

AN EXTRAORDINARY CUSTOM CASE

The case of Dimario v. Coppola, 10 F.Supp. 2d 213 (E.D.N.Y. 1998) gives an extraordinary effect to custom and usage in the thoroughbred horse business. In that case, the trainer of multiple stakes winning stallion RUNAWAY GROOM testified that he had been promised expressly (but orally) that he would be paid cash compensation, in addition to his usual benefits, in a sum equal to ten percent (10%) of the proceeds of RUNAWAY GROOM'S syndication upon retirement. The owners of the horse apparently did not disagree that this had been the oral agreement, but contended that the statute of frauds applied, and that the statute of limitations had run before the trainer filed his lawsuit. The Court recited much custom in the business, some of it inaccurately (Each syndicate interest grants the holder a proportionate share in the profits and expenses of the stallion), but was exactly correct that the usual compensation to a trainer of a successful male thoroughbred is the grant of a lifetime breeding right upon syndication. The term orally agreed in this case was said to be unusual. After wandering off into the discussion of cases involving the absence of a material term in a contract, and the undoubted rule that silence on such a term may be cured by proof of established custom and practice in the industry, the Court indicated that in this case there is no question of a silence B the trainer was not guilty of mistake and perjury. There was no statute of frauds or statute of limitations problem, held the Court. However, having discussed for many pages the use of custom and usage in adding to or interpreting a contract, the Court decided to rewrite the contract: These customs must be construed as implied precise terms of the original contract. The oral contract was not enforced; rather, compensation was limited to customary compensation. By construed the judge meant constructed.