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ARABIAN HORSE ASSOCIATION
NEW CODE OF ETHICS PROVISIONS
AND THE LAW

I. INTRODUCTION

The following is a general discussion and is not intended as specific legal advice. The laws of the states vary, and each situation has it own unique set of facts, so the discussion below is for educational and general information purposes only. In the event that a reader has an actual case, consultation with a qualified attorney is recommended.

The Arabian Horse Association has added the following provisions to its code of ethics:

> "7. Members shall not offer a horse capable of reproduction for breeding, transfer of ownership, or lease if the horse is known to such member to be a SCID carrier, a Lavender Foal Syndrome (LFS) carrier, a cerebellar abiotrophy (CA) carrier, or to be affected by CA without disclosure of that horse's SCID, LFS or CA status to all parties to the transaction (Res. 3-09, Res. 4-09)
>
> 8. An owner of any mare that produces affected SCID, LFS or CA offspring shall immediately notify the stallion owner of a foal's positive SCID, LFS or CA diagnosis and cooperate fully with the stallion owner's reasonable efforts to verify that finding. (Res. 3-09, Res. 4-09)"

The above quoted Code of Ethics sections specifically place a duty on all members of the Arabian Horse Association ("AHA") to the AHA concerning horses who are **known** to be carriers of Cerebellar Abiotrophy ("CA") and/or Lavender Foal Syndrome ("LFS"), and/or Severe Combined Immunodeficiency Disorder ("SCID") and/or are affected with CA. These provisions clearly require disclosure in sales of breedings, transfers such as sales and trades and leases. They also require that mare

owners notify stallion owners and cooperate with them if there is a diagnosis of CA, LFS and/or SCID However, these provisions do not bind non-members, nor do they, in and of themselves create a duty at law between a buyer and seller or a mare owner and a stallion owner, although they could have some collateral effects on civil liabilities. Only time will really tell what their full effects will be.

II. ENFORCEMENT

Duties to the AHA have been created, but just how these duties will be enforced is not clear.. The AHA Ethical Practice Review Board ("EPRB") as well as state and federal courts are the apparent possibilities.

A. Complaints to the Ethical Practices Review Board.

If the seller of a horse violates the above-quoted provisions, in some cases, there could be a complaint to the Ethical Practices Review Board. The Code of Ethics Provisions create a duty for members of the AHA. Violation of that duty can be punished by the AHA EPRB. The EPRB can bar an offending member from showing or from registering horses, expel them from membership, or even fine them. The drawback is that the EPRB cannot award damages to a claimant, or effectively order a rescission of the transaction.

Another, potential more serious drawback to using the EPRB to seek a remedy is that AHA Handbook, Article 308, Section 1, paragraph c.1 provides, in relevant part:

> "The EPRB shall not, unless there are exceptional circumstances hear any charges the involve:
>
> 1. Private and/or contractual disputes that should properly be settled by a court of law.
>
> * * * *"

The Probable Cause Panel will determine what constitutes "exceptional circumstances."

As a result of these factors, a buyer or breeder who believes that a member of the AHA has violated these above quoted new sections of the Code of Ethics will most likely have to seek redress in the courts.

III. WILL THE NEW AHA CODE OF ETHICS HELP IN COURT?

Will the existence of these new provisions of the AHA Code of Ethics help a buyer or breeder in court? It is not certain. Even if one proves that a seller, for example, who is a member of AHA has knowingly violated these new AHA Code of Ethics sections, such proof does not establish that the seller has violated any law. The AHA is a private club. It may place duties upon its members and penalize its members for violation of such duties, but it cannot create state or federal law.

On the other hand, the existence of these new Code of Ethics provisions might be useful by proving what conduct is expected in Arabian horse transactions. In a lawsuit, a plaintiff will bring these provisions up. A defendant will seek to exclude them on the grounds that they are irrelevant. Rulings by courts could go either way.

There are laws already in place, discussed below, which can be utilized to implement the goals of these new Code of Conduct sections.

IV. DO ASK AND DO TELL

For buyers and breeders and lessees the best practical and legal step to take is to ask. Ask a stallion owner directly: Do you know if your stallion is an SCID carrier, or CA carrier, or LFS carrier? Then ask if they have tested? Same drill for buyers or lessees. **If you ask, it does create a legal duty on the part of the stallion owner or seller to tell you truthfully what they know.**

V. PRACTICAL QUESTIONS

A. Question: A seller has some untested breeding stock available for purchase, but the seller knows that there is at least one parent of a sale horse that is a CA carrier. Does that seller have a legal obligation to let prospective buyers know that the sale horses could potentially be carriers?

Answer: No. Not under the Code of Ethics, and generally not under the law, **unless the seller is asked.** If the seller is asked, if the seller says anything, the seller is obligated to truthfully disclose what the seller knows. In this question, the seller would need to disclose the known carrier parent.

B. Question: A stallion is suspected of being a carrier has not been tested, but the stallion owner is notified of a tested carrier offspring produced out of a tested clear dam. Does that situation constitute enough information to require that the stallion owner inform prospective purchasers of breedings that the stallion is a carrier – pursuant to resolution 3-09 (the new AHA Code of Ethics Provisions quoted above)?

Answer: No. Under the facts stated, the stallion owner does not necessarily **know** that the stallion is a carrier. The report might be false. Either or both of the test results might be in error. The facts and circumstances could be such that the EPRB would hold that the stallion owner must inform prospective purchasers of breedings that the stallion is a carrier, based on these facts, but that cannot be said with certainty. On the other hand, if the stallion owner were asked if he had been informed of any carriers being sired by the stallion out of a clear dam, he would have a legal obligation to tell what he knows. This can be a problem area though, because there is potential for an enemy of a stallion owner to give a false report. The best defense in this situation for a potential breeder is to breed only to tested stallions.

VI. A LITTLE LAW

Horses are "goods" under Article 2 of the Uniform Commercial Code, which is part of the law in virtually every state in some form. Sellers have a common law obligation to disclose any facts within the seller's knowledge that materially affect the value or desirability of the property if the seller is also aware that those facts are not known to the buyer or within reach of the buyer's "diligent attention and observation."

"'[A]lthough one may be under no duty to speak as to a matter, "if he undertakes to do so, either voluntarily or in response to inquiries, **he is bound not only to state truly what he tells but also not to suppress or conceal any facts within his knowledge which materially qualify those stated. If he speaks at all he must make a full and fair disclosure**." ' "

In California, Civil Code, § 1710(3) imposes a duty of disclosure by codifying the rule that: "when one speaks, one must speak the whole truth to the end that no facts are concealed that would qualify the statements made." .

VII.
HILDA HORSEBREEDER v. SLY DEALER AND J. SLIMINGTON SNOBHAT HYPOTHETICAL

A. The Facts

Sly Dealer, a member of AHA, acting as agent for J.Slimington Snobhat, also a member of AHA, has sold a purebred Arabian stallion whom Sly Dealer knows to be a Cerebellar Abiotrophy carrier to Hilda Horsebreeder. Hilda was looking for a breeding stallion. She told Sly Dealer that she wanted a herdsire. Sly told Hilda that he had just the right horse for her who would be a fine herdsire, and showed her Ibn Blockhead. Hilda relied on Sly's representation and bought Ibn Blockhear in California, pursuant to a written sales agreement that specified that the sale was "as is" for $150,000.

What can Hilda do?

What legal doctrines are available?

Will the new AHA Code of Ethics provisions help?

First, Hilda can look to the common law of California, from whence might cometh her help.

Hilda finds out about Ibn Blockhead's carrier status a few months after the sale. She notifies Sly Dealer and J. Slimington Snobhat of Ibn Blockhead's condition and sends them a letter in which she tells them that she rescinds the sale. She offers to return Ibn Blockhead and demands her money back. Dealer and Snobhat refuse to return her

money. Through S. Capartist, attorney at law, they tell Hilda that the sale was "as is" and to go jump in the lake (or words to that effect). They further assert that Ibn Blockhead became a carrier after Hilda bought him. Hilda retains a good equine lawyer and sues Dealer and Snobhat in California for breach of contract (warranty) fraud and negligent misrepresentation.

But what about the "as is" clause?

Under California law, it is well established that neither an "as is" sale nor the buyer's right of inspection exonerates the seller from liability for failure to disclose known defects in the property sold (i.e., intentional misrepresentation or fraudulent concealment). The mere acceptance of "as is" language does not relieve the seller from liability for failure to reveal a known or concealed defect not readily apparent from an inspection of the property.

Was Hilda's rescission effective?

Civil Code Section 1689(b)(1) states: a party to a contract may rescind a contract . . . if the consent of the party rescinding . . . was given by mistake . . . or fraud, exercised by or with the connivance of the party as to whom he rescinds . . ."

Acts of fraud and deceit are reasons which can justify rescission.

Rescission can also be justified on the basis of mistake. Specifically, "Rescission is available for a unilateral mistake, when the unilateral mistake is known to the other contracting party and is encouraged or fostered by that party."

Was Ibn Blockhead's CA carrier status a breach of warranty?
What is a warranty?

Any promise that is a part of the basis of the bargain can become a warranty. See California Commercial Code Section 2313(1)(a).

Sly told Hilda that Ibn Blockhead would be a fine breeding stallion. Hilda relied upon that representation and it became a part of the basis of the bargain. It became an express warranty.

Here, the Code of Ethics provisions may help. Since Hilda, a member of AHA would have had to disclose to potential customers Ibn Blockhead's carrier status, and that would hurt the market for his breedings, Hilda's lawyer could offer the new Code of Ethics provisions to show that in the Arabian Horse Association, CA carrier status is considered sufficiently serious that AHA members are required to disclose such status to potential breeders in the AHA Code of Ethics. Hilda would argue that absence of CA carrier status is necessarily a part of being a "fine herdsire" in the Arabian breed at present. Hilda's case would have been stronger is she had specifically asked if Ibn Blockhead was a CA carrier.

S. Capartist argues that there was no warranty – it was just Sly Dealer's **opinion** that Ibn Blockhead would be a good herdsire. But Courts have held:

> ". . . **when a party possesses or holds itself out as possessing superior knowledge or special information or expertise regarding the subject matter and a plaintiff is so situated that it may reasonably rely on such supposed knowledge, information, or expertise, the defendant's representation may be treated as one of material fact**."

No settlement was reached. What does Hilda have to prove in order to prevail on her fraud and negligent misrepresentation causes of action?

Intentional Misrepresentation (Fraud) – CACI (approved jury instructions) 1900

1. That J. Slimington Snobhat/Sly Dealer represented to Hilda Horsebreeder that an important fact was true;
2. That J. Slimington Snobhat/Sly Dealer's representation was false;
3. That J. Slimington Snobhat/Sly Dealer knew that the representation was false when he made it, or that he made the representation recklessly and without regard for its truth;
4. That J. Slimington Snobhat/Sly Dealer intended that Hilda Horsebreeder rely on the representation;

Concealment – (another species of fraud)CACI 1901

1. That J. Slimington Snobhat/Sly Dealer disclosed some facts to Hilda Horsebreeder but intentionally failed to disclose other important fact(s), making the disclosure deceptive;

[or]

That J. Slimington Snobhat/Sly Dealer intentionally failed to disclose an important fact that was known only to them and that Hilda Horsebreeder could not have discovered;

[or]

That J. Slimington Snobhat/Sly Dealer actively concealed an important fact from PLAINTIFF (Hilda) or prevented her from discovering that fact;

2. That PLAINTIFF did not know of the concealed fact;

3. That J. Slimington Snobhat/Sly Dealer intended to deceive PLAINTIFF by concealing the fact;

4. That PLAINTIFF reasonably relied on J. Slimington Snobhat/Sly Dealer s deception;

5. That PLAINTIFF was harmed; and

6. That J. Slimington Snobhat/Sly Dealer 's concealment was a substantial factor in causing PLAINTIFF's harm.

Negligent Misrepresentation - CACI 1903

1. That J. Slimington Snobhat/Sly Dealer represented to PLAINTIFF that an important fact was true;

2. That J. Slimington Snobhat/Sly Dealer 's representation was not true;

3. That J. Slimington Snobhat/Sly Dealer had no reasonable grounds for believing the representation was true when he made it;

4. That J. Slimington Snobhat/Sly Dealer intended that PLAINTIFF rely on this representation;

5. That PLAINTIFF reasonably relied on J. Slimington Snobhat/Sly Dealer 's representation;

6. That PLAINTIFF was harmed; and

7. That PLAINTIFF's reliance on J. Slimington Snobhat/Sly Dealer s representation was a substantial factor in causing her harm.

The major difference between intentional misrepresentation and negligent misrepresentation is that in the former, the Defendant must be aware of the falsity of his representation when he made it, but in the latter, the Defendant simply had no reasonable grounds for believing that the representation was true when he made it.

VII. The Principal Knew Nothing Defense

The clever J. Slimington Snobhat offers as a defense that he did not know about any fraud – he simply relied on his agent, the estimable Sly Dealer.

Oh no you don't, Slimey! Here is a little more law to counter that defense.

A. Agent Placed in a Position to Defraud

In California **a principal who enables an agent to defraud third persons while apparently acting within his authority is liable to the third persons, even if principal is entirely innocent and has not benefited from the transaction.**. This theory of "vicarious liability" is based upon fact that the agent's position facilitates consummation of fraud since, from point of view of fact of a third person, the transaction seems regular on its face and the agent appears to be acting in ordinary course of business confided to

him.. In other words, the principal, even without any knowledge of the agent's wrongful conduct, is held liability because the principal placed the agent in a position to defraud.

B. Imputed Knowledge

Where the principal actually or apparently authorizes representations about a matter related to the agent's duties, and the *agent* has knowledge of their falsity, this knowledge may be imputed to the principal, even though the agent is acting adversely.

C. Respondeat Superior

Under the theory of *respondeat superior*, a principal is vicariously liable for an agent/employee's torts committed within the scope of agency/employment.

D. Benefits Retained by Principal

Where an agent acting within his actual or apparent authority procures a sale of property by means of fraud, the principal, who has accepted and retained benefits which accrued from the transaction, is jointly liable with the agent for the damages incurred thereby, even though principal is innocent of personally participating in the fraud.

Ordinarily the principal may escape liability only by repudiating the agent's acts immediately on discovery of the fraud, and giving up any benefits received.

E. Ratification of Fraud

"An agency may be created, and an authority may be conferred, by a ... subsequent ratification." Civ. Code, § 2307. "A ratification can be made ... by accepting or retaining the benefit of the act, with notice thereof." Civ. Code, § 2310. "A principal is responsible for ... wrongs committed by his agent [if] ... he has ... ratified them ...." Civ. Code, § 2339.

"Ratification" may be by conduct which is inconsistent with any reasonable contention that approval and adoption was not intended, by voluntary retention of benefits with knowledge of the unauthorized nature of the act, or by acquiescence or silence.

VIII. The Bottom Line

Do ask and be careful. For buyers, the new provisions in the AHA Code of Ethics do not provide an express right for you, but rather a duty on the seller, which you might not be able to effectively enforce that duty before the AHA EPRB. Nonetheless legal remedies are available.

But lawsuits are costly. In many cases, the cost of a lawsuit may exceed the cost of the horse in question. State laws vary concerning whether or not a successful party in a lawsuit can recover their attorney's fees. In Arizona, a successful party in a contract action can recover their attorney's fees as a matter of law. In California, however, a

successful party in a contract action can recover their attorney's fees only if the contract so provides. Always use written agreements, and make sure that they contain a clause enabling the prevailing party, in the event of a dispute, to recover attorney's fees. Most states have laws like California, not Arizona, so an "attorney's fee" clause is important.

Ask questions. Get it in writing. Buying and breeding to the best Arabian horses are worth the effort.