

NO. 09-CI-5292

FAYETTE CIRCUIT COURT
DIVISION 3
HONORABLE JAMES D. ISHMAEL

AMERICAN SADDLEBRED
HORSE ASSOCIATION, INC.

PLAINTIFF

**AMERICAN SADDLEBRED HORSE ASSOCIATION'S MOTION
FOR STAY PENDING APPEAL**

v.

EDWARD R. BENNETT, CARL T.
FISCHER, JR., KRIS KNIGHT, TOM
FERREBEE, SIMON FREDRICKS,
M.D. AND LYNN W. VIA

DEFENDANTS

TO: Stephen A. Houston
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Louisville, Kentucky 40202-2828
Counsel for Defendants

NOTICE

PLEASE TAKE NOTICE that the undersigned will on Friday, February 11, 2011, at 8:30 a.m., local prevailing time, in the courtroom of the above Court, make the following Motion to Stay enforcement of the Court's Opinion, Order and Judgment of December 2, 2010 pending appeal.

CERTIFICATE OF SERVICE

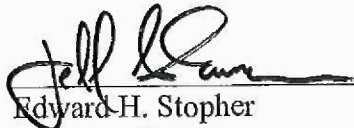
It is hereby certified that a true and correct copy of the foregoing was served via first class mail on this 7th day of February, 2011 to the persons and addresses listed above.

MOTION TO STAY PENDING APPEAL

Comes the Plaintiff, American Saddlebred Horse Association (hereinafter "ASHA"), by counsel, and hereby respectfully moves the Court for an Order staying the execution of or any proceedings to enforce the Court's final judgment of January 6, 2011, which incorporates in full the Opinion, Order and Judgment of December 2, 2010 ("December 2nd Order"), pending the final disposition of ASHA's appeal. As grounds for this Motion, ASHA states that it timely filed its Notice of Appeal appealing from the December 2nd Order to the Kentucky Court of Appeals on February 3, 2011. ASHA further states that its Executive Director has been placed on notice that a representative or representatives of the Defendant Members may appear at ASHA's corporate offices at 4083 Iron Works Parkway, Lexington, KY 40511 and request that all documents be immediately produced for inspection and copying pursuant to this Court's December 2nd Order. ASHA maintains that the December 2nd Order is automatically stayed because no supersedeas bond is required to stay execution of the judgment under CR 62.03 and 73.04 and no injunctive relief was ever sought or ordered in these proceedings such that a suspension or modification must be sought under CR 65.08. However, in the event the Defendant Members attempt to enforce the December 2nd Order and to the extent the Court deems it otherwise appropriate, ASHA requests the Court to stay any proceedings to enforce its Order pending the final disposition of ASHA's appeal.

ASHA relies upon the attached Memorandum of Law for further support this Motion.

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NO. 09-CI-5292

FAYETTE CIRCUIT COURT
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HONORABLE JAMES D. ISHMAEL

AMERICAN SADDLEBRED
HORSE ASSOCIATION, INC.

PLAINTIFF

AMERICAN SADDLEBRED HORSE ASSOCIATION'S
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR
STAY PENDING APPEAL

v.

EDWARD R. BENNETT, CARL T.
FISCHER, JR., KRIS KNIGHT, TOM
FERREBEE, SIMON FREDRICKS,
M.D. AND LYNN W. VIA

DEFENDANTS

I. INTRODUCTION

At a telephonic meeting held on Tuesday, February 1, 2011, the American Saddlebred Horse Association ("ASHA") Board of Directors voted unanimously to appeal from the final judgment of January 6, 2011, which incorporates in full this Court's Opinion, Order and Judgment of December 2, 2010 ("December 2nd Order"). ASHA timely filed its Notice of Appeal on February 3, 2011. On or about the same date, ASHA's Executive Director was advised that a representative or representatives of the Defendant Members may appear at ASHA's corporate offices located at 4083 Iron Works Parkway, Lexington, KY 40511 and request that all documents be immediately produced for inspection and copying pursuant to the December 2nd Order despite the appeal being taken.

ASHA maintains that the Court's December 2nd Order is automatically stayed because (1) no supersedeas bond is required to suspend its execution under CR 62.03 and

73.04 and (2) no injunctive relief was sought or ordered in these proceedings. However, ASHA in no way desires to disobey or otherwise be perceived as obstructing the proceedings of this Court if or when the Defendant Members appear at ASHA's corporate offices demanding production of all documents in ASHA's possession.

Accordingly, ASHA requests the Court to enter an order staying the execution of or any proceedings to enforce its December 2nd Order pending the final disposition of ASHA's appeal. ASHA is entitled to such relief on the grounds that to do otherwise would cause irreparable harm to ASHA, its members, staff, officers and directors and effectively deprive ASHA of its constitutional right to one appeal.¹

II. DISCUSSION

A. **The December 2nd Order Is Automatically Stayed Pending Appeal.**

In prior memoranda, Defendant Members have taken the erroneous position that ASHA must move to stay the enforcement of this Court's December 2nd Order under CR 65.08 in order to prevent the Defendants from immediately executing on the judgment and obtaining access to any and all documents in ASHA's possession.² However, CR 65.08 only applies to interlocutory relief pending an appeal from a final judgment granting or denying an injunction. No injunctive relief was ever sought by the Defendant Members nor ordered in these proceedings by the Court such that ASHA must seek a suspension or modification of the December 2nd Order under this Rule.³ This litigation is and has always been about a single declaratory judgment question: what is the scope of

¹ See Kentucky Constitution §115 ("In all cases, civil and criminal, there shall be allowed as a matter of right at least one appeal to another court...").

² See, e.g., Defendants' Reply in Opposition to Proposed Final Judgment Tendered by Plaintiff, filed December 27, 2010.

³ See Complaint for Declaratory Judgment, ¶¶ 35-41 and Count I – Declaratory Judgment, ¶¶ 28-35.

the right of inspection of documents afforded to members of a nonprofit association under KRS §273.233.

Any stay of this Court's December 2nd Order must therefore fall under CR 62.03, which applies to any request to stay proceedings pending an appeal taken from judgments other than injunction judgments. Under CR 62.03, the enforcement of a judgment from which an appeal has been taken may be stayed "by giving a supersedeas bond." The purpose of such a bond is to secure the whole monetary amount of a judgment remaining unsatisfied or to secure property, as in actions involving the disposition of real property in controversy, pending an appeal.⁴

In this case, however, Defendant Members have not sought monetary relief and none has been ordered. There is therefore no risk that monies needed to satisfy a judgment will be depleted or that property subject to the dispute will be sold prior to the disposition of ASHA's appeal. Rather the relief granted involves the public disclosure of records in ASHA's possession. These documents will be maintained and preserved by ASHA pending the outcome of the appeal.

Further, the relief granted goes to the very heart of this litigation. At issue is the scope of a non-profit association member's right of inspection of documents under KRS §273.233. Both parties have already spent significant time, money and other resources briefing and arguing this one legal issue to the Court. This Court considered all arguments and rendered its interpretation of KRS §273.233 as part of the December 2nd Order, declaring that the statute entitles members of a non-profit association to inspect and copy any and all documents in the organization's possession and that copies must be made thereof at a reasonable expense. To demand or compel execution from such a

⁴ See Karam v. Greentree Corp., 783 S.W.2d 78, 81 (Ky. App. 1990).

judgment would moot any appeal. Thus, ASHA maintains that the December 2nd Order should be deemed automatically stayed.

B. An Order Staying Enforcement of the December 2nd Order Pending Appeal Is Just and Necessary to Protect ASHA's Constitutional Right to One Appeal.

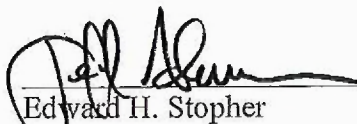
Having said this, in the event the Court deems it necessary for ASHA to request a stay in these proceedings, ASHA does so on the grounds that to rule otherwise would cause irreparable harm to ASHA, its members, staff, officers and directors and effectively deprive ASHA of its constitutional right to one appeal. This Court remains well within its discretion to issue an order "that the status existing immediately before the entry of the final judgment shall be maintained for a specified limited time to protect a party wishing to proceed promptly" with an appeal.⁵ Such an order is clearly just in this case because the interpretation of the scope of a non-profit member's inspection rights under KRS §273.233 is both an issue of first impression for the Kentucky courts and the only issue on appeal.

III. CONCLUSION

WHEREFORE, the Plaintiff, American Saddlebred Horse Association, Inc., by counsel, respectfully moves the Court to enter an Order staying the execution of or any proceedings to enforce the Court's Opinion, Order and Judgment of December 2, 2010 pending the final disposition of ASHA's appeal.

⁵ CR 65.08.

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