

# PAULICK REPORT

## BROWN GETS PEANUTS FOR RACHEL

*By Ray Paulick*

The legal battle in Kentucky between Jerry Brown, owner of ThoroGraph performance figures, and Kentucky horse owner James Lauffer ended with Johnson Circuit Court Judge John David Preston ruling Lauffer owed Brown for advisory services rendered in Lauffer's purchase of a half interest in eventual Horse of the Year Rachel Alexandra in November 2008, but the amount Brown will receive—\$25,000—is peanuts compared to what he was looking for.

Lauffer asked the court for declaratory relief to determine he owed Brown nothing for Brown's role in his purchase of the half-interest in Rachel Alexandra from breeder Dolphus Morrison. Brown had sought what he said is his standard fee for advising clients to buy a horse: 5% of purchase price, 5% of future earnings, and 5% in the increase in a horse's value.

In Brown's counterclaim against Lauffer, he sought a total of \$4,928,451, which includes profits Lauffer made on Rachel Alexandra from purses and the May 2009 sale of the entire filly to Jess Jackson's Stonestreet Stable for \$10 million.

Brown had several witnesses testify in person or by deposition in defense of his fee structure, including WinStar Farm racing manager Elliott Walden, Overbrook Farm principal Chris Young, Millennium Farm owner Ro Parra, and bloodstock agent Rich Decker.

Lauffer called Headley Bell of Mill Ridge Farm and several other witnesses who indicated the industry standard for commissions is 5% or less.

Brown and Lauffer both testified in the case.

Brown had recommended the purchase of several fillies, including Rachel Alexandra, to Lauffer and two potential partners, Lexington insurance agent Ron Kirk and horse owner and businessman Greg McDonald. Since Brown is a consultant and not a bloodstock agent, he put them in touch with Florida bloodstock agent Don Brauer to negotiate a deal. Kirk backed out because he felt Rachel Alexandra was overpriced at \$1.2 million and McDonald said he didn't like Brown's fee structure, and he also opted out. Lauffer then struck a deal with Morrison to buy the half-interest for \$500,000 without using an agent.

Lauffer said he had asked Brown to lower his fees, but Brown declined to do so. When Brauer complained he was cut out of the deal for his normal 5% commission, Lauffer offered to pay him \$15,000, which Brauer accepted.

At issue was whether Lauffer was aware of the fee structure when he accepted what Judge Preston called "valuable information and advice" from Brown. Preston concluded Brown and Lauffer "never reached an agreement concerning any fee to be paid" for Brown's services and that Lauffer was "not made aware of the fee structure" prior to getting advice from Brown.

However, Preston wrote, Lauffer "relied at least in part" on Brown's "valuable services in the form of specific advice" in his purchase of Rachel Alexandra, and that Brown deserved payment, even in the absence of a binding contract, under the legal concept of quantum meruit. But Preston limited the judgment to \$25,000, or 5%, which he called a "reasonable amount. ... In fact," he wrote, "5% seems to be a fee covering a wide variety of situations" in the horse industry.

Preston ruled against Brown's plea for punitive damages, disgorgement of profits, fraud, and said Brown was not entitled to treble damages and attorney's fees under KRS 230.357, a relatively new Kentucky law regulating bloodstock transactions.

Andre Regard, attorney for Brown, said he and his client "are reviewing our options for appeal."

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