

Disclosures in Horse Sales – when is enough, enough?

CARFAX? CAR FOX?

There used to be a television commercial for “Carfax” (a service that provides maintenance and repair histories for used vehicles) that went something like this: a couple sits down with a used car salesman and announces, “We love the car. Show us the Carfax.” The salesman pulls out a stuffed fox hand puppet and squeaks, “I’m the Car Fox. Buy the car. It’s great.” The couple, looking surprised, reiterates, “We said ‘Carfax.’ Not ‘Car Fox’.” The salesman responds, “Carfax, Car Fox, whatever. Buy the car. You’ll love it.” The couple stands up and leaves – presumably, without buying the car.

I love this commercial. If you are buying a used car and the salesman refuses to answer a direct request for information about the car’s history, anyone in their right mind would walk away. Why is the process of buying a horse so different?

But what if you ask for the Carfax, and then accept a statement from Mr. Car Fox? What if you don’t even ask for the Carfax? Are you just naïve? Or, have you been the victim of a fraud?

DON’T ASK, DO TELL?

A number of years ago, a jury in California awarded Tom Selleck \$187,000 after he claimed he’d been duped into buying a lame horse. According to news reports, before the jury began deliberating on Selleck’s claim for punitive damages, Selleck and the seller (and seller’s agents) of the horse settled the case –agreeing to pay Selleck \$250,000. Selleck allegedly paid \$120,000 for the horse in 2006. \$67,000 of the jury’s award represented board and vet bills paid by the Sellecks. According to USEF records, the Sellecks still owned the horse at the conclusion of the litigation, but had retired it from competition.

The purchase of the horse was fairly typical. The Sellecks had the horse vetted. The horse was sound for the veterinary examination, and they had the horse x-rayed. The Sellecks were allegedly offered access to the horse’s veterinary history, and apparently an offer was made for the veterinarian who conducted the pre-purchase exam to contact the horse’s treating veterinarian. The Selleck’s attorney admitted that they did not ask for the horse’s veterinary records, or contact the treating veterinarian, before they bought it.

A few weeks after the purchase, the horse went lame. According to the Selleck’s attorney, the horse “had chronic lameness stemming from a subchondral bone lesion – the horse was routinely treated with corticoid steroid injections . . . The defense claimed that . . . [this] prior condition . . . would and could have been revealed had we asked for vet records.” The Selleck’s theory of the case was that “it’s not customary to seek vet records” in California, and the sellers committed fraud when they failed to disclose that the horse was being treated in this matter for chronic lameness.

A top veterinarian, who was consulted for purposes of this article and who was not involved with the case, explained that if the complained of condition was not detectable on the x-



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rays performed during the pre-purchase examination, then as a matter of semantics it was probably not what he would call a “lesion” but rather an area of “stress” that would be detectable by an MRI or a bone scan. Different veterinarians might have differing views on whether routine injections to treat such a condition constituted a deliberate attempt to “mask” lameness versus a fairly typical maintenance program for a competitive, high-end performance horse.

Apparently, the Selleck’s attorney and their expert witnesses succeeded in convincing a jury that this was a case of fraud. But because the case ultimately settled, there will be no appeal and the jury’s finding will stand. A jury verdict has no value as legal precedent, however. So this one case does not change the law. But it does stand out as an example of what ordinary people think constitutes fraud.

According to statements made by Selleck’s attorney, his client’s motivation for suing the seller and her agents was “never about money,” and that Selleck did in fact pay his attorney more than he settled for (i.e. \$250,000?). The fact that the case was a financial loss for the Sellecks was apparently irrelevant to them – they litigated on principle seeking vindication and a change in the way the horse industry does business.

What “horse industry practice” was Selleck objecting to? Non-disclosure of veterinary records. But apparently Selleck doesn’t think that a buyer should even have to ask for the veterinary records – they should just be produced by the seller as a matter of course.

The problem I have with this case is that it clouds the distinction between “buyer beware” and outright fraud. Under the principle “buyer beware,” the buyer is under a duty to educate him or herself in advance of a purchase and conduct whatever investigation s/he deems necessary under the circumstances. If a horse is being sold “AS IS”, then “buyer beware.”

As an aside, not every horse is sold “AS IS.” In fact, this is the Number 1 Biggest Myth in the horse industry. Unless a disclaimer of warranties is properly documented and disclosed in advance of the sale and agreed to in writing by the buyer, that horse is being sold with warranties (and lots of them). This is why written contracts are so important. But that is an article for another day.

In the meantime, “fraud” is something different. Fraud is lying or cheating. A buyer can attempt to educate him/herself prior to purchasing a horse, but fraud will stifle that attempt. Fraud will render the vetting useless. A buyer cannot truly protect him/herself from a liar or a cheat, which is why the law allows a buyer who has been “duped” to sue, even if the horse was purchased pursuant to a contract with a proper “AS IS” clause.

It is sad that the Sellecks chose to suggest to the world that their case exemplifies how crooked the horse industry is. I don’t believe that the facts in this case support a finding of fraud – in the court of public opinion OR in a court of law. If the seller invited the Sellecks to contact the treating vet, and the information about the horse’s condition could have thus been discovered, where’s the fraud? This was a 10 year old, six-figure, high-end, show horse --- apparently it didn’t even come as a surprise to the Sellecks that it was getting joint injections. “Car Fox. Buy the car!”

