

FAYETTE CIRCUIT COURT
22ND JUDICIAL CIRCUIT
THIRD DIVISION

Civil Action No. 15-CI-4101

MARIA BORELL

PLAINTIFF

V. **RESPONSE OF THE PLAINTIFF TO
RESPONSE TO MOTION FOR AN ORDER FILED
BY THE DEFENDANTS GALLERY RACING STABLES, LLC,
JAMES MCINGVALE AND LINDA MCINGVALE**

GALLERY RACING STABLES, LLC, et al.

DEFENDANTS

* * * * *

The Defendants, Gallery Racing Stables, LLC (“Gallery Racing”), James McIngvale (“Mr. McIngvale”), Linda McIngvale (“Mrs. McIngvale”) (collectively, the “Responding Defendants”), having filed a Response to the Motion for an Order filed herein by the Defendants Keeneland Association, Inc. (“Keeneland”) and Breeders’ Cup Limited (“Breeders’ Cup”) that requires response and, as to certain allegations included therein, a correction, the Plaintiff, Maria Borell (“Ms. Borell”), through counsel, respectfully submits the following Response.¹

INTRODUCTION

The Responding Defendants base their Response to the Motion for an Order filed by Keeneland and Breeders’ Cup on the fallacious premise that Ms. Borell is seeking prejudgment attachment or a temporary injunction from this Court. Review of the Complaint – a Complaint that the Responding Defendants acknowledge they have received – demonstrates that, to the contrary, Ms. Borell instead seeks a declaration of the Court regarding whether, in light of the claims asserted by Ms. Borell, it would be appropriate for that portion of the purse being held by

¹ Ms. Borell designates this a Response rather than a Reply as the underlying Motion was filed by Keeneland and Breeders’ Cup, not by Ms. Borell.

Keeneland and/or Breeders' Cup and those to which Ms. Borell has made a claim, be paid into Court.² As demonstrated below, there is more than adequate support for the claims Ms. Borell has asserted against the Responding Defendants, and she is therefore entitled to some form of protection from the Court against the loss of the funds at issue.³

COUNTERSTATEMENT OF FACTS

1. It Is Industry Standard To Pay Commissions On Winnings For Both Private And Public Trainers.

The Responding Defendants make much of the supposed distinction between a private trainer and a public trainer as support for their assertion that Ms. Borell should not be paid in accordance with the widely-accepted and well-known industry standard for thoroughbred racehorse trainers. Even assuming for purposes of the pending Motion that the Responding Defendants are correct that Ms. Borell was retained by Gallery Racing as a private trainer – which Ms. Borell does not concede – the Responding Defendants' characterization of the distinction is incorrect.

² Ms. Borell respectfully submits that an alternate solution would be for the disputed funds to be paid into an interest-bearing escrow account, providing further protection to the Responding Defendants in the event they prevail against Ms. Borell's claims. In any event, the only amount that Ms. Borell seeks to be held is the \$122,752 she claims she is owed in purse commissions and claiming fees. See Complaint, ¶13. See also November 2, 2015 letter from Richard A. Getty, Esq. to Mr. James McIngvale, attached as Exhibit E, detailing Ms. Borell's claims, including her claim for commissions on purse winnings and claiming fees (and inadvertently stating that number as \$127,752 rather than the correct amount, \$122,752).

³ Ms. Borell also respectfully submits that the matter might be most efficiently resolved by first bifurcating the contract/quantum meruit claims from the remaining claims and then expediting the trial of the former, and will file a Motion to that effect if appropriate. This would also allow for a possible early mediation and, ideally, resolution of all claims and issues.

a. Charles Simon

Charles Simon is a professional thoroughbred horse trainer with over fifteen years experience. See Affidavit of Charles E. Simon (the “Simon Aff.”), attached as Exhibit A, ¶1.⁴ Mr. Simon previously trained horses for Gallery Racing and has trained for several other owners over the years. See id. As stated by Mr. Simon:

I have heard the phrase “private trainer” used but it is rare, if ever, that anyone acts as a private trainer within the thoroughbred industry according to my understanding. However, it is customary within the thoroughbred business for a private trainer who is paid a stipend or a monthly or weekly payment to also receive a 10% or 12% commission off first, second or third place race winnings. Any assertion that anyone being paid a periodic payment and provided means to board horses does not also get compensated with a commission representing either 10% or 12% of any first, second or third place purse winnings is not consistent with my understanding within the industry or with my experience with Mr. McIngvale/Gallery Racing.

Simon Aff., ¶4 (emphasis added).

Mr. Simon received a commission during his tenure with McIngvale/Gallery Racing:

During the entire time that I trained horses for Mr. McIngvale, I acted as what would be termed a public trainer and was paid consistent with the custom in the industry for such trainers. I was paid a “day rate” of \$76.00 per day per horse and I also received a commission of 12% of any purse for any first, second or third place finish. It is my understanding that a number of other trainers who worked for McIngvale/Gallery Racing were also compensated on the same or a similar basis.

Simon Aff., ¶3.

Indeed, Mr. Simon disputes the suggestion that any trainer is not entitled to receive a percentage of winnings as a commission and in recognition of the trainer’s role in achieving those winnings:

In fact, I do not know of any trainers, “public or private,” currently training that do not get a percentage of purse winnings, and any contrary arrangement would certainly not be consistent with the longstanding thoroughbred industry customs

⁴ Mr. Simon has approved and signed his Affidavit, as attached, but does not have a Notary Public available today to notarize his signature. The signed, notarized Affidavit will be provided to the Court and to counsel as soon as it is received.

and practices as to compensating horse trainers. Nor would such an arrangement for a “private trainer” provide fair or reasonable compensation to any trainer.

Id. (emphasis added).

b. Kenneth McPeek.

Other trainers agree with Mr. Simon’s characterization of industry standard for both private and public trainers. For example, Kenneth McPeek, a thoroughbred horse trainer and bloodstock agent with over thirty years experience in training thoroughbred horses, provided a sworn Affidavit setting out his experience with the customs and practices in the industry. See Affidavit of Kenneth McPeek (“McPeek Aff.”), attached as Exhibit B, ¶¶1-2. Mr. McPeek confirms Mr. Simon’s statements regarding commissions payable to thoroughbred trainers:

It is customary within the thoroughbred industry for a horse trainer to receive compensation in the form of 10% of all purse winnings, including first, second or third place results. Generally, a figure in the range of 10% to 12% is utilized with respect to this practice. In my experience, the provision of compensation in the form of a commission with respect to winnings is applicable throughout the industry regardless of whether the trainer is what might be termed either a public or a private trainer.

McPeek Aff., ¶¶2-3.

The reason for this standard is clear:

The training of horses is a difficult and time consuming endeavor and it would not be fair or equitable or provide a reasonable level of compensation for those efforts if the trainer was not provided with the standard commission within the industry commission of payment of a portion of all purse winnings.

Id., ¶4.

c. Steven L. Moyer.

The Responding Defendants’ claim that private trainers are not generally entitled to commissions on purse winnings is also belied by their practice with one of their own former private trainers. Steven L. Moyer has been a professional thoroughbred trainer for over twenty-

five years and has worked for the Responding Defendants. See Affidavit of Steven L. Moyer (“Moyer Aff.”), attached as Exhibit C, ¶¶1-2. As a private trainer for the Responding Defendants, Mr. Moyer received both a weekly stipend and a commission on purse winnings:

I was compensated as a private trainer by the McIngvaes by the payment of \$700 per week plus I also received a 6-1/2% commission on all purse winnings across the board, meaning all first, second, third, fourth or fifth place winnings. My compensation was paid by the McIngvaes’ financial person at the furniture store in Houston, a gentleman named David Kennedy. I submitted statements periodically, all of which included the 6-1/2% commission noted above and those commissions were paid by the McIngvaes in addition to my \$700 per week payment, plus any other reimbursements.

Moyer Aff., ¶3.

Mr. Moyer absolutely refutes the statements of the McIngvaes published in the Paulick Report, which provide the basis for Ms. Borell’s defamation claims, that the McIngvaes have never paid a commission to a private trainer. A copy of the Paulick Report article is attached to the Complaint herein as Exhibit A. Mr. Moyer’s Affidavit thus completely contradicts the Responding Defendants’ claim that private trainers do not receive purse commissions: “If the McIngvaes are now taking the position that they have never paid a commission for purse winnings to a private trainer, that statement is inconsistent with my personal experience with them, their having compensated me in accordance with the arrangement outlined above.” Id., ¶4.

There can be no question but that industry standard – a standard recognized and adhered to by the Responding Defendants in other cases – provides that all trainers, both private and public, are entitled to receive commissions from the winnings of horses they train.

2. The Responding Defendants Have A History Of Acting In Bad Faith Toward Their Trainers.

Unfortunately for Ms. Borell, she is not the first trainer to stand up to the Responding Defendants, both for her rights and for the well-being of their horses. Mr. Simon’s experience

was similar to that faced by Ms. Borell and demonstrated a disturbing disregard for the best interests of Gallery Racing's horses:

After I began training for McIngvale/Gallery Racing, Laura Wohlers ("Ms. Wohlers") became involved to act as a racing manager. A problem developed dealing with Ms. Wohlers after a group of two year olds arrived for training. To put it bluntly, dealing with Ms. Wohlers was extremely difficult. She tried to micromanage training from Houston and disregarded my advice or directions regarding the risks involved in over-training horses.

Simon Aff., ¶6.

Mr. Simon ultimately left his position with Gallery Racing in large part because of Ms. Wohlers:

"I was relieved that I could ultimately extricate myself from the situation. I disagreed often with her usual training theories. To say that dealing with her was difficult is an understatement." Id.,

¶7.

Mr. Moyer's experience was also similar:

I ended my relationship with the McIngvales in approximately April 1998 principally because of the involvement of Mr. McIngvale's sister-in-law, Laura Wohlers. After Ms. Wohlers and her involvement was injected into the training of the McIngvale horses, it became very difficult for me to continue in that position. Ms. Wohlers was very confrontational and, to say the least, was extremely difficult to deal with. It finally reached the point where I severed my relationship with the McIngvales.

Moyer Aff., ¶5.

At a minimum, the sworn Affidavits of Mr. Simon and Mr. Moyer raise legitimate questions about the credibility of the Responding Defendants and their characterization of their relationship and understandings with Ms. Borell.

3. The Issue Of Ms. Borell's Right To Commissions Has Not Been Resolved.

Finally, the Responding Defendants' use of two e-mails between Ms. Borell and Ms. Wohlers does not begin to tell the entire story. As demonstrated above, one thing Ms. Borell certainly knew from her own experience with Ms. Wohlers and the Responding Defendants and

from the experience of other trainers was the danger in crossing them. Ms. Borell knew if she pushed too hard for the money she was entitled to receive, she might likely lose her job (a result that unfortunately occurred anyway). A series of text messages between Ms. Borell and Ms. Wohlers demonstrates – as do the e-mails cited by the Responding Defendants – that Ms. Borell believed she was entitled to at least a ten percent commission on race winnings, but that she simply did not know how to best enforce that right as to the Responding Defendants and in light of Ms. Wohlers’ known propensity for getting rid of those who dared disagree with her.

Ms. Borell specifically sought confirmation from Ms. Wohlers that she would receive the ten percent commission to which she was entitled, asking “Will I get 10% if he [Runhappy] wins?” [referring to the King’s Bishop August 27, 2015 race at Saratoga, which Runhappy won]. See August 7, 2015 text messages between Ms. Borell and Ms. Wohlers, attached as Exhibit D. Ms. Wohlers was vague – promising to ask “him” (presumably Mr. McIngvale), but cautioning “I don’t think now is the time.” See Exhibit D. Ms. Borell was therefore put in the unenviable position of walking away from a horse that she loved and whose training she had so carefully overseen, or proceeding with her job and taking the chance that she would have to fight for her ten percent commissions – commissions that are paid consistent with longstanding industry custom and practice. It is with this fight that Ms. Borell seeks assistance from the Court, protection of her commissions until the matter is resolved.

CONCLUSION

Despite the Responding Defendants’ efforts to portray this as an ill-advised attempt by a disgruntled former employee to obtain monies to which she is not entitled, in fact this matter is more akin to David’s willingness to face down Goliath in order to protect himself and those things he held most dear. Ms. Borell does not seek anything other than the protection of what

she rightfully asserts she is entitled to receive, and the Court can assist her in that effort by ordering only the funds at issue (\$122,752) paid in to Court or into an interest-bearing account until such time as the parties or the Court can bring this matter to a resolution. For all the reasons set forth herein, Ms. Borell therefore respectfully requests an Order of the Court to that effect.

Respectfully submitted,



RICHARD A. GETTY
DANIELLE H. BROWN
and
MATTHEW W. ENGLISH

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250 West Main Street
Lexington, Kentucky 40507
Telephone: (859) 259-1900
Facsimile: (859) 259-1909

COUNSEL FOR PLAINTIFF,
MARIA BORELL

CERTIFICATE OF SERVICE

A copy of the foregoing Response of the Plaintiff to Response to Motion for an Order Filed by the Defendants Gallery Racing Stables, LLC, James McIngvale and Linda McIngvale was e-mailed and mailed, postage prepaid, on this the 13th day of November, 2015, to the following:

David T. Royse, Esq.
Robert M. Watt III, Esq.
and
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Keeneland Association, Inc. and
Breeders' Cup Limited

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Counsel for Defendants
Gallery Racing Stables, LLC,
James McIngvale and Linda McIngvale



COUNSEL FOR THE PLAINTIFF

dhbpld1492

**RAYETTE CIRCUIT COURT
22ND JUDICIAL CIRCUIT
DIVISION 3**

Case No. 15-CI-4101

MARIA BORELL

PLAINTIFF

V.

**AFFIDAVIT OF
CHARLES E. SIMON**

GALLERY RACING STABLES, LLC, ET AL.

DEFENDANTS

1, Charles E. Simon, having been first duly sworn, do depose and state as follows:

1. I am a thoroughbred horse trainer who previously trained horses for James McIngvale ("Mr. McIngvale") and his racing entity, Gallery Racing Stables, LLC ("Gallery Racing"). I have been a professional thoroughbred horse trainer since 1999. During the period of January 2014 through October 2014, I trained horses for Mr. McIngvale and Gallery Racing. I have trained horses for a number of people during my years of training, including Ken Ramsey and his wife and Stella Thayer, the owner of Tampa Bay Downs. I am currently involved in training and racing horses at Gulfstream Park West, which is commonly referred to as the Calder Racecourse.

2. I was introduced to the McIngvale racing entity through a friend of mine named Kerry Thomas who asked me to take a look at the McIngvale/Gallery Racing horses. I trained the horses first at the West Hampton, New Jersey Thoroughbred Training Center and later moved the horses to Monmouth Park at which they were trained and raced.

3. During the entire time that I trained horses for Mr. McIngvale, I acted as what would be termed a public trainer and was paid consistent with the custom in the industry for such



trainers. I was paid a "day rate" of \$76.00 per day per horse and I also received a commission of 12% of any purse for any first, second or third place finish. It is my understanding that a number of other trainers who worked for McIngvale/Gallery Racing were also compensated on the same or a similar basis.

4. I have heard the phrase "private trainer" used but it is rare, if ever, that anyone acts as a private trainer within the thoroughbred industry according to my understanding. However, it is customary within the thoroughbred business for a private trainer who is paid a stipend or a monthly or weekly payment to also receive a 10% or 12% commission off first, second or third place race winnings. Any assertion that anyone being paid a periodic payment and provided means to board horses does not also get compensated with a commission representing either 10% or 12% of any first, second or third place purse winnings is not consistent with my understanding within the industry or with my experience with Mr. McIngvale/Gallery Racing. In fact, I do not know of any trainers, "public or private," currently training that do not get a percentage of purse winnings, and any contrary arrangement would certainly not be consistent with the longstanding thoroughbred industry customs and practices as to compensating horse trainers. Nor would such an arrangement for a "private trainer" provide fair or reasonable compensation to any trainer.

5. It is also customary within the thoroughbred industry for an owner to award to the trainer a lifetime breeding right with respect to the first place winner in a Grade I stakes race. This is a customary practice which has been and currently is recognized within the thoroughbred industry.

6. After I began training for McIngvale/Gallery Racing, Laura Wohlers ("Ms. Wohlers") became involved to act as a racing manager. A problem developed dealing with Ms.

Wohlers after a group of two year olds arrived for training. To put it bluntly, dealing with Ms. Wohlers was extremely difficult. She tried to micromanage training from Houston and disregarded my advice or directions regarding the risks involved in over-training horses.

7. I was relieved that I could ultimately extricate myself from the situation. I disagreed often with her usual training theories. To say that dealing with her was difficult is an understatement.

Further Affiant sayeth naught.



CHARLES E. SIMON

STATE OF FLORIDA)
)
COUNTY OF BROWARD)

Subscribed and sworn to before me by Charles E. Simon on this the _____ day of November, 2015.

My Commission expires: _____

NOTARY PUBLIC
NOTARY NO.: _____

mgpld3652

FAYETTE CIRCUIT COURT
22ND JUDICIAL CIRCUIT
DIVISION 3

Case No. 15-CI-4101

MARIA BORELL

PLAINTIFF

V.

AFFIDAVIT OF
KENNETH McPEEK

GALLERY RACING STABLES, LLC, ET AL.

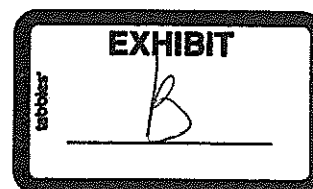
DEFENDANTS

I, Kenneth McPeek, having been first duly sworn, do depose and state as follows:

1. I am a thoroughbred horse trainer and bloodstock agent and have been involved in the training of thoroughbred horses for over 30 years. In addition to training thoroughbred horses, I also act as a bloodstock agent with respect to the purchase and sale of bloodstock. The prominent thoroughbred horses which I have purchased are Curlin and Take Charge Lady, among others. A copy of my résumé reflecting my background and experience within the thoroughbred industry is attached as Exhibit A.

2. As a result of my involvement in the thoroughbred business as a horse trainer, I am familiar with the customs and practices throughout the industry which are generally accepted and applied. It is customary within the thoroughbred industry for a horse trainer to receive compensation in the form of 10% of all purse winnings, including first, second or third place results. Generally, a figure in the range of 10% to 12% is utilized with respect to this practice.

3. In my experience, the provision of compensation in the form of a commission with respect to winnings is applicable throughout the industry regardless of whether the trainer is what might be termed either a public or a private trainer.

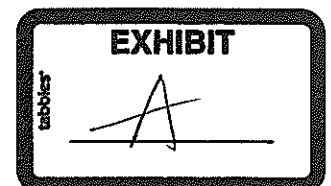


Kenneth G. McPeek Racing

Kenneth G. "Kenny" McPeek was born August 2, 1962 in Fort Chaffee, Arkansas and raised in Lexington, Kentucky. He graduated from Tates Creek High School and then the University of Kentucky with a Bachelor of Arts in Business Administration. In 1985 McPeek received his trainer's license in Kentucky and won his first race soon after. In 2002, the Turf Publicists of America voted the Big Sport of Turfdom Award him and former wife Sue. McPeek serves on the Boards of the UK Agricultural Equine Program and TOBA - Thoroughbred Owners and Breeders Association. He is a member of the NYRA Equine Veterinary Medical Director Search Committee.

McPeek has trained a number of successful racehorses. In 2002, he won the Belmont Stakes with Sarava. He has won back-to-back Spinster Stakes' with Take Charge Lady in 2002 & 2003 and back-to-back Gulfstream Park Breeder's Cup Handicaps with Hard Buck (BRZ) & Prince Arch in 2004 & 2005. Other Grade 1 victories include the Florida Derby, Ashland Stakes, Blue Grass Stakes, Dixiana Breeders Futurity and the Darley Alcibiades Stakes three times in his career. He has also Dream Empress, Tejano Run, Golden Ticket, Harlan's Holiday, Hard Buck (BRZ), Java's War, Pure Fun, Repent, Take Charge Lady, Salty Strike, Sweet Talker, Leah's Secret, She's A Devil Due, Wild Desert, Einstein, Prince Arch, Noble's Promise, Kathmanblu and Rogue Romance, among others. McPeek has won more than 159 stakes in his career with over 45 of them graded and in 2009, he surpassed 1000 winners.

A knack for finding talent at bargain prices and developing those young horses and bringing new owners into the racing has enabled Kenneth "Kenny" McPeek to rise to the top levels of the sport.



A top example of McPeek's skill at picking out good, young Thoroughbreds is Curlin. McPeek purchased the colt for \$57,000 and turned him over to his assistant when he took a sabbatical from training. Curlin was sold after showing great ability early in his career and went on to be a two-time Horse of the Year and the leading money winner in North American racing history with more than \$10 million in earnings. McPeek bought Noble's Promise for \$10,000 as a weanling and he has won a Grade 1, a Grade 3 and earned more than \$1 million.

McPeek currently races primarily at Keeneland, Churchill Downs, Oaklawn Park and Saratoga, as well as keeping a division at his Magdalena Farm in Lexington.

FAYETTE CIRCUIT COURT
22ND JUDICIAL CIRCUIT
DIVISION 3

Case No. 15-CI-4101

MARIA BORELL

PLAINTIFF

V.

AFFIDAVIT OF
STEVEN L. MOYER

GALLERY RACING STABLES, LLC, ET AL.

DEFENDANTS

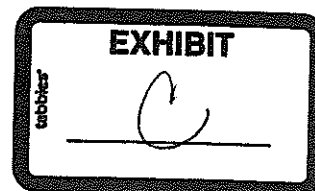
* * * * *

I, Steven L. Moyer, having been first duly sworn, do depose and state as follows:

1. I am a trainer of thoroughbred horses and have maintained a trainer's license for over 25 years. I am currently an assistant trainer with Jimmy Jerkins and I am based at Belmont Park in Nassau County, New York.

2. In 1997-1998, I worked with Nick Zito who was then training horses for James McIngvale and his racing entity. At one point, the McIngvales decided to send 20 two year olds to the training center in Lexington, Kentucky and asked that I train for them as a private trainer. I worked for the McIngvales as a private trainer during the period of August 1997 through approximately April 1998 training and racing horses for them.

3. I was compensated as a private trainer by the McIngvales by the payment of \$700 per week plus I also received a 6-1/2% commission on all purse winnings across the board, meaning all first, second, third, fourth or fifth place winnings. My compensation was paid by the McIngvales' financial person at the furniture store in Houston, a gentleman named David Kennedy. I submitted statements periodically, all of which included the 6-1/2% commission noted above and those commissions were paid by the McIngvales in addition to my \$700 per week payment, plus any other reimbursements.



4. If the McIngvales are now taking the position that they have never paid a commission for purse winnings to a private trainer, that statement is inconsistent with my personal experience with them, their having compensated me in accordance with the arrangement outlined above.

5. I ended my relationship with the McIngvales in approximately April 1998 principally because of the involvement of Mr. McIngvale's sister-in-law, Laura Wohlers. After Ms. Wohlers and her involvement was injected into the training of the McIngvale horses, it became very difficult for me to continue in that position. Ms. Wohlers was very confrontational and, to say the least, was extremely difficult to deal with. It finally reached the point where I severed my relationship with the McIngvales.

6. I am willing to make myself available to testify at any trial or hearing in the above litigation on behalf of the Plaintiff, Maria Borell.

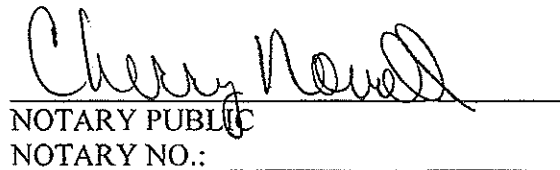
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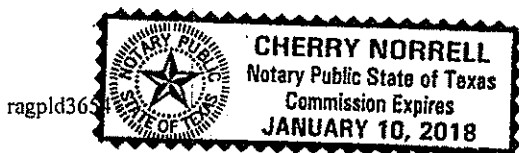

STEVEN L. MOYER

STATE OF TEXAS)
)
COUNTY OF BOWIE)

Subscribed and sworn to before me by Steven L. Moyer on this the 12 day of November, 2015.

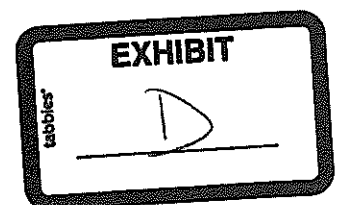
My Commission expires: Jan 10, 2018


NOTARY PUBLIC
NOTARY NO.: _____



Laura , can we talk some point about this next race? Will I get 10% if he wins? I know I have the horses in the stalls etc, but my parents are about to lose everything and move into an basement apartment because my sisters are screw ups. I just want to give them the money. Even 5% , anything. Sorry to ask via text , but I am balling crying. I don't think you could understand me.

Sorry about that happening. We have never paid a commission to our private trainers. Mack Alrwady said he'd give you a 10k bonus if we won and I could ask him about more if we won but can't promise you anything. The barn costs us soooooo much more to pay for everything ourselves than a day rate. I ll ask him though if win but I don't think now is the time



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VIA E-MAIL AND MAIL
mack@galleryfurniture.com

November 2, 2015

Mr. James McIngvale
Gallery Racing, LLC
6006 North Fwy.
Houston, Texas 77076

Re: Maria Borell/James McIngvale and Gallery Racing, LLC

Dear Mr. McIngvale:

As you are likely now aware, our firm represents Maria Borell regarding amounts owed to her by Gallery Racing, LLC ("Gallery Racing") for training services and recognition of breeding rights. As I understand it, in April of this year Gallery Racing retained Ms. Borell as a trainer and agreed to pay her according to industry standards, *i.e.*, \$1,000 per week, ten percent (10%) of the owner's share of any purses won by horses trained by Ms. Borell, ten percent (10%) of any monies received by Gallery Racing for horses trained by Ms. Borell that won claiming races and a lifetime breeding right for each Grade 1 race win by any horse trained by Ms. Borell. Although it appears that Gallery Racing honored its commitment to pay Ms. Borell \$1,000 per week throughout the parties' affiliation, the remainder of Gallery Racing's obligations to Ms. Borell have largely been ignored.

Other than a \$10,000 payment toward her share of Runhappy's win in the Kings Bishop Stakes, Gallery Racing has failed to pay Ms. Borell her ten percent share of Gallery Racing's purses for the four races won by Runhappy and the race won by Triple Hott, all of which wins resulted from Ms. Borell's training efforts. Specifically, and as set out in the letter to Keeneland Association, Inc. and Breeders' Cup Limited Kentucky on which you were copied, Ms. Borell is owed \$127,752 for her share of winning purses and claiming fees, broken down as follows:

<u>Date</u>	<u>Race</u>	<u>Horse</u>	<u>Owner's Share</u>	<u>Trainer's Share</u>
10/31/15	Breeders' Cup Sprint	Runhappy	\$820,000	\$82,000
10/2/15	Stoll Keenon Ogden Phoenix Stakes	Runhappy	\$150,000	\$15,000

EXHIBIT

E

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THE GETTY LAW GROUP PLLC

Mr. James McIngvale
November 2, 2015
Page 2

8/29/15	Kings Bishop Stakes	Runhappy	\$275,000	\$17,500 (\$27,500 less \$10,000 paid)
7/31/15	Ellis Park	Runhappy	\$19,500	\$1,950
6/27/15	Arlington	Triple Hott	\$13,020 \$50,000 claiming fee	\$1,302 \$5,000 (10% of claiming fee)

In addition, Ms. Borell is entitled to two (2) lifetime breeding rights in Runhappy based on his wins in the Grade 1 Breeders' Cup Sprint and Kings Bishop Stakes. Finally, Gallery Racing's very public termination of Ms. Borell's services was unwarranted under the circumstances and may well have done permanent damage to her professional reputation.

We would certainly prefer to resolve this matter amicably and without the need for litigation, which can be accomplished for the above listed amounts and confirmation of the two lifetime breeding rights in Runhappy. Please contact me or have your lawyer do so as soon as possible to discuss and hopefully resolve this situation. I will look forward to hearing from you.

Sincerely yours,


Richard A. Getty

RAG/dhb

cc: Ms. Maria Borrell
Danielle H. Brown, Esq.
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(e-mailed only, with copy of November 2, 2015 letter to Keeneland Association, Inc. and
Breeders' Cup Limited Kentucky)

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