

No. 96, September Term, 1994

*Frank P. Lussier v. Maryland Racing Commission*

[Concerns The Validity, As Applied To A Racehorse Owner, Of A Maryland Racing Commission Regulation Which Authorizes The Commission To Impose A Monetary Penalty Not Exceeding \$5,000 Upon A Person Subject To Its Jurisdiction Who, *inter alia*, Violates The Commission's Regulations]

IN THE COURT OF APPEALS OF MARYLAND

No. 96

September Term, 1994

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FRANK P. LUSSIER

v.

MARYLAND RACING COMMISSION

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Eldridge  
Rodowsky  
Chasanow  
Karwacki  
Bell  
Raker  
McAuliffe, John F.  
(Retired, specially  
assigned),

JJ.

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Opinion by Eldridge, J.  
Bell, J., dissents.

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Filed: November 8, 1996



The single issue before us in this case concerns the validity, as applied to a racehorse owner, of a Maryland Racing Commission regulation which authorizes the Commission to impose a monetary penalty not exceeding \$5,000 upon a person subject to its jurisdiction who, *inter alia*, violates the Commission's regulations.<sup>1</sup>

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<sup>1</sup> COMAR 09.10.04.03D provides as follows:

"D. Denials of Licenses and Sanctions.

(1) The Commission may refuse to issue or renew a license, or may suspend or revoke a license issued by it, if it finds that the applicant or licensee:

(a) Has engaged in unethical or criminal conduct;

(b) Is associating or consorting with an individual who has been convicted of a crime in any jurisdiction;

(c) Is consorting or associating with, or has consorted with, a bookmaker, tout, or individual of similar pursuits;

(d) Is, or has been, operating as a bookmaker, tout, or a similar pursuit;

(e) Is not financially responsible;

(f) Has been engaged in, or attempted to engage in, any fraud or misrepresentation in connection with the racing or breeding of a horse;

(g) Assaults, or threatens to do bodily injury to, a member of the Commission or any of its employees or representatives or

(continued...)

I.

The petitioner, Frank P. Lussier, is a Vermont resident who purchased three thoroughbred racehorses in the spring of 1991. Later in 1991, the three horses were shipped to Maryland where they raced at the Laurel Race Course in three races on November 26, 1991, December 29, 1991, and December 31, 1991. Lussier was licensed by the Maryland Racing Commission as an owner of racehorses, and his license expired at the end of 1991. Lussier did not

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<sup>1</sup>(...continued)

a member or employee of an association;

(h) Has engaged in conduct detrimental to racing; or

(i) Has violated, or attempted to violate:

(i) A law or regulation in any jurisdiction, including this State, or

(ii) A condition imposed by the Commission.

(2) Instead of, or in addition to, suspending a license, the Commission may impose a fine not exceeding \$5,000.

(3) In determining the penalty to be imposed, the Commission shall consider the:

(a) Seriousness of the violation;

(b) Harm caused by the violation;

(c) Good faith or lack of good faith of the licensee; and

(d) Licensing history of the licensee."

Other regulations authorize fines or monetary penalties in various amounts, but not exceeding \$5,000, for certain specific types of misconduct. See, e.g., COMAR 09.10.03.02.

Although there has been no substantial change in the regulations pertinent to this case since 1992, the numbering of the regulations has changed. Except for quotations, we shall in this opinion use the current numbering of the regulations.

renew his Maryland license for 1992 or thereafter.<sup>2</sup>

In February 1992, the Maryland Racing Commission and the Thoroughbred Racing Protective Bureau commenced an investigation with regard to the races on November 26, December 29, and December 31, to determine whether the true owner or trainer of the three horses had been concealed and whether falsified workout reports for the three horses had been published. Upon the completion of the investigation, and after a hearing before the Commission on July 1, 1992, the Commission found that Lussier had participated in "improper acts in relation to racing in violation of COMAR 09.10.01.11(A)(3);" that Lussier transferred two of his horses "from himself to the name of another person for a purpose other than the legitimate sale of the horses in violation of COMAR 09.10.01.11(A)(14);" and that Lussier perpetrated "dishonest acts in connection with his activities, responsibilities and duties on the race track, and has engaged in conduct detrimental to racing in violation of COMAR 09.10.01.25(B)(8)." In an order issued on July 24, 1992, the Commission imposed a \$5,000 fine upon Lussier.<sup>3</sup>

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<sup>2</sup> Under COMAR 09.10.01.25 and 09.10.01.28, an owner of a racehorse is not allowed to start the horse in a race subject to the Maryland Racing Commission's jurisdiction unless that owner is licensed by the Commission. The license is issued on an annual basis, and expires on December 31st of each year.

<sup>3</sup> In light of the limited issue before this Court, we have no occasion to set forth the evidence presented at the administrative hearing regarding Lussier's misconduct. A detailed review of the evidence is contained in the comprehensive opinion of the Court of Special Appeals. See *Lussier v. Maryland Racing Comm'n*, 100 Md. (continued...)

Lussier filed an action in the Circuit Court for Baltimore County for judicial review of the Commission's decision, challenging the administrative decision on several grounds. After a hearing, the circuit court upheld the Commission's order imposing a \$5,000 fine upon Lussier. Lussier appealed to the Court of Special Appeals, again raising numerous issues. The intermediate appellate court rejected each of Lussier's contentions and affirmed. *Lussier v. Maryland Racing Comm'n*, 100 Md. App. 190, 640 A.2d 259 (1994). Lussier then filed in this Court a petition for a writ of certiorari, presenting all of the issues which he had raised in both courts below. This Court granted the petition limited to a single question, namely whether the Commission could, in accordance with its regulation, impose a fine as a sanction for misconduct absent a statutory provision expressly authorizing the imposition of a fine.

II.

Lussier argues that it is an "elementary" principle of Maryland law that administrative agencies lack the authority to fix "penalties in the absence of specific statutory authorization from the Legislature," and that "it has always been the Legislature's exclusive province to fix penalties . . . for transgressions of the law, either directly or via *specific* delegation." (Petitioner's

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<sup>3</sup>(...continued)  
App. 190, 640 A.2d 259 (1994).

brief at 10, 17). Lussier cites three cases which he claims support this alleged principle of Maryland administrative law. They are *Holy Cross Hosp. v. Health Services*, 283 Md. 677, 393 A.2d 181 (1978); *Gutwein v. Easton Publishing Co.*, 272 Md. 563, 325 A.2d 740 (1974), *cert. denied*, 420 U.S. 991, 95 S.Ct. 1427, 43 L.Ed.2d 673 (1975); and *County Council v. Investors Funding*, 270 Md. 403, 312 A.2d 225 (1973). According to Lussier, since the General Assembly did not explicitly authorize the Commission to impose a fine upon a racehorse owner, the Commission's order in this case "is a nullity" (Petitioner's brief at 10). Lussier asserts that the Commission's regulation authorizing the imposition of a fine, COMAR 09.10.04.03D, is invalid except as applied to those licensed racetrack operators who have been awarded racing dates. (Petitioner's brief at 16-18). See Maryland Code (1992, 1995 Supp.), § 11-308(d) of the Business Regulation Article (expressly authorizing the Commission to impose a monetary penalty not exceeding \$5,000 upon racetrack operators who, *inter alia*, violate the statute or the Commission's regulations).

As pointed out by the Court of Special Appeals, *Lussier v. Maryland Racing Comm'n*, *supra*, 100 Md. App. at 203-204, 640 A.2d at 266, this Court's prior cases relied upon by Lussier neither recognize nor support the assertion that, under Maryland law, an administrative agency lacks authority to impose a particular penalty unless it has explicit authorization from the Legislature

to do so. *Holy Cross Hosp. v. Health Services, supra*, was not concerned with the imposition of penalties; instead, the question in that case was whether, as a matter of statutory construction, an administrative agency's statutory authority to regulate hospital rates extended to fees charged by physicians to hospital patients. In *Gutwein v. Easton Publishing Co., supra*, 272 Md. at 576, 325 A.2d at 747, the issue was whether, under the pertinent statutory provisions and "[i]n view of the [Human Relations] Commission's legislative background," the Human Relations Commission was authorized to make an award of compensatory damages to a victim of employment discrimination. Neither a penalty nor a regulation adopted by the agency was involved in the *Gutwein* case. The portion of *County Council v. Investors Funding, supra*, 270 Md. at 441-443, 312 A.2d at 246-247, relating to monetary penalties, had nothing to do with an administrative agency's imposition of a particular type of penalty without express statutory authorization. In fact, in *Investors Funding* there was express statutory authorization for the agency to impose monetary penalties. The issue in that case concerned the validity of the *statute* in light of constitutional delegation of powers and due process principles.

Neither the Maryland cases relied on by Lussier, nor any other decisions of this Court which have been called to our attention, set forth or support a general principle that a state administrative agency lacks authority, by regulation, to fix a

civil penalty for misconduct subject to its jurisdiction unless the General Assembly has expressly authorized the agency to fix that type of penalty.

Instead, the cases invoked by Lussier, as well as numerous other decisions by this Court, indicate that, in determining whether a state administrative agency is authorized to act in a particular manner, the statutes, legislative background and policies pertinent to that agency are controlling. See, e.g., *Comptroller v. Washington Restaurant*, 339 Md. 667, 670-673, 664 A.2d 899, 900-902 (1995); *Luskin's v. Consumer Protection*, 338 Md. 188, 196-198, 657 A.2d 788, 792-793 (1995); *Fogle v. H & G Restaurant*, 337 Md. 441, 654 A.2d 449 (1995); *Christ v. Department*, 335 Md. 427, 437, 440, 644 A.2d 34, 38, 40 (1994); *McCullough v. Wittner*, 314 Md. 602, 610-612, 552 A.2d 881, 885-886 (1989); *Consumer Protection v. Consumer Pub.*, 304 Md. 731, 756-759, 501 A.2d 48, 61-63 (1985); *Holy Cross Hosp. v. Health Services*, *supra*, 283 Md. at 683-689, 393 A.2d at 184-187; *Gutwein v. Easton Publishing Co.*, *supra*, 272 Md. at 575-576, 325 A.2d at 746-747. Moreover, with regard to the validity of a regulation promulgated by an administrative agency, the governing standard is whether the regulation is "`consistent with the letter and spirit of the law under which the agency acts.'" *Christ v. Department*, *supra*, 335 Md. at 437, 644 A.2d at 38, quoting *Department of Transportation v. Armacost*, 311 Md. 64, 74, 532 A.2d 1056, 1061 (1987). See also

*Fogle v. H & G Restaurant, supra*, 337 Md. at 453, 654 A.2d at 455, and cases there cited.

III.

Turning to the statutes applicable to the Maryland Racing Commission, title 11, subtitle 2, of the Business Regulation Article of the Maryland Code establishes the Commission, provides for its membership and staff, and sets forth generally the authority of the Commission. Instead of particularizing various powers of the Commission with regard to racehorse owners, trainers, jockeys, and others involved in Maryland racing, the statutory provisions, in § 11-210, broadly authorize the Commission to "adopt regulations . . . to govern racing and betting on racing in the State," and then specify four types of regulations which the Commission may not adopt. Thus, § 11-210 of the Business Regulation Article states in relevant part as follows:

**"§ 11-210. Regulatory power of Commission.**

(a) *In general.* - Except as provided in subsection (b) of this section, the Commission may:

(1) adopt regulations and conditions to govern racing and betting on racing in the State . . .

(b) *Prohibited regulations.* - The Commission may not adopt regulations that allow:

(1) racing a breed of horse not now authorized by law; or

(2) holding currently unauthorized:

(i) intertrack betting;

(ii) off-track betting; or

(iii) telephone betting other than telephone account betting."

This Court has consistently held that, where the Legislature has delegated such broad authority to a state administrative agency to promulgate regulations in an area, the agency's regulations are valid under the statute if they do not contradict the statutory language or purpose. We have repeatedly rejected the argument, similar to that made by Lussier here, that the Legislature was required expressly or explicitly to authorize the particular regulatory action. Recently in *Christ v. Department, supra*, 335 Md. at 437-439, 644 A.2d at 38-39, in upholding a Department of Natural Resources regulation prohibiting persons under the age of 14 from operating certain types of watercraft, we explained (335 Md. at 437-438, 644 A.2d at 39):

"In the State Boat Act, . . . the General Assembly broadly granted to the Department the authority to adopt regulations governing the `operations of any vessels' which are subject to the Act. In numerous situations where the General Assembly has delegated similar broad power to an administrative agency to adopt legislative rules or regulations in a particular area, this Court has upheld the agency's rules or regulations as long as they did not contradict the language or purpose of the statute.

"For example, in *Jacobson v. Md. Racing Comm'n*, 261 Md. 180, 186, 274 A.2d 102, 104-105 (1971), where the pertinent statute gave the Racing Commission the `full power to prescribe rules, regulations and conditions under which all horse races shall be conducted,' the contention that the legislative delegation of power did not reach a rule regulating the transfer of race horses was characterized by this Court as an argument

which `approaches the frivolous.'"

After reviewing numerous other cases in this Court upholding various types of regulations under broad delegations of authority to administrative agencies, we went on in *Christ* to reject an argument like that advanced by Lussier in the present case (335 Md. at 439, 644 A.2d at 39):

"The crux of the plaintiff's argument concerning absence of statutory authority is that `there is no specific delegation of authority by the General Assembly to the Department permitting the Department to promulgate regulations which *prohibit* the use of vessels by an entire class of citizens of the State.' (Plaintiff's brief at 10). As the above-cited cases demonstrate, however, such specificity is not required. The broad authority to promulgate `regulations governing the . . . operations of any vessels' plainly encompasses a regulation prohibiting the operation of certain motor vessels by persons under 14."

*See Fogle v. H & G Restaurant, supra*, 337 Md. at 455, 654 A.2d at 456 (in upholding an administrative regulation prohibiting smoking in most workplaces, even though the statute did not expressly address the matter, this Court pointed out "that courts should generally defer to agencies' decisions in promulgating new regulations because they presumably make rules based upon their expertise in a particular field").

Similarly, the broad authority granted by the Legislature to the Maryland Racing Commission to promulgate regulations "to govern

racing and betting on racing" plainly encompasses a regulation authorizing the imposition of a monetary penalty, not exceeding \$5,000, upon a racehorse owner who engaged in Lussier's deceptive misconduct in connection with three races at the Laurel Race Course. The regulation in no manner contradicts the language of the statutes relating to the Commission.

Moreover, the regulation authorizing the imposition of a fine is entirely in accord with the statutory purpose. We have often stated that "[t]he Legislature's purpose in granting to the Racing Commission the authority to promulgate rules was to assure that horse races in Maryland are `conducted fairly, decently and clean[ly],'" *Heft v. Md. Racing Comm'n*, 323 Md. 257, 263-264, 592 A.2d 1110, 1113 (1991), quoting *Mahoney v. Byers*, 187 Md. 81, 84, 48 A.2d 600, 602 (1946). The "Commission performs an active role of policy formation in order to ensure the integrity of horse racing in this State." *Maryland Racing Com'n v. Castrenze*, 335 Md. 284, 294, 643 A.2d 412, 416-417 (1994). See *Greenfeld v. Maryland Jockey Club*, 190 Md. 96, 105, 57 A.2d 335, 338 (1948) (one of purposes of the statute and regulations was to insure that "[t]he law protects bettors against fraud").

If we were to accept Lussier's argument that the Maryland Racing Commission is powerless to impose any penalty or sanction without express statutory authority relating to that type of penalty, then racehorse owners, trainers, jockeys and others could

commit numerous deceptions and frauds upon bettors and the public, and the Commission could do little about it. The statutory purpose requires that the Commission be able to sanction misconduct in connection with racing. The challenged regulation is, therefore, clearly consistent with the statutory purpose of insuring the integrity of racing and protecting the public from fraud.

As the General Assembly has delegated broad power to the Maryland Racing Commission to adopt regulations "to govern racing and betting on racing in the State," and as the regulation providing for the imposition of a monetary penalty does not contradict the statutory language or purpose, the regulation is statutorily authorized under a consistent line of this Court's decisions dealing with the regulatory authority of state administrative agencies.

#### IV.

Furthermore, the history, nature and rationale of the regulatory scheme governing horse racing in this State, as well as actions by the General Assembly and opinions by this Court, confirm the validity of the regulation authorizing the imposition of a fine upon racehorse owners, trainers, jockeys, etc., engaging in misconduct.

Prior to 1920, the licensing and regulation of horse racing and betting on horse races in Maryland was accomplished on a county-by-county basis. In a few jurisdictions, local racing commissions were created to license and regulate horse racing. In

most counties, the circuit courts issued licenses. Much of the regulation was accomplished by statutes with criminal sanctions enforced by the state's attorney for each county. For a review of the pre-1920 licensing and regulation of horse racing, see, e.g., *Nolan v. State*, 157 Md. 332, 146 A. 268 (1929); *Close v. Southern Md. Agr. Asso.*, 134 Md. 629, 108 A. 209 (1919); *Agri. Soc. Montgomery Co. v. State*, 130 Md. 474, 101 A. 139 (1917); *Clark v. Harford Agri. & Breed. Asso.*, 118 Md. 608, 85 A. 503 (1912), overruled on other grounds, *Howard County Comm. v. Westphal*, 232 Md. 334, 342, 193 A.2d 56, 611 (1963); *State v. Dycer*, 85 Md. 246, 36 A. 763 (1897).

In 1919, this Court held that the statutes providing for the licensing of horse racing by the circuit courts were unconstitutional because they imposed nonjudicial functions and duties upon the circuit courts in violation of the separation of powers requirement in Article 8 of the Maryland Declaration of Rights. *Close v. Southern Md. Agr. Asso.*, *supra*, 134 Md. 629, 108 A. 209.

In response to the *Close* case, the General Assembly in 1920 adopted an entirely new statewide scheme of licensing and regulating horse racing which has continued, largely intact, until the present time. By Ch. 273 of the Acts of 1920, the Legislature created the Maryland Racing Commission as a state agency, whose members were appointed by the Governor, and whose jurisdiction encompassed "any meeting within the State of Maryland whereat horse

racing shall be permitted for any stake, purse or reward." Ch. 273 of the Acts of 1920, § 1, subsection 1. The 1920 statute contained somewhat detailed provisions with regard to the licensing and regulation of "[a]ny person or persons, association or corporation desiring to conduct racing within the State of Maryland," *id.*, subsection 7. Apart from the provisions concerning racetrack owners or operators who conducted racing, however, the 1920 statute broadly stated that the "Racing Commission shall have full power to prescribe rules, regulations and conditions under which all horse-races shall be conducted within the State of Maryland. Said Commission may make rules governing, restricting or regulating betting on such races," *id.*, subsection 11.

As the 1920 statute did not expressly authorize the Maryland Racing Commission to license and regulate racehorse owners, trainers, jockeys, etc., in 1921 the Attorney General was specifically asked whether the Commission was authorized to license trainers and jockeys. Judge Motz for the Court of Special Appeals in the present case summarized the Attorney General's response as follows (*Lussier v. Maryland Racing Comm'n, supra*, 100 Md. App. at 205-206, 640 A.2d at 267):

"In 1921, the Attorney General was asked whether the above quoted general powers permitted the Commission to require that jockeys and trainers be licensed. 6 *Opp. Att'y Gen.* at 480. In concluding that licensing of jockeys and trainers was within the scope of authority granted the Commission, the Attorney

General specifically recognized that 'no control over them [was] given the Commission by any express provision in the [Act],' *id.* at 481, and that very few of the Commission's express statutory powers dealt with 'the regulation of racing itself.' *Id.* at 480. The Attorney General noted that the reason for this was that the legislature 'realized that the formulation of adequate, practical and satisfactory regulations [governing those involved in racing itself] involved a knowledge of racing conditions which the General Assembly did not possess, and which could only be acquired by a careful study of racing, and of the many problems connected therewith.' *Id.*"

The Court of Special Appeals went on to point out that the 1921 Attorney General's opinion

"concluded that even though the Commission was given no express statutory control over, let alone power to license, jockeys and trainers, the General Assembly intended that it have this power. He reasoned:

'There can be no full and complete control of racing on the part of the Commission, unless it controls those upon whose skill and honesty the outcome of the race so largely depends. All other regulations, rules and conditions prescribed by the Commission for the purpose of securing clean racing and elevating the standards by which racing is to be conducted in Maryland could be nullified by dishonest and purchasable jockeys and trainers. . . . I do not believe, . . . that the Legislature intended that jockeys and trainers, whose probity is so essential a feature of clean racing, should be entirely beyond the control of the Commission. . . . [The Act was] clearly designed to give the Commission *broad and*

*sweeping powers of control and regulation of racing, and I am of the opinion that, in spite of the [limited] authorization expressly conferred therein, the Commission possess practically unlimited power to pass, promulgate and enforce such rules and regulations actually dealing with the control of racing as in the judgment of the Commission appear to be desirable and necessary.*

*Id.* at 481-82 (emphasis added). Thus, since the General Assembly had given the Commission 'full power' to regulate horseracing, the Attorney General found that the Commission could not do so without the ability to 'full[y] and complete[ly]' control 'those upon whose honesty and skill the outcome of races depended.' *Id.* 480-81."

With regard to the 1921 opinion of the Attorney General taking the position that the Racing Commission's authority extended to racehorse owners, trainers, jockeys, and others not expressly covered by the statutory language, this Court in *Mahoney v. Byers*, *supra*, 187 Md. at 84-85, 48 A.2d at 602, stated:

"At the outset it may be stated that under the Act of 1920, Chapter 273, Article 78B, Code 1939, which created the Maryland Racing Commission, it has power and authority to promulgate reasonable rules to govern the racing of horses. It may make such rules regulating the conduct of trainers, jockeys, owners, and generally regulate all matters pertaining to horse racing, in order that they may be conducted fairly, decently and clean[ly] but may not revoke a license except for cause. 6 *Opinions of Attorney General* 480; 11, 273; 24, 662.

"These decisions of the Attorneys General have governed the Commission for a long time,

and Attorney General Armstrong's decision was rendered shortly after the passage of the Act. We see no reason to alter or disturb these decisions, long applied. *Popham v. Conservation Commission*, 186 Md. 62, 46 A.2d 184; *Baltimore City v. Machen*, 132 Md. 618, 104 A. 175."

As previously mentioned, the basic scheme of the 1920 statute has continued until the present time. Under Maryland Code (1992, 1995 Supp.), title 11 of the Business Regulation Article, the General Assembly has legislated in detail with respect to those licensees who hold race meetings in Maryland, *i.e.*, the owners or operators of race courses. See, *e.g.*, §§ 11-301 through 11-320, 11-501 through 11-526, 11-601 through 11-620, 11-701 through 11-704, 11-801 through 11-812, and 11-1001 of the Business Regulation Article. Thus, the Maryland Racing Commission is expressly authorized by statute to grant or deny licenses to those desiring to hold race meetings, to "suspend or revoke a license" to hold a race meeting, or to "impose a penalty not exceeding \$5,000 for each racing day" that the licensee holding a race meeting is in violation of the statute or a Commission regulation or a condition set by the Commission.<sup>4</sup>

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<sup>4</sup> Section 11-308 of the Business Regulation Article states as follows:

**"11-308. Denials, reprimands, suspensions, and revocations - Grounds; penalty.**

(a) *In general.* - Subject to the hearing provisions of §§ 11-309 and 11-310 of this

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<sup>4</sup>(...continued)

subtitle, the Commission may deny a license to an applicant or discipline a licensee in accordance with this section.

(b) *Denials.* - The Commission may deny a license to any applicant for any reason that the Commission considers sufficient.

(c) *Reprimands, suspensions, and revocations.* - (1) The Commission may reprimand any licensee or suspend or revoke a license if the licensee violates:

- (i) this title;
- (ii) a regulation adopted under this title; or
- (iii) a condition set by the Commission.

(2) The Commission shall suspend or revoke a license if the applicant or licensee fails to:

- (i) keep records and make reports of ownership of stock that are required under § 11-314 of this subtitle; or
- (ii) make a reasonable effort to get affidavits required under § 11-314(b) and (c) of this subtitle.

(d) *Penalty.* - (1) The Commission may impose a penalty not exceeding \$5,000 for each racing day that the licensee is in violation of subsection (c) of this section:

- (i) instead of suspending or revoking a license under subsection (c)(1) of this section; and
- (ii) in addition to suspending or revoking a license under subsection (c)(2) of this section.

(2) To determine the amount of the penalty imposed under paragraph (1) of this subsection, the Commission shall consider:

- (i) the seriousness of the violation;
- (ii) the harm caused by the violation; and
- (iii) the good faith or lack of good faith of the licensee.

(3) A penalty imposed on a licensee

(continued...)

Nevertheless, with regard to other persons involved in Maryland racing and subject to the Commission's jurisdiction, such as racehorse owners, trainers, jockeys, grooms, etc., the statutory provisions largely remain silent. There are no statutory sections, comparable to those cited above, relating to racehorse owners, trainers or jockeys. Instead, the General Assembly has simply granted to the Commission the broad authority to regulate racing in Maryland, and has specified a few areas which are beyond the Commission's authority to adopt regulations.

In accordance with this statutory scheme, and the 1921 Attorney General's opinion, the Maryland Racing Commission since 1921 has adopted regulations governing racehorse owners, trainers, jockeys, and others which, to the extent that is relevant, parallel the statutory provisions concerning racetrack operators. Thus, the regulation at issue in the present case, COMAR 09.10.04.03D, providing for the suspension or revocation of licenses, or the imposition of a fine not exceeding \$5,000, with respect to those engaging in specified types of misconduct, parallels § 11-308 of the Business Regulation Article which provides for suspensions or

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<sup>4</sup>(...continued)

shall be paid from the licensee's share of the takeout."

For purposes of § 11-308, a "[l]icensee' means a person who has been awarded racing days for the current calendar year." § 11-101(h) of the Business Regulation Article. See also § 11-302 of the same Article (indicating that a licensee is a "person [who] holds a race meeting in the State. . .").

revocations of licenses, or monetary penalties up to \$5,000, of racetrack operators who engage in specified types of misconduct.

Moreover, the authority to impose a fine upon racehorse owners, trainers, jockeys, etc., has been set forth in the Commission's regulations consistently since the first regulations in 1921. Thus, the 1921 regulations permitted stewards to suspend the licenses of or impose a fine not exceeding \$200 upon "[o]wners, trainers, jockeys, grooms, and other persons attendant on horses. . . ." 1921 Rules of Racing, Rules 24 and 27. Furthermore, if the maximum of \$200 was deemed insufficient, the stewards could so advise the Commission which could impose a higher penalty. *Id.*, Rule 27. Consequently, the Commission's authority under the statute, to impose a monetary penalty upon racehorse owners and others guilty of misconduct, is supported by the long and consistent administrative construction of the statute. The General Assembly has not, over the past 75 years, changed that administrative construction of the statute.<sup>5</sup> See, e.g., *Md. Classified*

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<sup>5</sup> The General Assembly has clearly been aware of the Maryland Racing Commission's regulation authorizing the imposition of fines upon racehorse owners, jockeys, trainers, and others, and has legislated with respect to those fines. See, e.g., Ch 786 of the Acts of 1947, authorizing the Commission to establish "the Relief Fund of the Maryland Racing Commission," referring in both the title and the preamble to the "fines and [monetary] penalties . . . collected from jockeys, trainers, owners and others," and providing that such fines should continue to be paid into the Relief Fund.

See also the Department of Fiscal Service's Sunset Review of the Maryland Racing Commission for 1989, at 37-38, referring to the  
(continued...)

*Employees v. Governor*, 325 Md. 19, 33, 599 A.2d 91, 98 (1991) ("legislative acquiescence in a long-standing administrative construction `gives rise to a strong presumption that the interpretation is correct'"); *Morris v. Prince George's County*, 319 Md. 597, 613, 573 A.2d 1346, 1354 (1990) ("long-standing administrative construction of [the statute] and its predecessor statutes by an agency charged with administering them . . . is entitled to deference"); *Board v. Harker*, 316 Md. 683, 699, 561 A.2d 219, 227 (1989) ("the agency rule is entitled to considerable weight in determining the meaning of [the statute's] provisions"); *McCullough v. Wittner, supra*, 314 Md. at 612, 552 A.2d at 886 ("The interpretation of a statute by those officials charged with administering the statute is, of course, entitled to weight"); *Sinai Hosp. v. Dep't of Employment*, 309 Md. 28, 46, 522 A.2d 382, 391 (1987) ("the long-standing legislative acquiescence [in the administrative interpretation of the statute] gives rise to a strong presumption that the interpretation is correct"); *Balto. Gas & Elec. v. Public Serv. Comm'n*, 305 Md. 145, 161, 501 A.2d 1307, 1315 (1986) ("the contemporaneous interpretation of a statute by the agency charged with its administration is entitled to great deference, especially when the interpretation has been applied

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<sup>5</sup>(...continued)

Commission's authority to impose fines upon "general" licensees such as racehorse owners, trainers and jockeys, and commending the effectiveness of these monetary penalties.

consistently and for a long period of time"); *Consumer Protection v. Consumer Pub.*, *supra*, 304 Md. at 759, 501 A.2d at 63 ("The consistent construction of a statute by the agency responsible for administering it is entitled to considerable weight").

This Court has often pointed to the Commission's broad regulatory authority, and we have regularly upheld the application of the Commission's regulations, including the penalty provisions, to racehorse owners, trainers, jockeys and others. In *Jacobson v. Md. Racing Commission*, *supra*, 261 Md. 180, 274 A.2d 102, Jacobson was both a racehorse owner and trainer who violated a Commission regulation which prohibited an owner or trainer who had claimed a horse in a Maryland claiming race from selling it within 60 days of the claim. The Commission fined Jacobson \$2,500 for claiming a horse in a Maryland race and selling the horse in New York before the expiration of the 60-day period. Jacobson principally contended that the Commission's regulation prohibiting the sale of the claimed horse for 60 days was invalid; he argued, *inter alia*, that the Legislature had not delegated to the Commission the authority to apply its regulations to events occurring outside of Maryland. In response, Chief Judge Hammond for the Court explained the necessity for conferring broad regulatory authority upon the Commission (261 Md. at 183, 274 A.2d at 103):

"Horse racing is an endeavor and undertaking that necessarily must be the subject of intensive, extensive and minute regulation. *Green-*

*feld v. Md. Jockey Club*, 190 Md. 96, 104-105, 57 A.2d 335. It exists only because it is financed by the receipts from controlled legalized gambling which must be kept as far above suspicion as possible, not only to sustain and profit the racing fraternity but to feed substantial . . . millions to the State's revenues. Not surprisingly the legislature has given the Commission full power to control racing."

Addressing the argument that the Commission's regulation prohibiting the sale of the horse within 60 days was not authorized by the language of the statute, Chief Judge Hammond succinctly stated (261 Md. at 186, 274 A.2d at 105):

"Jacobson's argument that the legislature's delegations to the Commission of the power to regulate racing does not extend to the regulation imposed by Rule 80 approaches the frivolous, and we turn to his constitutional arguments."

Although Jacobson had not specifically challenged the Commission's authority to impose a \$2,500 fine if the regulation concerning the sale of claimed horses was valid, nevertheless this Court concluded its opinion as follows (261 Md. at 190, 274 A.2d at 107, emphasis supplied):

"We think that Jacobson had become a racing citizen of Maryland as far as the purposes and effects of the Rules are concerned and that this State acquired sufficient personal jurisdiction over him in matters of licensed racing to permit it to enjoin him by Rule 80 from selling a horse claimed in a licensed Maryland race for sixty days, and to punish him if he

*disobeyed that rule."*

For other cases recognizing the broad authority of the Maryland Racing Commission to promulgate and enforce regulations appropriate to insure the integrity of Maryland racing, see, e.g., *Maryland Racing Com'n v. Castrenze*, supra, 335 Md. at 294-295, 643 A.2d at 417 (in affirming the Commission's application of a regulation providing for reciprocal suspensions, we commented that "[t]he Racing Commission is given broad statutory authority to adopt regulations governing horse racing and betting on racing in Maryland"); *Heft v. Md. Racing Comm'n*, 323 Md. 257, 264, 592 A.2d 1110, 1113 (1991) (applying numerous Commission regulations, and pointing out that "[t]he statute and `the Commission's rules and regulations provide a comprehensive scheme for the regulation of horse racing in Maryland,'" quoting *Silbert v. Ramsey*, 301 Md. 96, 105, 482 A.2d 147, 152 (1984)); *So. Md. Agri. Ass'n v. Magruder*, 198 Md. 274, 280, 81 A.2d 592, 594 (1951) ("The Maryland Racing Commission is given exceedingly wide and comprehensive regulatory powers. \* \* \* It is apparent that the Legislature deliberately imposed grave responsibility upon the Racing Commission in order that this [betting on horse races] exception to the anti-gambling laws of the State be kept within proper limits"); *Brann v. Mahoney*, 187 Md. 89, 103, 48 A.2d 605, 611 (1946) (the Racing Commission "may make rules regulating the conduct of trainers, jockeys, and owners in order that horse racing may be conducted fairly").

As discussed earlier, acceptance of Lussier's argument, that a Maryland Racing Commission regulation authorizing the Commission to impose a particular type of penalty must be expressly authorized by the statutory language, would leave the Commission in a position whereby it could promulgate regulations governing the conduct of racehorse owners, trainers, jockeys and others, but could not enforce those regulations. The statutory provisions do not expressly authorize the imposition of any particular type of sanction upon racehorse owners, trainers, jockeys, etc. The Commission's authority to suspend or revoke the licenses of racehorse owners, trainers, jockeys and others, like the authority to impose monetary penalties upon them, is based entirely upon the Commission's regulations. It is inconceivable that the General Assembly intended to grant broad authority to the Commission to regulate the conduct of these individuals, but did not intend that the Commission be able to enforce its regulations by sanctions.

Finally, even if there were some statutory basis to distinguish between the revocation or suspension of a license on the one hand, and the imposition of a monetary penalty on the other,<sup>6</sup> the inability to impose a fine would still leave the Racing Commission powerless to enforce its regulations under circumstances like those in the instant case. After the race on December 31, 1991, which was the last day before expiration of Lussier's

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<sup>6</sup> We hasten to add that no such basis in the statutory provisions has been suggested to us.

license, Lussier left Maryland and did not thereafter seek to renew his license as a racehorse owner. When his misconduct was discovered, Lussier neither possessed nor desired a Maryland license. There was nothing to revoke or suspend. Under the circumstances, the imposition of a monetary penalty was the only sanction that could be imposed upon Lussier to enforce the regulations of the Commission. We very much doubt that the Legislature intended that a racehorse owner could come into Maryland, enter his horses in Maryland races with the true names of the owner and trainer disguised, publish false workout reports, make a large sum of money by betting on his horses at the track,<sup>7</sup> and then escape any sanction for his misconduct because he did not desire to renew his Maryland license.

We conclude, in agreement with both courts below, that the Maryland Racing Commission's regulation authorizing the imposition of a reasonable fine is valid.

JUDGMENT OF THE COURT OF SPECIAL  
APPEALS AFFIRMED. PETITIONER TO  
PAY COSTS.

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<sup>7</sup> Lussier collected more than \$30,000 winnings on the three races in question.