

STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHENECTADY

In the Matter of the Application
For a Judgment Pursuant to Article 78 of the
New York Civil Practice Law and Rules

LUIS PENA

Petitioner,

-against-

NEW YORK STATE GAMING COMMISSION,

Respondent.

DECISION and ORDER
Index No. 2013-0375
RJI No. 46-1-2013-0272

APPEARANCES: Meyer, Suozzi, English & Klein, PC
Anthony J. Turro, Esq. Of Counsel
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For Petitioner

Eric T. Schneiderman
Attorney General of the State of New York
Roger W. Kinsey, Esq.
Assistant Attorney General of Counsel
The Capitol
Albany, NY 12224-0341
For Respondent

REILLY, JR., J.

The petitioner herein, Louis Pena, who prior to May 24, 2012 was a licensed owner and trainer of horses in the State of New York, has commenced a special proceeding under Article 7801 and 3001 seeking to vacate the summary suspension of his license by the respondent; an Order of the Court directing the respondent to reinstate his license forthwith; an Order declaring that the respondent has violated Racing Law Section 321; and an Order of the Court declaring that by virtue of failing to issue a final Order as required by Section 321 respondent has violated petitioner's right

to due process. The proceeding was commenced by order to show cause and on February 26, 2013 this Court vacated for good cause shown the suspension of petitioner's license as a horse owner and trainer by respondent. That order vacating the suspension remains in effect to date.

The respondent has subsequently moved to dismiss the petitioner's petition asserting that judicial intervention in an ongoing administrative proceeding is impermissible, the matter is not ripe for judicial determination, that time limits in administrative matters are "discretionary only"; and that the petition fails to state a cause of action.

This Court will deny the motion to dismiss and treat the respondent's motion as its answer to the order to show cause. Although the Court recognizes that judicial interference with administrative proceedings generally requires exhaustion of administrative remedies where there is a cognitive claim of violation of due process rights, a dismissal of an action on that basis as well as on the "ripeness" argument is not justified.

The relevant facts before the Court are that the respondent commenced an administrative proceeding against petitioner seeking a revocation of his licenses as both an owner and trainer for alleged violations of its rules and regulations relating to the medication of horses. In connection therewith the respondent temporarily suspended his licenses. In a prior decision dated October 31, 2012, this Court ruled that the respondent's action in temporarily suspending the licenses was appropriate. On August 29, 30, 31, 2012 a hearing was conducted to address the underlying merits of respondent's allegations before a Hearing Officer appointed by respondent. On September 12, 2012 written summations were submitted to the Hearing Officer. The Hearing Officer has not as of the date of this Decision rendered a decision and the respondent has not made a final decision.


That the principles of procedural due process apply to State actions seeking to suspend or revoke a horse owner and trainer's license is not legally in dispute. (see, In the Matter of Lazaro Saumell v. New York Racing Association, Inc., 58 NY2d 231; Barry v. Barchi, 443 U.S. 55). The

Courts have recognized that fundamental to the concept of due process once a license has been suspended is a prompt determination without appreciable delay (see, Barry v. Barchi, supra). Respondent has asserted that the hearing has not been completed since the Hearing Officer has not rendered a decision and that they have by statute 30 days to make a determination following the completion of the hearing and that the 30 day time limit is only discretionary. The Court rejects this argument. Fundamental to the concept of a prompt hearing is a prompt determination. The reliance by the respondent upon the failure of the Hearing Officer selected by it to render a written decision when indeed a full transcript of the hearing has been available to it for several months as an excuse for its delay has resulted in a denial of due process to this petitioner. He is entitled to have the cloud of the charges determined.

The Court hereby directs the charges against the petitioner brought by the respondent to be dismissed.

THIS DECISION CONSTITUTES THE ORDER OF THE COURT.

Dated: 10/1/13


HON VINCENT J. REILLY, JR.
Supreme Court Justice



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*Vincent J. Reilly, Jr.
Justice*

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October 2, 2013

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**Re: Pena v NYS Gaming Commission
Index # 2013-0375
RJI # 46-1-2013-0272**

Dear Counselors:

Attached is my Decision and Order regarding the above referenced matter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Vincent J. Reilly Jr.", written in dark ink.

Hon. Vincent J. Reilly Jr.
Supreme Court Justice

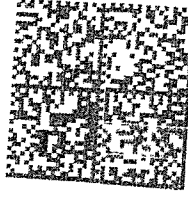
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