence that he considered over the course of a two-day

hearing. ALJ Pylitt clearly provided the statutorily mandated factual support for each of his findings and conclusions.

Estvanko and Granitz's objections to the ALJ's well reasoned and fully supported Recommended Order are wholly without merit. Estvanko and Granitz have established nothing more than their disagreement with the ALJ's observations and conclusions. It is not surprising that Estvanko and Granitz are more impressed with their own flawed alibi than was the ALJ. That is certainly not a legitimate reason to disregard the thoughtful and well-reasoned Recommended Order. Accordingly, the Commission Staff respectfully requests that the Commission enter a Final Order affirming in all material respects ALJ Pylitt's Recommended Order of July 28, 2015, and that it impose the penalties recommended therein.²

Respectfully submitted,



Holly Newell, 25029-29
Counsel to Indiana Horse Racing Commission Staff
1302 North Meridian, Suite 175
Indianapolis, IN 46204

Robin L. Babbitt, 3765-49
ICE MILLER LLP
One American Square, Suite 2900
Indianapolis, IN 46282

Counsel for Indiana Horse Racing Commission Staff

² ALJ Pylitt's Recommended Order contained a few scrivener's errors, which mis-cited an article of the IHRC regulations. Specifically, paragraphs 181, 182, 183, 187, and 188 reference Article 8.5, but the rules to which Judge Pylitt refers appear in Article 5.5. Staff respectfully requests that the scrivener's errors be corrected in any Final Order issued by the Commission.

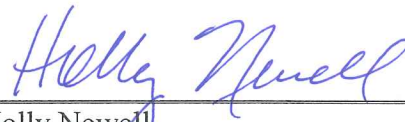
CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2015, I served the following parties with the foregoing Brief, via email and U.S. Mail, first class, postage paid, and email:

Joe Eddingfield
84 West Market Street
P.O. Box 294
Wabash, IN 46992
joe@eddingfieldlaw.com

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

Lea Ellingwood *via hand delivery*
Counsel to the IHRC
1302 North Meridian Street, Suite 175
Indianapolis, IN 46202
lellingwood@hrc.in.gov



Holly Newell
Deputy General Counsel
Indiana Horse Racing Commission