

**COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
22nd JUDICIAL CIRCUIT
DIVISION 3**

**AMERICAN SADDLEBRED
HORSE ASSOCIATION, INC.,**

Plaintiff

v.

EDWARD R. BENNETT, et al.

Defendants

Case No. 09-CI-05292

DTC 27 2010

**DEFENDANTS' REPLY IN OPPOSITION
TO PROPOSED FINAL JUDGMENT
TENDERED BY PLAINTIFF**

I. DISCUSSION

The American Saddlebred Horse Association (“ASHA”) argues that the Court should exercise its discretion to maintain the status quo for a limited time to protect the ASHA should it wish to file an appeal. As this Court is aware, the Defendants (“Members”) have agreed to allow the ASHA to maintain the status quo for thirty (30) days – the deadline for the ASHA to file an appeal as it has indicated it will do. However, the proposed order tendered to the Court on behalf of the ASHA goes much further than that by granting a stay throughout the pendency of any appeal. In fact, the plain language proposed by the ASHA would not require the ASHA to ever produce the records if the ASHA simply files a notice of appeal.

The ASHA’s proposed language flies in the face of the Kentucky Rules of Civil Procedure and should not be adopted by this Court. Rule 65.08 is the exclusive method by which the ASHA may seek a stay pending an appeal, and it requires the ASHA to file a proper

motion after an appeal has been filed. At that time, the ASHA will be provided an opportunity to meet its burden, and the Members will have an opportunity to respond to the motion.¹

II. CONCLUSION

The order tendered to the Court on behalf of the Members provides appropriate protection for the ASHA by maintaining the status quo for thirty (30) days after entry of the final order. If the ASHA files a timely appeal, it may follow the appropriate procedures set forth in the Kentucky Rules of Civil Procedure to request a stay pending the appeal process. The order tendered to the Court on behalf of the ASHA improperly stays enforcement of the order pending any appeal without requiring the ASHA to comply with Rule 65.08. Accordingly, this Court should reject the language proposed by the ASHA and enter an order consistent with the language tendered by the Members.

Respectfully submitted,



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¹ Of course, to obtain a stay pending an appeal pursuant to Rule 65.08, the ASHA cannot rely upon its mere assertion that it will suffer irreparable harm. *Newell Enterprises, Inc. v. Bowling*, 158 S.W.3d 750, 757 (Ky. 2005) (overruled on other grounds by *Interactive Media Entm't & Gaming Ass'n, Inc. v. Wingate*, 320 S.W.3d 692 (Ky. 2010)) (finding that the plaintiffs failed to produce sufficient evidence to support their claims of irreparable harm).

CERTIFICATE OF SERVICE

A copy of the foregoing document was served via electronic mail and First Class United States Mail, postage prepaid, to the following on the 27th day of December, 2010:

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