



COMMISSION HEARING

TORONTO, ONTARIO – AUGUST 11, 2011

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

**AND IN THE MATTER OF THE APPEAL AND REQUEST FOR HEARING BY  
STANDBRED LICENSEES LINDEN WELLS, COLIN JOHNSON,  
JOHN KOPAS, CARL JAMIESON JOE HUDON AND BEN WALLACE**

The Appellants are all owners and/or trainers of horses declared to start in the Ontario Sires Stakes (“OSS”) Gold Eliminations for 2 year-old Colt Trotters on July 21, 2011 at Mohawk Racetrack, which were cancelled due to an extreme heat wave.

On July 22, 2011, a Notice to the Industry was issued by the Program Administrator advising that Eliminations would be rescheduled to August 19, 2011, at Mohawk Racetrack and that the Final would take place on August 26, 2011.

The Notice also advised *inter alia*:

“As a result of the amount of time between the original scheduled race and the new date, this event is considered a new event and will be open to all horses. Please note that any horse that was entered into the original event will be required to be re-entered. Participants are advised that because this is a make-up event, the association with Grassroots #2 at Clinton Raceway on July 24<sup>th</sup> no longer exists, and therefore, any horse that contested that Grassroots event is now eligible to enter into this rescheduled Gold event in August.”

On July 25, 2011, the Appellants appealed the decision of the Program Administrator.

The appeal was heard on August 11, 2011, by a Panel of the Ontario Racing Commission consisting of Chair Rod Seiling.

Angela Holland appeared as counsel for the Administration. Randy Bennett appeared as counsel for the Appellants.

Upon hearing the testimony of Wendy Hoogeveen, Program Administrator and Director of Industry Development and Support, and Rob McKay, ORC Judge, and upon reviewing the exhibits filed, the Panel allowed the appeal and ordered as follows:

1. The rescheduled event will be open only to those horses that were entered into the July 21, 2011 event; and
2. There will be a redrawing of post positions.

Reasons for Decision are attached.

DATED at Toronto this 12<sup>th</sup> day of August, 2011.

BY ORDER OF THE COMMISSION

  
John L. Blakney  
Executive Director



## REASONS FOR DECISION

### Overview

1. Standardbred licensees Linden Wells, Colin Johnson, John Kopas, Carl Jamieson, Joe Hudon and Ben Wallace appealed a decision of the Program Administrator of the Ontario Sires Stakes (OSS) to open the “box” to any horse eligible for rescheduled divisions of the OSS Gold 2 year-old Colt Trot Eliminations.
2. A de novo hearing was held on August 11, 2011. Angela Holland appeared on behalf of the Administration with Randy Bennett representing the Appellants. The appeal was upheld with written reasons to follow. These are those reasons.

### Background

3. The July, 21 2011 OSS Gold Elimination event for 2 year-old trotting colts was to be raced at Mohawk Racetrack. The box closed with 27 horses entered that necessitated 3 divisions of 9 horses each scheduled to be run as races 2, 4, and 6 respectively. Due to the forecast temperatures for that day, the track applied for, and was granted permission not to race that day in consideration of the health of the horses.
4. SB Rule No. 21.02 was not followed wherein postponed added money events are to be run on the next scheduled race day when favourable conditions apply. Testimony was led that there was a concern that the Mohawk paddock would be overtaxed given those races had already been drawn and therefore had a full complement of races. Waiting a week was not an option as that would conflict with a gold event for these horses at Rideau Carlton. No consideration was given to racing them as non-betting events which would not have been a problem, paddock wise, as they could have been raced at a time when there would not be paddock concerns. The August date was selected as it was the first conflict-free available time slot.
5. The Program Administrator opted to open the re-scheduled races for August 19, 2011, to any horse that was qualified and met the conditions. The appellants contended that event should only be open to those horses that had entered and were programmed for the July 21, 2011 event.
6. The Program Administrator, Wendy Hoogeveen, Director of Industry Development and Support for the ORC, and ORC Judge, Rob McKay, submitted that the decision was made to open the rescheduled race for the good of the program. They had a concern that given the 31-day interval, a number of the declared horses may not have been allowed to race due to not having a clean line thereby negatively impacting on the quality of the races. Under the rules of racing, a number of the 27 horses that were entered into go could quite possibly be ineligible to race for the aforementioned reason as they would have raced a number of times during the interval and would not be able to re-qualify.

### Decision

7. The Appellants' appeal was upheld. The rescheduled event will be open only to those horses that were entered into the July 21, 2011 event. There will be a redrawing of post positions thereby ensuring that any of the 27 horses that may have become ineligible due to not having the required



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“clean” line will have the opportunity to re-qualify before the entry box closes. Furthermore, any horse that opts not to re-enter will not be subject to the starting fee.

### Reasons for Decision

8. The event is being rescheduled, it was not cancelled. Therefore, it remains that it should only be open to those horses that were entered in to go when the box closed as per the terms and conditions of the event.

9. The crystallizing point is the closing of the box. The race at that point in time is “made” and only those horses entered, subject to meeting the terms and conditions, are eligible to race in that particular event.

10. Horse people enter into a “de facto” contract when they enter a horse into a “stake” race. At the very least they are granted an entitlement. On their side, they have paid the appropriate nominating, sustaining and entry fees. They know and expect that in doing so, they are going to race against the other horses that followed the same terms and conditions for that event.

11 In return, there is a reasonable expectation that the stake sponsor (OSS) working in conjunction with the host track will fulfill their end of the contract, to run the event as advertised. They should not be forced to race against any other horse that was neither qualified nor opted not to enter for whatever reason on the day and time the box closed for that event.

12 The entitlement conferred to owners whose horses were properly entered cannot and should not be altered for the betterment of the program. In this instance, individual rights trump those of the program. To allow anything else could threaten, over the long term, the health and vitality of what has proven to be the best breed improvement program in North America.

13. Some owners would have preferred that the event be raced as drawn, that is the 3 divisions. To do so would have ensured, as Mr. McKay testified, at least one horse would be ineligible and quite possibly a number of others suffering the same fate. Such a result would not be fair and the only way to correct this inequity under the rules of racing is to have a new draw.

14. The re-scheduling is a very rare occurrence. The Panel is recommending that the Commission, by way of policy, ensure that any future rescheduled OSS stakes events identify a policy under which the event is to be run in the future. The current advertised terms only speak to a cancelled race or event.

DATED this 12th day of August 2011.

Rod Seiling  
Chair