

## \$2.3M in attorneys' fees awarded in racetrack battle

By Lisa K. Bruno

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Lawyers representing the Plainville Racing Co. have been awarded approximately \$1.6 million in attorneys' fees and costs in connection with their successful Chapter 93A counterclaim brought against Rhode Island developer and horseman Louis Giuliano in a bitter legal dispute over ownership of the Plainridge harness racing track.

A further \$661,000 in counsel fees and costs were awarded to the attorneys for co-defendant Ourway Realty, the owner of the track, on its breach of lease and 93A counterclaims.

The awards follow the decisive court victory of Plainville President Gary T. Piontkowski over Giuliano, a former partner, last March.

Boston lawyer Jeffrey S. Robbins represented Piontkowski, the racing company and its affiliate. Observing that the case began with a series of 20 claims asserted by Giuliano against his client, Robbins pointed out that each of the charges had been dismissed following trial.

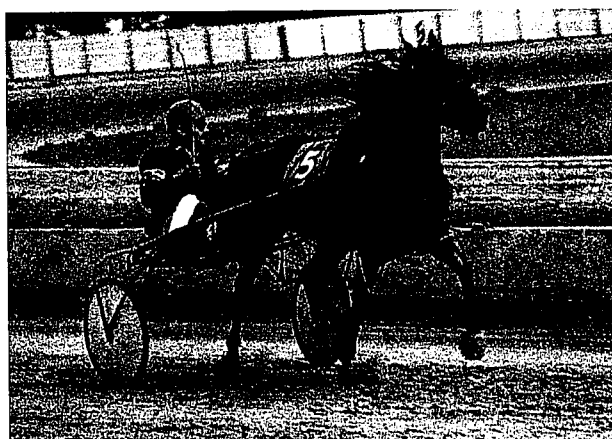
In her March 23 decision, Superior Court Judge Margot Botsford ruled that the so-called PRC parties had proven their 93A counterclaim insofar as Giuliano had misrepresented that he owned the Plainville property — a claim from which most of the case flowed, according to Robbins — and that he had misappropriated funds provided by PRC for the construction of the racetrack facility.

Although there was a finding that his clients had suffered quantifiable financial damages as a result of the unfair and deceptive acts and practices — namely, the improper use of funds — he noted that the judge also stated such a finding was not a prerequisite for an award of attorneys' fees under 93A.

"It is not critical that PRC did not prove the actual amount of the loss suffered; what must be shown is that there was an actual adverse economic effect on PRC, even if it was not quantified in dollars and cents," Botsford wrote in her decision.

She also ruled that the PRC parties were entitled to attorneys' fees on their claim for rescission of stock-related agreements that Giuliano fraudulently induced Piontkowski to execute.

In reviewing the fee application, Botsford noted the case was one with an extremely long pre-trial and trial history and was "hard fought" on all sides. At the center of the case, she said, was a series of "charges and countercharges of mispre-



sentation, deceit and fabrication," rendering the task of "untangling the snarled set of stories and facts" one that "consumed enormous time by all concerned."

The motion practice was "intense and frequent," Botsford observed, ultimately requiring the appointment of a discovery master and generating ancillary litigation. In addition, she noted that on its scheduled trial date, the case was transferred to the business litigation session, where it was eventually tried over the course of 30 days, spread out over nine months.

Though the fees his clients had sought were in the vicinity of \$4 million, Robbins described the amount awarded — calculated using the lodestar method — as "perfectly reasonable."

The fees awarded to Ourway Realty more closely approximated those requested by its attorneys. This was partly attributable, according to David H. Rich of Boston, to his firm's hourly fees, which the judge acknowledged were "substantially lower" than going rates. In addition, Ourway had a further avenue of recovery, he explained, as it was entitled to attorneys' fees under both its 93A claim and its lease contract.

While noting that litigators are used to a level of belligerence in their work, Robbins said the case was "certainly the most contentious, the most aggressively fought and, in some respects, the most disturbing litigation that I can remember being a participant in."

He pointed out that Giuliano had himself engaged in the very misconduct with which he had falsely accused the defendants.

"Everything that you can imagine was thrown into this case," said Rich, pointing to allegations of perjury, forgery and of switching signature pages.

"The courts, and rightly so, establish a reasonably high standard for allowing an award of attorneys' fees in the context of

93A," he remarked. "I think the court correctly observed that this kind of conduct had gone on and that it was just the type of case where a party is absolutely entitled to a recovery of fees."

Robbins was reluctant to call the ruling the final word on the case.

"I think it would be hubris to say this closes the book on this," he commented, with a laugh. "Of course, Mr. Giuliano has the right to appeal — and he is an uncommonly litigious fellow who will, no doubt, avail himself of all his rights."

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