

October 15, 2007

An open letter regarding the 2007 Sales Integrity Task Force and its recommendations:

Unfortunately, after multiple meetings and the reports of the sub-committees to the larger Task Force, the serious and abiding concerns I had at the beginning of this effort, after learning about the selection process for participants, have materialized into recommendations that are simply not meaningful enough to address the concerns that the Task Force was charged by the legislature to address.

I am writing this statement to make my views known, as an originator of the legislation that began this process, because I was unable to attend the October 15th public meeting. Likewise, the Task Force chose to meet and vote on adopting these recommendations at a time that I was unable to attend. Consequently, I had no ability to vote against these recommendations, although the Task Force was advised of my opinions before calling the vote. Accordingly, any assertion that the Task Force “unanimously” approved these recommendations should be tempered with the fact that the vote was taken in my absence and I would have voted “no” on each recommendation for the reasons stated below.

To be clear, there are many good people on the Task Force and there has been a productive dialog. Both Fasig-Tipton and Keeneland have shown exemplary leadership in this process. Unfortunately, the sales companies alone simply are not capable of resolving these issues without measures that reach beyond them and into the business practices of the broader industry, including consigners, breeders, sellers and buyers. I firmly believe that Fasig-Tipton and Keeneland have done everything they could in this effort and it is unfortunate that the individuals controlling this process did not rise to meet their efforts and initiative and propose broader reaching, meaningful and enforceable change.

The tragedy is that the Task Force effort has been manipulated and essentially hijacked from the very start by a handful of individuals. These individuals successfully manipulated the sub-committees and the larger Task

Force in such a way as to advance their own agenda and derail any effort at meaningful and serious sales integrity reform.

The composition of the Sales Integrity Task Force.

The composition of the Task Force is overwhelmingly dominated by the interests of central Kentucky commercial consigners, breeders and sales companies. The Task Force is comprised almost entirely of individuals and entities from the “seller’s” side of the industry and almost completely excludes representatives from the “buyer’s” side.

The membership of the Task Force was selected in secret by a group of individuals and entities who had previously publicly opposed the tabled legislation and are, purposefully or not, responsible for and profiting from the current and historical sales integrity problems in this industry. This is aggravated by the secretive and closed-door nature of the proceedings. The buyers of our products – who undeniably have the greatest interest in the integrity and transparency of the sales industry – were essentially absent from this process.

It is revealing to note that while the Sales Integrity Task Force is formed under the auspices of the Thoroughbred Owners and Breeders Association, there is marginal, if any, inclusion of significant owners or breeders, many of whom asked to and were prepared to participate. For instance, not a single owner who was nominated by TOBA for national or regional award was invited to participate in the Task Force.

Consequently, the positions and recommendations of the Task Force were predestined after the membership was selected in secret, and represent the views of only a handful of central Kentucky sales and consigner “insiders”.

The resulting recommendations are a suggestion that the sales companies make three additions to their conditions of sale. Beyond the specific concerns addressed below, the idea that simply changing the conditions of sale for the two major Kentucky thoroughbred sales companies can substantively address these integrity issues is fundamentally flawed.

It is an open question whether these suggested conditions are legally enforceable and who they would be enforceable against. Among other problems is that enforcing and policing the application of the conditions would fall upon the sales companies who are poorly equipped to do any such policing and enforcement. Beyond all the enforceability and effectiveness issues is the fact that the idea of making minor changes to the conditions of

sale has been tried and done for many years and has not solved any of the underlying problems. In fact, it has led to almost the exact opposite effect and has forced Keeneland to add the following statement to their conditions of sale:

“Sales results reported by Keeneland may or may not reflect the fair market value of any horse(s) going through Keeneland’s sale as, among other reasons, consignors may inform Keeneland after the sale concerning horses that may have been initially reported as a sale(s) which are, in fact, not a sale.”

These current proposals are being made to generate the appearance of progress and the appearance of addressing these issues while avoiding any meaningful reform in a consigner or seller’s obligations towards sales integrity or meaningfully educating a buyer. These recommendations are the result of manipulation by a small group of individuals who have been meeting independently since well before the Task Force was constituted to strategize amongst themselves on how to preserve the status quo and prevent any effective or enforceable injection of integrity.

Accordingly, the direction of the Task Force has resulted in recommendations that a silent many do not agree with and I cannot endorse because they are limited to suggesting changes in auction houses’ conditions of sale, and are not recommendations that encompass substantial and enforceable reform.

Ownership Sub-Committee Recommendation

The recommendation presented by the Ownership Sub-Committee, the creation of a voluntary ownership repository, is insufficient to address the problems in the industry that the pending legislation seeks to remedy. The legislation sought to disclose the true ownership of the horse to prevent the gamesmanship and deceitful “shell-game” tactics that injure not only the appearance of integrity but the actual integrity of the sales arena. Beyond this is the goal of preventing illegal and improper “by-bidding” – where an undisclosed owner or consigner improperly bids up (or buys back at an inflated value) their own horse to fraudulently increase the appearance of value in the horse.

We have heard arguments that the success and widespread use of the medical repository, participation in which was initially voluntary and is now pervasive, makes voluntary use of the proposed ownership repository preferable and a good test to see if the market will respond and use it. This argument falls apart, however, because the consigners and sellers of the horses have an incentive to use the medical repository. The medical repository saves the consigners and sellers time, effort and money and saves

the horses themselves from being poked, prodded and scoped dozens of times a day. There is no similar incentive in the proposed ownership repository; in fact there is no incentive at all for a consigner to recommend the use of the ownership repository to a seller.

The addition of this condition of sale is, in and of itself, a good thing and should be added to the sales companies' conditions of sale. However, without a legislative mandate or a significant incentive to use it (or disincentive not to use it) the voluntary repository is a toothless gesture.

Bloodstock Agent and Consigner Licensing Sub-Committee Recommendation

The recommendation presented by the Licensing Sub-Committee, asking the sales companies to impose a code of conduct on their participants, is likewise a positive step, but a toothless gesture if it is intended as an alternative to licensing bloodstock agents and consigners.

The code itself merely restates basic agency law and prohibits things that are prohibited by both common law and the dual agency bill passed in 2006. It doesn't require any behavior beyond what is already prohibited by law.

What the code of conduct does do is provide for an arbitration process that can result in the exclusion of a violator from the sales grounds. This is nothing new – the sales companies have always reserved the right to exclude persons from their properties. The recommendation only provides an avenue for someone to complain and provides the sales companies with a method to exclude people from the sales grounds which allows for due process and avoids a claim that the sales companies are being unfair. Aside from the obvious issues of – again – having the sales companies enforce and police these provisions, it is a positive step and a beneficial change that should be added to the sales companies' conditions of sale. In fact it probably should have been added years ago.

What the recommendation does not do is provide an adequate alternative to simply licensing bloodstock agents and consigners. The Kentucky Horse Racing Authority licenses over 20,000 participants in the horse industry. The KHRA issues 43 different classifications of licenses including Owners, Trainers, Blacksmiths, Dental Techs, Stable Employees, Jockeys and Jockey Agents. Beyond this, the State of Kentucky issues over 400 different business licenses and permits for everything from hair stylists to realtors, including horse auction facilities. The KHRA and Kentucky has this many licenses because licensing is an effective and affordable method to

monitor and regulate members of an occupation and keep the inept and criminal elements out.

This recommendation is an attempt by a few bloodstock agents and commercial consigners to avoid accountability. Ironically, it is the bloodstock agents and commercial consigners that stand to gain the most from licensing. They stand to benefit greatly by not having to compete with unscrupulous agents who poison the entire market.

Bloodstock agents and consigners are responsible for facilitating transactions involving hundreds of millions of dollars a year. Right now – there are no regulations on who can serve as an agent or consigner. For example, there are individuals who have been convicted of felonies and misdemeanors currently serving as “agents”. This includes an individual serving as “agent” at recent Keeneland and Fasig-Tipton sales who was convicted in 1998 of multiple counts of fraud in federal court based on a multiple-year, multiple-victim international investment conspiracy. He was sentenced to 33 months in prison and ordered to pay over \$500,000 in restitution to the victims. This aspect of the industry needs to be regulated to prevent new owners and prospective buyers from being defrauded or given harmful advice from dishonest or incompetent individuals posing as agents or consigners.

The State of Maine issues a \$45.00 worm digging license for people who dig for worms to sell to bait shops. The worm digging licenses apparently even make money for Maine’s environmental funds. If Maine can license worm diggers, Kentucky can license the bloodstock agents and consigners in Kentucky’s signature industry.

Medical Condition Sub-Committee Recommendation

Finally, the recommendations of the Medication Sub-Committee, essentially to do nothing but opine that Fasig-Tipton and Keeneland’s plan for implementing a testing program is a good thing, is not only preposterous but is shocking given the results of the various surveys and medication summits expressing an overwhelming industry-wide consensus for such things as disclosure of conformation altering surgeries and vigorous steroid regulation. TOBA’s own survey on the importance of disclosing conformation changing surgeries in July of 2006 concluded that it “is clear that disclosure of surgical procedures by the seller is very important to each of the segments.” (“Segments” being defined as varying levels of small to large buyers.) Beyond this is the fact that the sales companies’ program for testing is still only in the conceptual stage and the details of the program have yet to be written down.

The second aspect of the recommendation, that a standing committee be formed to continually evaluate and update the “prohibited practices” in the sales companies’ conditions of sale, is likewise insubstantial. Further, there is no obligation for any sales company to adhere to this recommendation or any advice that might come from the committee and – again – this is something that logically should have been done years ago. Finally, planning on evaluating what is or is not a prohibited practices under the various conditions of sale does not address what the legislation sought – simple disclosure.

The pending legislation would only require disclosure. It then allows the buyer to make up their own mind about whether or not the information is important to them. It does not prohibit or regulate anything – it only requires that the buyer be informed. A secondary, but no less important, effect is that this disclosure will allow the industry to strengthen the breed of the horse by identifying previously hidden genetic flaws in horses and avoid further breeding those flaws into the breed. This will result in fewer breakdowns, a stronger overall breed of horse and hopefully further reduce catastrophic and tragic injuries.

The Medication Sub-Committee’s near-meaningless recommendation is an obvious and appalling illustration of the sentiment of the handful of individuals who have successfully manipulated the Task Force to satisfy their own agendas at the expense of the industry itself. The legislation proposed in February does not prohibit or require anything but disclosure. If the seller or consigner of a horse is aware of a medical condition or medication that affects the ability, appearance or performance of the horse that condition or medication should be disclosed. If the condition or medication is something the owner or consigner is embarrassed or afraid to disclose, it’s either something that shouldn’t have been done in the first place or quite certainly something a prospective buyer needs to be aware of.

In Closing

I want to make it very clear that I am not indicting the entire Sales Integrity Task Force membership. There are substantial and honest people on the Task Force volunteering their time in an attempt to better the industry. In particular, Keeneland and Fasig-Tipton have spent a great deal of effort and exercised commendable leadership in this process. I applaud the efforts, but the resulting recommendations are simply not substantial enough. Unfortunately, the effort and time of those seeking reasonable, effective and enforceable solutions have been completely undermined by a

small group of individuals who have manipulated the process from the beginning to prevent exactly that.

Throughout this process I have been the focus of a great deal of criticism. But never once did anyone ever tell me that the problems in the sales industry I am trying to correct do not exist. Quite to the contrary, the Task Force had lengthy discussions about the length, breadth and prevalence of some of these problems and practices. Rather – I have been the target of abuse simply because I am talking about these problems in the open. The result has been a concerted effort to isolate me – the messenger – in this process and produce the contrived appearance of consensus or unanimity.

The industry must stop the deceitful and embarrassing practices that cause the problems – and learn that attacking the messenger does nothing. The recommendations, although positive in spirit, accomplish nothing more than preserving the status quo. Suggesting voluntary compliance with ethical standards has repeatedly been tried and quite vividly has not worked in the past. Mandatory compliance with legally enforceable standards is needed.

I am committed to this industry and equally committed to assuring it will be around for generations to come. I truly want the Task Force process to work and arrive at reasonable and effective solutions that improve the industry for all its ethical participants. Tragically, it appears that the interests that have been manipulating this process are not so inclined.

Respectfully,

Jess S. Jackson