

STEVEN A. MAIETTA,
Petitioner,
v.
NEW JERSEY RACING COMMISSION,
Respondent.

Initial Decision: December 1, 1980 Final Agency Decision: January 14, 1981

Supreme Court of New Jersey Decision Appears at: 93 *N.J.* (1983)

SYNOPSIS

Appellant sought licensure as a stable employee by the New Jersey Racing Commission. A preliminary determination was made by the Commission that appellant was ineligible for licensure as a result of two convictions relating to the possession of controlled dangerous substances. The matter was then transferred to the Office of Administrative Law and assigned to an administrative law judge.

The administrative law judge found that appellant, while the holder of a groom's license in New York State, had been indicted and convicted in New York on charges of possession of a controlled dangerous substance. The appellant had also been convicted on a similar charge in New Jersey. The judge determined, however, that the basic issue to be determined was whether appellant had demonstrated such a degree of rehabilitation so that a denial of licensure would be an abuse of discretion.

While noting that the standards to be applied when applicants with criminal convictions seek licensure from the New Jersey Racing Commission must be high, the judge found that there was no indication that they were to be insurmountable. Applying the standard of the Rehabilitated Convicted Offender's Act, the judge determined that the appellant's licensure would not contravene the public interest and that the Commission's denial of licensure in the case failed to give due consideration to the requirements of the Act. Accordingly, the judge ordered appellant's licensure.

Upon review, the New Jersey Racing Commission rejected the initial decision. It reasoned that the mere fact of a drug conviction, irrespective of its underlying circumstances or appellant's personal situation, implicated too great a risk to the integrity of the racing industry to permit the issuance of a license to anyone so convicted.

Maietta v. New Jersey Racing Commission
Cite as 7 *N.J.A.R.* 10

Matthew P. Boylan, Esq., for appellant (Lowenstein, Sandler, Brochin, Kohl, Fisher & Boylan, attorneys)

Stephen E. Brower, Esq., for respondent (John J. Degnan, Attorney General of New Jersey, attorney)

Initial Decision

WEISS, ALJ:

Stephen A. Maietta has appealed from a preliminary determination of the New Jersey Racing Commission which denied his application for a groom's license upon the ground that he had a criminal record consisting of "two narcotic convictions." In view of those convictions, the Commission cited *N.J.A.C.* 13:71-1.13 and *N.J.A.C.* 13:71-7.3 as the legal authority for its denial.

The joint exhibits introduced at the hearing revealed the following circumstances pertinent to this matter. On May 12, 1976, an indictment was returned against Maietta and one Donna A. Hilbrant by the Grand Jury of the County of Nassau, State of New York. The indictment set forth in the first count that they were in criminal possession of a controlled dangerous substance in the fifth degree, namely, ". . . ten ounces and more of a dangerous depressant, to wit: methaqualone." The indictment contained three additional counts against Maietta, including one count of criminal possession of a controlled dangerous substance in the sixth degree with intent to sell the same, and two counts of criminal possession of a controlled dangerous substance in the seventh degree. The counts related to possession of three separate controlled dangerous substances, methaqualone, amphetamine-methamphetamine and diazepam. On December 3, 1976, Maietta appeared before the County Court, Nassau County, and entered a plea of guilty to one count of criminal possession of a controlled dangerous substance in the seventh degree in full satisfaction of the indictment. On January 14, 1977, he was sentenced to probation for a period of three years.

The record next reveals that Maietta also had been named as a defendant in Indictment No. 646 returned in Union County, New Jersey, wherein he was charged with one count of engaging in a conspiracy to distribute, possess with intent to distribute and possession of dangerous substances. On May 26, 1977, he was sentenced by the Union County Court following a plea of guilty to pay a fine of \$500 and to serve 300 days in the Union County Jail. However, the sentence then provided for a suspension of the custodial term and the

*Maietta v. New Jersey Racing Commission*Cite as 7 *N.J.A.R.* 10

placement of Maietta on probation for one year and to run concurrently with the probation then being served in the State of New York. An attachment to the sentencing order noted that his role in the crime “. . . was minor in nature, in view of the overall circumstances.”

On December 20, 1977, a Certificate of Relief from Disabilities was issued by the Nassau County Court pertaining to Maietta's conviction in New York State. The certificate relieved him of all disabilities and bars to employment, excluding the right to be eligible for public office. By letter dated September 14, 1978, the New York State Racing and Wagering Board advised Maietta that since he had served a satisfactory rehabilitation period and maintained a proper and continued interest in racing he was being licensed by the State of New York as a groom in the Harness Racing Division. On April 24, 1979, a letter was issued to Maietta from the Probation Department, Nassau County, stating that he had successfully completed his period of probation and was discharged therefrom, effective that date.

On May 8, 1980, the Director of Probation, Nassau County, sent a letter to the Racing Commission indicating that Maietta had been discharged from probation prior to the expiration of the full probationary term, that he had adjusted well, and that he had obtained a Certificate of Relief from Disabilities which removed a barrier to his obtaining a New York State Groom and Training License. The letter also observed that Maietta's rehabilitative efforts had been successful and from all indications his proposed New Jersey employment “. . . will not be incompatible with the welfare of society.” By letter dated May 14, 1980, the chief probation officer of Union County advised the Racing Commission that Maietta had made “a very satisfactory adjustment while on probation” and that he has “indicated his ability to conform and abide by the rules of our society and has rehabilitated himself to a point where it is not likely he will become reinvolved with the law in any area.” The chief concluded that Maietta's intended employment did not seem to him to be “incompatible with the welfare of society.”

As indicated above, the Racing Commission determined to deny the license application in reliance upon a regulation which provides that a license may be refused to any person who, among other misdeeds, has been convicted of a crime in any jurisdiction. *See, N.J.A.C. 13:71-7.3.* The Commission's denial also cited *N.J.A.C. 13:71-1.13* which prohibits persons from coming upon the grounds of any association who have been convicted for illegal possession, sale or giving away of narcotics. The Commission could have, but did not refer to an addi-

Maietta v. New Jersey Racing Commission
Cite as 7 *N.J.A.R.* 10

tional regulation, *N.J.A.C.* 13:71-23.18, which specifically provides that a license application shall be denied to any person who has been convicted of possession or use of narcotics.

The only oral testimony presented at the hearing was that of the appellant himself. Maietta stated that he presently lives in Westbury, Long Island, with his wife and has resided there for the past five years. He said that although his arrest and conviction were for possession of controlled dangerous substances, they were not in any way connected to horse racing. He stressed that he cooperated with the law enforcement authorities and pled guilty. He stressed his early discharge from probation and his having been licensed by the State of New York in 1978 despite his convictions. He stated that he does not now use drugs nor has he had any further adverse involvement with the law. He presently is employed as a groom and also as a driver.

The basic issue to be determined is whether or not Maietta has demonstrated such a degree of rehabilitation that the action by the Racing Commission in denying his application for licensure can be said to constitute an abuse of discretion in the exercise of its regulatory authority. Apropos in this respect is, of course, the Rehabilitated Convicted Offenders Act, *N.J.S.A.* 2A:168A-1 *et seq.*

In the case of *Cordero v. New Jersey Racing Commission*, OAL DKT. No. RAC 2245-79, an initial decision by Judge Thomas E. Clancy, dated October 18, 1979, was affirmed by the Racing Commission. That case, too, involved application for a groom's license and a Racing Commission denial on the basis of conviction for a narcotics offense (distribution of heroin). In *Cordero*, as here, appellant had pled guilty to the narcotics offense and had successfully completed a non-custodial sentence to three years of probation. Moreover, it was not disputed that he had performed effectively as an informant for the United States Department of Justice, and the Essex County Senior Probation Officer observed that he had been "completely rehabilitated." Moreover, in *Cordero*, as in the case *sub judice*, the applicant had been issued a groom's license by the State of New York, was a member of the United States Trotting Association and had not been in any further difficulty with the law since his sentencing.

Judge Clancy examined the provisions of *N.J.S.A.* 2A:168A-1 *et seq.*, the Rehabilitated Convicted Offenders Act (hereafter "RCOA") and its relation to the described circumstances. He noted that the denial of a license was based upon pertinent Commission regulations which authorized such action where there has been a criminal conviction, particularly a conviction involving drugs, and

Maietta v. New Jersey Racing Commission
Cite as 7 *N.J.A.R.* 10

that the Commission took the position that the conviction did relate adversely to the occupation, trade or business for which licensure was sought.

He ultimately decided that the Commission had acted properly since a conviction for distribution of heroin related adversely to the occupation, trade or business of racing, especially when viewed in light of the strong legislative policy of strict and close regulation which is articulated in the racing statutes.

My review of the *Cordero* initial decision leads me to conclude that there are important distinctions between the facts in that case and the instant one. For example, in *Cordero*, the substance involved was heroin, whereas in the matter *sub judice*, the substances were amphetamine-methamphetamine, methaqualone, and diazepam. Also, in *Cordero*, the precise activity for which the applicant was convicted was *the distribution* of heroin, where Maietta's conviction was based upon a less active course of conduct, *possession*. Indeed, the suspension of the custodial portion of his sentence by the Union County Court stemmed from the fact, as noted above, that Maietta's role was perceived to be “. . . minor in nature, in view of the overall circumstances.” Furthermore, in *Cordero*, the probation officer's letter made no specific reference to the relationship of the degree or rehabilitation to the proposed employment, a specific requirement of RCOA. *See, N.J.S.A.* 2A:168A-3. Such language is present in Maietta's case.

In addition to the *Cordero* case, which is presently pending on appeal, the Racing Commission also cites *Bonacorsa v. New Jersey Racing Commission*, (N.J. App. Div., Jan. 26, 1979, A5042-76) (unreported). The court in that case held that the mere presentation of a Certificate of Rehabilitation by a chief probation officer under *N.J.S.A.* 2A:168A-3 does not automatically preclude consideration of the conduct underlying the conviction when a licensing authority is passing upon an applicant's qualifications, particularly with reference to licensure by the New Jersey Racing Commission where a close inquiry must be made regarding the relationship to the criminal conduct to the trade, profession or business for which licensure is sought.

The language of RCOA itself provides guidance in determining whether or not the particular convictions which have been raised as a bar to licensure in this case relate adversely to the occupation involved. Indeed, it directs the licensing authority to explain in writing how certain specified factors, or any other factors, do so relate to the license being sought. As noted by Judge Clancy in his initial decision

Maietta v. New Jersey Racing Commission
Cite as 7 N.J.A.R. 10

in the *Cordero* case, the absence of such a writing by the Racing Commission should not be deemed a fatal defect provided the applicant and the Commission have had full opportunity to address themselves to the statutory factors and an opportunity, as well, to present substantive evidence concerning them at a hearing. For present purposes, I will assume that to be a correct view of the statute.

In this case, the record consisted solely of the testimony of the appellant, together with the joint exhibits. The *only* item in evidence articulating the Racing Commission's position revealed that its denial of the application ". . . is based on his criminal record in having two narcotic convictions." At the hearing, counsel for the Racing Commission urged that those two convictions, standing alone, were a valid basis for denial of a license since a groom is in daily contact with horses. However, there was no independent evidence presented to show that the crime of possession of the controlled dangerous substances involved in this case has any particular relationship to or special connection with the nature and duties of a groom. In *Cordero*, Judge Clancy felt that distribution (as opposed to use or possession) of heroin was conduct that presented too great a risk for licensure as a groom because of the opportunity such an employee has for tampering. Presumably, he meant that there was a demonstrated propensity for drug involvement of any sort. The undersigned is not at all sure that such a conclusion necessarily follows. Judge Clancy also felt that permitting a person convicted of such a crime to be employed in racing posed too great a potential for diminishing public confidence in racing and threatened the integrity of the industry. That may be; however, it does not necessarily aid in analyzing the facts in Maietta's case.

The Legislature has provided eight specific factors to be considered when a licensing agent acts under RCOA. They will be discussed in serial form:

- (a) "*The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying*"

Clearly the business of racing is one which is entitled to the application of extracautious activities. The letter and spirit of the racing statutes direct that this be done and the regulations contain a detailed apparatus designed to implement the legislative scheme. If any doubt exists, the decisions of our courts have stressed the particular need for strict regulation. See, *Dare v. State*, 159 N.J. Super. 533 (App. Div. 1978); *Jersey Downs, Inc. v. Division of New Jersey Racing Commission*, 102 N.J. Super. 451 (App. Div. 1968); *Garfine v. Monmouth Park Jockey Club*, 29 N.J. 47 (1959). In short, the racing industry is deserving of extra concern in matters involving those who seek the privileges of licensure.

Maietta v. New Jersey Racing Commission
Cite as 7 N.J.A.R. 10

Thus, in analyzing the first factor set forth in RCOA there is a substantial burden placed upon an applicant for licensure who comes burdened with a criminal record or narcotic conviction.

(b) *"Nature and seriousness of the crime"*

In this case the applicant was convicted in two separate states for drug-related offenses. The crimes for which he was convicted were, in abstract, serious in nature. However, the fact that the particular controlled dangerous substance were not heroin, in my view, presents a substantial distinguishing factor from *Cordero*. Also, the possession of the particular controlled dangerous substance here involved posed a less substantial threat to the public interest than did the distribution involved in *Cordero*. So too, the seriousness of the crimes is tempered by a consideration of the particular sentences that were imposed.

(c) *"Circumstances under which the crime occurred"*

There is little in the record to reveal the particular circumstances involved. The Union County indictment merely refers in general terms to participation by Maietta in the use of a telephone to engage in conversations relating to illegal conduct. No details beyond that were provided. However, it should again be noted that the New Jersey sentence took into account the fact that Maietta's role ". . . was minor in nature, in view of the overall circumstances."

(d) *"Date of the crime"*

The events which led to Maietta's dual convictions took place in the latter part of 1975, approximately five years ago. Whether or not this is "recent" or "stale" insofar as the statutory factor is concerned is very much a subjective determination. I believe that a five-year hiatus between the criminal conduct and the licensing decision is substantial insofar as this case is concerned. While the time involved in *Cordero* was greater, as the arrest in that case took place in 1971, nearly eight years before the date of the initial decision recommending license denial, the two cases simply are not the same.

(e) *"Age of the person when the crime was committed"*

The testimony at the hearing revealed that Maietta was 23 years old when his crimes took place. In my opinion, this does not aid him since he was sufficiently old enough to have been expected to shoulder the responsibility to conduct himself in a more respectable, law-abiding manner.

(f) *"Whether the crime was an isolated or repeated incident"*

The facts in the record would appear to indicate that Maietta had no previous problems with the law nor has had any subsequent difficulties. Clearly, his conduct was isolated.

(g) *"Social conditions which may have contributed to the crime"*

There was no evidence with respect to this particular factor.

(h) *"Any evidence of rehabilitation, including good conduct in prison or in the community, counselling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs or the recommendation of persons who have or have had the applicant under their supervision"*

Maietta v. New Jersey Racing Commission
Cite as 7 N.J.A.R. 10

This particular factor is of special relevance to the instant case. Counsel for Maietta urges that the evidence of his rehabilitation is overwhelming as exemplified by:

- (a) express statements from probation officers in both New York and New Jersey;
- (b) the fact of his licensure by the State of New York; and
- (c) his functioning as a responsible member of society and in racing for the past two years with New York licensure. It should also be noted that the probationary period was somewhat shortened in his case. Unlike *Cordero*, where the record was silent, the Director of Probation of Nassau County specifically observed in May 1980 that from Maietta's record it appeared that he is "... capable of exercising self-discipline and able to conform to the norms of our society. Every indication exists that Mr. Maietta's rehabilitative efforts have been successful, and that his engaging in the proposed employment will not be incompatible with the welfare of society." So too, the Chief Probation Officer of Union County commented in May 1980 that Maietta had made a very satisfactory adjustment while on probation, had complied fully with the conditions, worked steadily, reported as instructed, avoided any conflict with law enforcement authorities and, overall, "... has indicated his ability to conform and abide by the rules of our society and has rehabilitated himself to a point where it is not likely he will become reinolved with the law in any area."

Based on the evidence comprising the entire record, I am unable to conclude as did the Racing Commission that simply because Maietta would be in contact with horses on a daily basis that the crimes for which he was convicted inexorably involve an adverse relationship to his proposed employment as a groom. While convictions for drug offenses certainly are of special concern in the racing industry, as well as in many other fields which are closely supervised, it would appear that the Racing Commission in this case did not make any special effort, if at all, to analyze the statutory factors contained in RCOA and their relationship to the particular circumstances of Maietta's case. Rather, what the Racing Commission appears to have done is to deny the license application strictly on the basis of the convictions themselves without consideration of the surrounding circumstances. Since entering his pleas of guilty and his sentencing, Maietta has demonstrated a fine rehabilitation record. The fact that senior probation officials in two states have specifically so stated is significant.

Accordingly, based upon my independent review of the entire record in this matter, and taking fully into consideration the spirit and intent of RCOA, and after having had an opportunity to observe the applicant offering testimony, it is my opinion that the grant of a license to Maietta as a groom would not contravene the public interest. Since the preliminary determination by the Racing Commission

Maietta v. New Jersey Racing Commission
Cite as 7 *N.J.A.R.* 10

did not take into account the several statutory factors contained in RCOA, it cannot be sustained.

I specifically find, that in view of the nature of the crimes for which Maietta was convicted, the circumstances of his involvement, the date of the criminal conduct, the isolated nature of the incident and the clear evidence of his rehabilitation, his license application is appropriate and should have been granted. I further find, from the evidence before me, that Maietta has demonstrated an ability to comply with the norms and requirements of society and that his licensure would not be incompatible with society's welfare nor with the welfare of the racing industry in particular.

There should be no doubt that the standards to be applied when applicants with criminal convictions seek licensure from the New Jersey Racing Commission must be quite high. However, I find no indication from the statutes nor from the regulations that they are intended to be insurmountable. Accordingly, based upon the foregoing findings, I **CONCLUDE** that the Commission's denial of the license application in this case failed to give due consideration to the requirements of RCOA. Accordingly, the Commission's preliminary determination should be set aside and a groom's license issued to Steven A. Maietta.

I, therefore, **ORDER** that the petitioner be granted a groom's license for the reasons herein stated.

This initial decision may be affirmed, modified, or rejected by the New Jersey Racing Commission, which by law is empowered to make the final decision in this matter.

**FINAL DECISION BY THE NEW JERSEY RACING
COMMISSION:**

Appellant seeks to be licensed by the New Jersey Racing Commission as a stable employee. A preliminary determination was made by the Commission that appellant was ineligible for licensure as a result of two convictions relating to the possession of controlled dangerous substances. The Commission deemed the matter to be a contested case and forwarded the proceedings to the Office of Administrative Law. A hearing was conducted before Steven G. Weiss, A.L.J. and an initial decision filed with the Commission with respect to Mr. Maietta's application for licensure, as well as Exceptions and Objections thereto by Stephen Brower, Esq.

The New Jersey Racing Commission adopts by reference the Findings of Fact made by Administrative Law Judge Weiss as contained in his initial decision filed with this agency.

Maietta v. New Jersey Racing Commission
Cite as 7 *N.J.A.R.* 10

WHEREFORE, we conclude that Mr. Maietta's criminal record consisting of convictions in 1976 and 1977 for controlled dangerous substance offenses as described in Judge Weiss' Initial Decision adversely relates to the occupation of stable employee in view of the strong legislative policy of strict regulation of pari-mutuel wagering as contained in *N.J.S.A. 5:5-22 et seq.*

The license sought by Mr. Maietta would place him in the restricted stable area of licensed race tracks operating in the State of New Jersey. Appellant would have ready access to racing animals whose care and custody he would be entrusted with. The Commission takes note that the entire area of drugs as it relates to racing is strictly regulated by the rules and regulations of this agency. (*N.J.A.C. 13:71-23.1 et seq.*) This Commission is of the opinion that it would be inimical to the best interests of racing to permit appellant, a young man with two serious narcotics convictions, to be licensed by this Commission in a capacity wherein he would have ready access to race horses competing in pari-mutuel racing events and that, in fact, it would be adverse to the public interest to do so. The Commission takes note of the degree of rehabilitation evidenced of the appellant as well as of the spirit of the Rehabilitated Offender's Act in reaching this conclusion.

WHEREFORE, it is ORDERED that appellant's application to be licensed as a stable employee is hereby denied pursuant to provisions of *N.J.A.C. 13:71-1.13* and *N.J.A.C. 13:71-7.3* and further the Commission expressly rejects the Conclusions of Law and initial decision reached by Judge Weiss.