

## Legal Lessons from Tom Brady

Articles May 2, 2016

The state of Massachusetts collectively groaned last week as the Second Circuit Court of Appeals reinstated quarterback Tom Brady's four-game suspension for his role in the "Deflate-Gate" saga. A brief recap of this strange story is in order before we discuss its important legal lessons.

On January 18, 2015, Brady's New England Patriots defeated the Indianapolis Colts in a crucial playoff game. After the game, reports emerged that the Patriots' footballs may have been "deflated" below NFL standards. NFL Commissioner Roger Goodell ordered an investigation. The resulting "Wells Report" concluded that "it is more probable than not" that two Patriots' employees intentionally deflated the team's footballs before the game. It also found that Brady "was at least generally aware" that team footballs were intentionally deflated.

Goodell suspended Brady for the first four games of the 2015-2016 season. Brady appealed under the league's collective bargaining agreement. Goodell served as the arbitrator at Brady's hearing. Predictably, he upheld the suspension.

In July 2015, Brady sued the NFL in federal court and argued that his suspension should be overturned. Federal Judge Richard Berman agreed. He vacated Brady's suspension, thus making him eligible to play the entire 2015-2016 season.

The NFL appealed Judge Berman's ruling to the Second Circuit Court of Appeals. Last Monday, this three-judge court overturned Judge Berman's decision. As it stands, Brady is now suspended for the first four games of the 2016-2017 season.

"Deflate-Gate" (strange as it's been) highlights the importance of a court's "standard of review." A standard of review is the amount of deference that one court must give to the decision of a lower court or tribunal. In Brady's case, the Second Circuit found that it had little authority to overrule Goodell's decision to suspend Brady:

The basic principle driving both our analysis and our conclusion is well-established: a federal court's review of labor arbitration awards is narrowly circumscribed and highly deferential: indeed, among the most deferential in the law.

The Second Circuit thus held that it must uphold Brady's suspension as long as Goodell acted within the scope of his authority under the collective bargaining agreement and did not fashion his "own brand of justice." Unlike Judge Berman, it ruled that Goodell exercised the appropriate authority and thus reinstated Brady's suspension.

Many other standards of review apply in different situations. Let's say you own a restaurant here in Pittsburgh, and have a liquor license. You set up a sound system outside of your restaurant, and blare loud music to attract customers. Noise complaints pour in from the neighbors, and the Liquor Control Board hits you with citations and big fines. You think the fines are total hogwash, and appeal to the Court of Common Pleas. Does the Court of Common Pleas have to defer to the Liquor Control Board's decision just like the Second Circuit deferred to Goodell's ruling in Brady's case?

In a word: no. In your situation, the court must conduct a "de novo" review. This means that it won't give any deference to the Liquor Control's Board findings and rulings. Instead, the court will take a fresh look at the evidence and issue its own ruling. See *Liquor Control Bd. v. Can, Inc.*, 664 A.2d 695 (Pa. Commw. Ct. 1995).

Here's a different scenario where yet another standard of review applies. You used to work at a Pennsylvania hospital, but the hospital just fired you. You think your termination was wrong, so you file a lawsuit. You really want to get your hands on some research files held by one of the hospital's doctors, but they won't turn them over. You file a written

request with the court, asking it to force the hospital to give you the files. The court denies your request. You still really want those files, so you appeal to the Pennsylvania Superior Court. Can the Superior Court take a fresh look at the evidence and issue a “de novo” ruling?

Unfortunately for you, the answer is no. In Pennsylvania, an “abuse of discretion” standard applies when a higher court reviews a lower court’s discovery order. See *Bensinger v. Univ. of Pittsburgh Med. Ctr.*, 98 A.3d 672, 682 (Pa. Super. Ct. 2014). Meeting an abuse of discretion standard is much more difficult than satisfying “de novo” review. Not only do you have to prove that the lower court made an error in judgment, but you must also establish that the law was “misapplied” or “overridden” or that the ruling was “manifestly unreasonable” or based on “bias, ill will, prejudice, or partiality.” See *Simmons v. Simmons*, 723 A.2d 221, 222 (Pa. Super. Ct. 1998).

In Brady’s case, the Second Circuit probably would have upheld Judge Berman’s decision revoking Brady’s suspension if it were required to apply an abuse of discretion standard to **Judge Berman’s decision** rather than a “highly deferential” review of **Goodell’s decision**. After all, most would agree that Judge Berman’s ruling wasn’t “manifestly unreasonable.” Nor is there any evidence that he was biased, prejudiced, or partial to Brady or the NFL. The standard of review – and what lower court or tribunal it applied to – was crucial in the Second Circuit’s decision.

So what’s the takeaway from the Deflate-gate story? First, don’t deflate footballs before your next NFL game. Even more importantly, speak with our attorneys about navigating the trial and appeals’ process if you’re involved in a lawsuit. Ensuring that the court applies the proper standard of review can make or deflate your case.

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