

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HARRY F. THOMPSON, JR.,	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. 05-3098
	:	
v.	:	
	:	
F. EUGENE DIXON, as Chairman of the	:	
Pennsylvania State Horse Racing Commission	:	
(the "Commission") and Individually;	:	
BENJAMIN H. NOLT, JR., as Executive Secretary	:	
of the Commission and Individually;	:	
CORNELIUS E. UBOH, as Director of the	:	
Pennsylvania Equine Toxicology and Research	:	
Laboratory and Individually; and	:	
LAWRENCE SOMA, as Principal Investigator	:	
of the University of Pennsylvania School of	:	
Veterinary Medicine and Individually,	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, S.J.

July 26, 2005

Presently before the Court is Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunctions (Docket No. 3) and Defendants' response in opposition thereto (Docket No. 5). An Oral Argument on this matter was held on July 11, 2005. For the following reasons, this Court denies Plaintiff's Motion and dismisses this matter in accordance with the Younger abstention doctrine.

I. INTRODUCTION

On June 29, 2005, Plaintiff filed the instant Complaint alleging violations of his civil rights due to the Defendants' "summary denial" of Plaintiff's petition to re-open an

administrative proceeding regarding the suspension of his license to train thoroughbred horses. In Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiff is requesting that this Court issue an Order compelling the Defendants to reinstate his license during the pendency of this action.

II. BACKGROUND

Plaintiff's license to train thoroughbred racehorses was suspended for 315 days by the Pennsylvania State Horse Racing Commission (hereinafter "Commission") for administering Clenbuterol within 24 hours of post time to horses on five separate occasions; the suspension will be fully served by September 16, 2005. This suspension was imposed by the Commission's Board of Stewards and affirmed following a *de novo* hearing before an administrative law judge on July 31, 2003. On October 29, 2004, the Commonwealth Court of Pennsylvania affirmed the Commission's November 19, 2003 ruling. Although the record is unclear, it appears that Plaintiff did not file leave to appeal the Commonwealth Court's decision to the Pennsylvania Supreme Court.¹

On February 23, 2005, Plaintiff, while represented by previous counsel, filed suit in the Middle District of Pennsylvania alleging due process violations which allegedly occurred during the Commission hearings. On March 11, 2005, the Honorable Yvette Kane, D.J., denied Plaintiff's motion for a temporary restraining order and, subsequently, dismissed Plaintiff's cause of action.

1. The issues raised on appeal to the Commonwealth Court of Pennsylvania are not raised in the current matter before this Court.

On May 18, 2005, Plaintiff petitioned the Commission to re-open the administrative proceedings due to newly-discovered evidence. Plaintiff asserted that a scientific report had recently been published which would contradict the Commission's findings that Plaintiff had administered Clenbuterol to the horses within 24 hours of post time. On May 25, 2005, the Commission denied Plaintiff's request to reopen the proceedings citing that Plaintiff's petition was untimely under the Commission Rules and that Plaintiff appealed this matter before both Commonwealth Court of Pennsylvania and the United States District Court for the Middle District of Pennsylvania. Rather than appeal the decision of the Commission to the Commonwealth Court of Pennsylvania, Plaintiff filed the instant action with this Court alleging that the Commission's "summary denial" of this petition to reopen the administrative hearing violated Plaintiff's civil rights.

III. DISCUSSION

Pursuant to the Younger abstention doctrine,² the federal courts should abstain from exercising jurisdiction in a state administrative proceeding³ "in which important state interests are implicated, so long as the federal claimant has an opportunity to raise any constitutional claims before the administrative agency or in state-court judicial review of the agency's determination." O'Neill v. City of Philadelphia, 32 F.3d 785, 789 (3d Cir. 1994) (citing Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc., 477 U.S. 619 (1986)). The Supreme

2. Although the issue of Younger abstention was not raised by the parties, this Court may consider it *sua sponte*. O'Neill v. City of Philadelphia, 32 F.3d 785, n.1 (3d Cir. 1994).

3. The Younger abstention doctrine was initially set forth by the United States Supreme Court in the context of state criminal proceedings. O'Neill, 32 F.3d at 789 (citing Younger v. Harris, 401 U.S. 37 (1971)). The United States Supreme Court has since expanded the scope of Younger abstention doctrine to non-criminal state civil proceedings, in Huffman v. Pursue, Ltd., 420 U.S. 592 (1975), and state administrative proceedings, in Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423 (1982). O'Neill, 32 F.3d at 789.

Court set forth three requirements which must be met in order for a federal court to abstain from hearing a case over which it has jurisdiction. O’Neill, 32 F.3d at 789 (citing Middlesex County Ethics Comm. v. Garden State Bar Ass’n, 457 U.S. 423 (1982)). The three prong test requires: 1) there must be pending or ongoing state proceedings which are judicial in nature; 2) the state proceedings must implicate important state interests; and 3) the state proceedings must afford an adequate opportunity to raise any constitutional issues. O’Neill, 32 F.3d at 789 (citing Middlesex, 457 U.S. at 432).

The Supreme Court has discussed the meaning of “pending” state proceeding at length. In Huffman v. Pursue, Ltd., 420 U.S. 592, 608 (1975), the Supreme Court stated that “ a necessary concomitant of Younger is that a party . . . must exhaust his state appellate remedies before seeking relief in the District Court, unless he can bring himself within one of the exceptions specified in Younger.” In O’Neil, the Third Circuit relied on Huffman in holding that a state proceeding is deemed “pending” where a federal claimant has failed to pursue state-court judicial review of an unfavorable state administrative determination. The O’Neil court stated:

We have been given no reason why a litigant in a state administrative proceeding should be permitted to forego state-court judicial review of the agency’s decision in order to apply for relief in federal court. Rather, we find the grounds offered by the Supreme Court to support its holding in Huffman – that state appellate review of a state court judgment must be exhausted before federal court intervention is permitted – are equally persuasive when considered with respect to state-court judicial review of a state administrative determination.

O’Neil, 32 F.3d at 790 - 91.

In the current matter, the Commission denied Plaintiff’s petition to re-open the administrative hearing regarding the suspension of this license on the grounds of newly-

discovered evidence. Plaintiff elected to forego state-court judicial review of the Commission's ruling and, rather, file the instant matter in federal district court. Accordingly, federal court intervention is not permitted since state appellate review of the administrative determination has not been exhausted.

The second requirement that the proceeding implicate an important state interest need not be discussed at length. Although neither the Third Circuit nor the Pennsylvania state courts have addressed the issue, it has been widely accepted that the regulation of the horse racing industry constitutes an important state interest. Barry v. Barchi, 443 U.S. 55, 64 (finding that New York has an important interest in assuring the integrity of the racing carried on under its auspices); Maymo-Melendez v. Alvarez-Ramirez, 364 F.3d 27 (1st Cir. 2004)(applying the Younger doctrine in a matter involving the suspension of the claimant's horse racing license in Puerto Rico); Baffert v. California Horse Racing Bd., 332 F.3d 613 (9th Cir. 2003)(holding that suspension of horse racing license implicated important state interests for Younger purposes); Bongiorno v. Lalomia, 851 F.Supp. 606, 613 (D.N.J. 1994)(stating that New Jersey's regulation of the horse racing industry is an important state interest).

The third requirement may also be disposed of briefly. Abstention under Younger is only proper where the claimant is afforded an adequate opportunity to raise his constitutional claims in the state forum. The Supreme Court has held that "when a litigant has not attempted to present his federal claims in related state-court proceedings, a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." O'Neil, 32 F.3d at 792 (quoting Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 15 (1987)). In the current matter, Plaintiff did not file an appeal to the Commonwealth Court of Pennsylvania

from the Commission's decision denying Plaintiff's petition to re-open the hearings.

Accordingly, this Court properly assumes that had Plaintiff attempted to raise his federal claims in a state court proceeding, he would have been afforded an adequate remedy.

Finally, even when all prongs of the Middlesex test are satisfied, federal court intervention is permitted "in those cases where the District Court properly finds that the state proceeding is motivated by a desire to harass or is conducted in bad faith, or where the challenged statute is 'flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in [whatever] manner and against whomever an effort might be made to apply it.'" Huffman, 420 U.S. at 611. Plaintiff has failed to present any evidence upon which this Court could find that the Defendants' actions were motivated by a desire to harass or conducted in bad faith. Further, Plaintiff is not asserting that the statute is flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph, and in whether manner and against whomever an effort might be made to apply it. As such, this matter does not fall within the exceptions to the Younger abstention doctrine.

For the above stated reasons, this Court find that abstention under the Younger doctrine is proper and, accordingly, dismisses Plaintiff's cause of action. An order follows.

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BENJAMIN H. NOLT, JR., as Executive Secretary	:	
of the Commission and Individually;	:	
CORNELIUS E. UBOH, as Director of the	:	
Pennsylvania Equine Toxicology and Research	:	
Laboratory and Individually; and	:	
LAWRENCE SOMA, as Principal Investigator	:	
of the University of Pennsylvania School of	:	
Veterinary Medicine and Individually,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 26th day of July, 2005, upon consideration of Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction (Docket No. 3), Defendants' response thereto (Docket No. 5), and oral arguments presented to this Court on July 11, 2005, it is hereby **ORDERED** that Plaintiff's Motion is **DENIED**.

It is **FURTHER ORDERED** that this matter is **DISMISSED**. For the reason detailed in the accompanying Memorandum, this Court finds abstention proper under the Younger doctrine.

This case is **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, S.J.