

1 individuals participating will be the individual  
2 Commissioners and Gordon White, Deputy Attorney  
3 General, who's counsel to the Commission on this  
4 matter.

5 The counsel who filed objections to the  
6 Administrative Law Judge's decision I do not know,  
7 but is he or she present?

8 MR. RED: Yes, sir.

9 CHAIRMAN DIENER: You're first up.

10 MR. RED: One year.

11 CHAIRMAN DIENER: I'm sorry, could you  
12 identify yourself.

13 MR. RED: My name is Michael Red. And I  
14 represent Janey Adams.

15 One year this case has been going on, in  
16 excess of four banker boxes of documents, 40 hours  
17 plus of sworn testimony, a thousand pages plus of  
18 transcripts, hundreds of miles traveled, three  
19 out-of-state depositions, and the most fundamental  
20 damning allegation against Janey Adams has proven  
21 to be wholly false. And that is this: That she  
22 mistreated and neglected Tony Terrific so badly  
23 that upon his arrival at Kentucky Equine Humane  
24 Center he was days from death.

25 We have testimony from three separate

1       veterinarians who have all said that's just simply  
2       not true. Yet, it's abundantly apparent from the  
3       record that Mr. Gorajec has based his decision to  
4       suspend Miss Adams for ten years on that basis. If  
5       he hasn't referenced the condition of the horse,  
6       how else could he have decided what the appropriate  
7       penalty was.

8                Again, Commissioners, Ladies and Gentlemen,  
9       thank you very much for your time today. My name  
10      is Mike Red. And it's my pleasure to represent  
11      Janey Adams here today. I'm going to talk about  
12      three issues. Given the limited amount of time,  
13      I'm not going to be too detailed in any of my  
14      discussion.

15             One, I want to talk about procedural due  
16      process issues because I think we've been denied  
17      minimum procedural due process in this case. Two,  
18      I do want to talk about some of the specific facts  
19      of this case that have been developed during the  
20      course of the last year. And, three, I want to  
21      talk about some policy concerns, both as they  
22      pertain to this Commission and as to Commission  
23      Staff's actions in this case.

24             As I said, as a preliminary matter, I want to  
25      talk about some procedural due process issues.

1           COMMISSIONER BARCLAY: Mr. Red, before you get  
2 started into that, can you help clarify for me, is  
3 Tony Terrific a racehorse?

4           MR. RED: Yes, that's correct. He's a  
5 Thoroughbred racehorse. And at the beginning of  
6 all this was a seven-year old gelding who while it  
7 was alleged to be a grand majestic horse, even if  
8 you look at Judge Hostetter's order, it clearly  
9 shows that by the time he went into Miss Adams'  
10 care, he was not a grand majestic horse anymore.

11          COMMISSIONER BARCLAY: Had he raced in the  
12 state of Indiana?

13          MR. RED: As far as I'm aware, yes.

14          So procedural due process issues, we had at  
15 least three hearings, including Miss Adams' hearing  
16 on her Petition to Stay the Summary Suspension  
17 where the ALJ didn't even keep a record of the  
18 proceedings. And even after I objected by way of  
19 e-mail and cited the specific statute requiring her  
20 to keep a record, we had at least two more hearings  
21 after that where she kept no record.

22          Why does this matter? Aside from being a  
23 procedural due process right that Miss Adams has,  
24 it's the number one rule of all adjudicative  
25 proceedings. You keep a record. You keep a record

1 of everything always just like you're doing here  
2 today. So we didn't get that fundamental  
3 procedural due process right.

4 And if you fast forward to the final hearing,  
5 at one point she asked me, well, Mr. Red, why is it  
6 that you're arguing about the severity of the  
7 penalty, all that's at issue here is neglect? I  
8 said, no, Your Honor, just like I said to this  
9 Commission, he had to reference the severity of the  
10 condition of the horse or the alleged severity to  
11 come up with what the appropriate penalty was.

12 She said, well, that's the first I've heard of  
13 that. That was a stunning statement for me to  
14 hear. And if there were a record of these five  
15 proceedings, that would be very clear. And it's  
16 also pretty clear from my pleadings prior thereto.

17 More importantly, in his closing arguments at  
18 the final hearing, Mr. Babbitt actually attributed  
19 certain statements that I had made during the  
20 course of those proceedings. And, again, there's  
21 not even a record to show whether I actually said  
22 what he alleges I said.

23 Secondly, Judge Hostetter, you know, we had a  
24 couple of occasions where, you know, she would go  
25 for weeks at a time without ruling on motions. At

1       one point, I started making calls to find out, and  
2       quite literally, and I mean no exaggeration here, I  
3       was quite literally wondering if she was still  
4       alive and well because we had motions pending out  
5       there that were time sensitive. And the time was  
6       passing by where we were getting no rulings in a  
7       matter that would allow us to react appropriately  
8       to those rulings.

9               Just thirdly, as an example of how we think  
10       this administrative law judge was really not in the  
11       game, and this is just by no means an exhaustive  
12       list, but most recently I filed my objections to  
13       the Findings of Fact and Conclusions of Law, and  
14       Judge Hostetter filed the response ordering the  
15       Commission Staff to respond. Well, now, obviously,  
16       I'm not prejudiced by that. My client is not, but  
17       there is no authority whatsoever for that in the  
18       Administrative Orders and Procedures Act. I mean,  
19       clearly, she didn't know what she was doing when  
20       she issued that order.

21               So all these things are examples of how we  
22       don't even think we got procedural due process in  
23       this case. We really think this administrative law  
24       judge was just asleep at the wheel.

25               COMMISSIONER BARCLAY: About this hearing that

1 occurred, what was the result of the hearing? Was  
2 there a decision made by the ALJ at the hearing on  
3 any substantive motion?

4 MR. RED: Yes, our Petition to Stay the  
5 Summary Suspension was denied.

6 COMMISSIONER BARCLAY: Did she issue a written  
7 order as a result of that?

8 MR. RED: Yes, she did. It's in the record  
9 that you have. And it's noted in the final order  
10 of the ALJ.

11 So, again, that's our procedural due process  
12 issue. I want to talk about some of the facts of  
13 this case. In Commission Staff's response to our  
14 Petition for Stay of Effectiveness, it is replete  
15 in at least, it is replete throughout the pleading  
16 in at least ten places they said Tony Terrific was  
17 near death when he arrived at Kentucky Equine  
18 Humane Center. Again, that's proven to be wholly  
19 false. We have testimony of three veterinarians  
20 saying that, including the two veterinarians at  
21 Kentucky Equine Humane Center and including Jerry  
22 Rodenbarger, who is the Chairman of the Board of  
23 Directors of the Indiana Veterinary Medical  
24 Association.

25 And that kind of segues into my next point is