



COMMISSION HEARING

TORONTO, ONTARIO – MAY 13, 2013

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**NOTICE OF DECISION**

**IN THE MATTER OF THE RACING COMMISSION ACT, S.O. 2000, c.20;**

**AND IN THE MATTER OF THE KEVIN TREMBLAY APPEAL**

Kevin Tremblay appealed against Ruling Number SB 4566.

Date of Hearing: May 13, 2013

ORC Panel Members: Chair Rod Seiling  
Commissioner John W. Macdonald  
Commissioner Dan Nixon

Counsel for Appellant: Self-represented

Counsel for the Administration: Angela Holland

The Panel denied the appeal.

The Panel's Reasons for Decision is attached to this Notice.

DATED at Toronto this 17<sup>th</sup> day of May 2013.

Steven Lehman  
Executive Director

## REASONS

### Overview

1. Standardbred licensee, Kevin Tremblay, appealed the penalty portion of SB Ruling No. 4566 issued on March 20, 2013 wherein he was fined \$2,000 and suspended for 7 months for having in his possession a number of items discovered during a Directive 5 search of his stable at the Campbellville Training Centre. Items found included unlabeled medications, medications acquired without a prescription from an Ontario Racing Commission (ORC) licensed veterinarian and loaded syringes, one of which contained lidocaine, a Class II drug. In doing so he was found in violation of SB Rules 1.09, 5.11, 6.20, (a), (b) and (c), 6.05 and 6.46 (a), (b), (c), (d) and (e).
2. Prior to the commencement of the de novo hearing on the merits of the appeal, the Panel dealt with a preliminary matter regarding representation for the appellant and providing translation services for him via Landry Kayembe. Angela Holland represented the ORC as legal counsel.
3. Mr. Tremblay submitted that Brian Tropea from the Ontario Harness Horse Association (OHHA) was to be present to assist him.
4. Ms. Pamela Bray, an investigator with the ORC, testified that she had just had a telephone conversation with Mr. Tropea and that he informed her that he was never asked to represent Mr. Tremblay at the hearing.
5. Mr. Tremblay, on hearing Ms. Bray's testimony, confirmed to the Panel that it was a misunderstanding, that he was waiving his rights to legal counsel and wished to proceed with the hearing.

### Background

6. On February 14, 2013, an ORC Investigative team that included Desmond Waithe conducted a Directive 5 search of the stable area of the appellant at the Campbellville Training Centre at 9:00 a.m. According to Mr. Waithe, Mr. Tremblay informed the team that he did not have keys for some parts on his stable. Notwithstanding that he lived at the Centre, he submitted that his part-time groom, Krystal Simard, (Simard) had the keys.
7. The investigators contacted Simard by phone. She informed them that it would be a while before she could get there as she had another job at a riding stable. It was her practice to come to work for the appellant in the afternoon. Mr. Waithe was of the opinion that Mr. Tremblay did not want his locked office to be inspected but finally concurred and broke the lock.
8. The search produced a number of items that constituted a violation of the Rules of Racing. These included unlabeled medications, medications acquired without a prescription from an ORC licensed veterinarian and 3 loaded syringes, one of which contained lidocaine, a Class II drug that has no therapeutic reason to be utilized on a horse for racing.
9. Mr. Tremblay admitted that he made a mistake and chalked it up to being relatively young and having his trainer's license for about a year. He acquired the products from two online services, Allivet.com and Horseprerace.com. It was his contention that he read up on the products that he acquired and there was no mention of lidocaine content. With the syringes discovery, he told the ORC investigators that they contained banamine and robaxin.
10. Mr. Tremblay was to qualify two horses at Woodbine the day after the search. The qualifiers were scheduled the day before the search but were canceled that same day just before they were due to

occur. In the mind of ORC Judge, Jeff Minler, there was a connection related to the syringes and the horses qualifying.

11. Both Mr. Waithe and Mr. Minler found the appellant uncooperative in their respective dealings with Mr. Tremblay. In both cases they testified that each case as time went on he became more willing to cooperate.

12. Mr. Tremblay admitted to his transgressions as they relate to the unlabeled medications and possessing medications without first obtaining a prescription from an ORC licensed veterinarian. He failed to provide a reasonable explanation for the lidocaine except to say that the products he acquired online made no mention of lidocaine. He asked for a second chance and requested that the variance be less time and added monies to the fine.

### **Issue**

13. Should the Panel vary the penalty as requested by Mr. Tremblay by reducing the time portion of the penalty and adding additional monies to the fine?

Decision:

14. After carefully listening to the testimony and reviewing the evidence and the documents submitted, the Panel denies the appeal. A 7-month full suspension and \$2,000 fine is reasonable given the seriousness of the multitude of the rule violations.

### **Reasons for Decision**

15. The onus was on the appellant to demonstrate to the Panel via cogent and compelling evidence why a variance in his penalty of 7 months and a \$2,000 was warranted. On this account he failed. It is in the best interest of racing that his penalty not be varied.

16. The aggravating factors clearly outweigh any mitigating factors as to considering a penalty variance as Mr. Tremblay requested. They are as follows; 1).The appellant was uncooperative with both the investigators when they were conducting their search and with the Judges at his hearing. 2). In terms of credibility, the appellant was not forthcoming. It is reasonable to conclude that he would have had access to the locked areas of his stable given he was living on site and his groom, whom he claimed had the key, only worked for him in the afternoons, six days per week and worked off site in the mornings. 3). The appellant, while he admitted to being at fault for the unlabeled medications and possessing medications without a veterinarian's prescription, failed to provide a reasonable answer as to the presence of lidocaine in one of the loaded syringes. 4). His assertion that he asked Mr. Tropea to assist him at his hearing was found to be without merit. 5). His previous record indicates (whipping a horse after a race) that his concern for the health and welfare of the horses under his care is suspect. This fact is buttressed with the discovery of the loaded lidocaine syringe. Lidocaine is a Class II drug and its use on a race horse constitutes a very serious breach of the Rules of Racing as it not only can affect performance, it can also have negative effects on the health and welfare of a horse. Mitigating the aforementioned was the appellant's admittance of wrongdoing and his plea for a second chance.

17. For greater certainty, age is not and cannot be a mitigating factor as it relates to trainer responsibility. Licensees are expected to know the rules and live by them. The public and the industry expect and deserve a level playing field. For the good of racing, all licensees must be treated equally and fairly, no matter their age or the length of time they have been licensed.

18. Penalties serve a dual purpose, they serve to act as a deterrent to the rule violator and send a clear signal to the industry that similar rule violations can expect to receive similar punishment. This Commission has and follows guidelines as its officials mete out penalties for those who violate the Rules. Any time there are variations in the penalty, they must be on the basis of cogent and compelling reasons that are clearly explained. In this instance, no such evidence was presented that would merit a

variance of the penalty the Judges assessed Mr. Tremblay.

19. This Panel, as a general rule, is not supportive of the concept of allowing licensees to trade time for money. The rationale of deterrence in the penalty structure is severely compromised. The penalty simply becomes a cost of doing business for a licensee. Deterrence is meant to help influence behavior, allowing one to buy themselves "out of jail" is counterproductive and should be avoided. It is well known that it is time that influences behavior as it relates to licensees.

DATED this 17<sup>th</sup> day of May 2013.

A handwritten signature in cursive script that reads "Rod Seiling".

Rod Seiling  
Chair