



COMMISSION HEARING

TORONTO, ONTARIO, FEBRUARY 27, 2013

NOTICE OF DECISION

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

**AND IN THE MATTER OF THE
RICHARD CARROLL AND MARK WILLIAMS APPEAL**

Standardbred licensees Richard Carroll ("Carroll") and Mark Williams ("Williams") appealed SB Rulings 45631 and 44038 respectively, wherein their horses, Slots Of Fun and St. Lads Eclipse, were rendered ineligible for 90 days.

Date of Hearing: February 27, 2013

ORC Panel Members: Chair Rod Seiling

Representative for Appellant: Brian Tropea, General Manager, Ontario Harness Horse Association

Counsel for the Administration: Jennifer Friedman

The Panel denied the appeal.

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

DATED at Toronto this 1st day of March 2013.

Steven Lehman
Executive Director



REASONS FOR DECISION

Overview

1. Standardbred licensees Richard Carroll and Mark Williams appealed SB Rulings 21/2013 and 20/2013 respectively wherein their request for a stay from the 90-day Owner Responsibility Rule for their horses, Slots Of Fun and St. Lads Eclipse, was denied.

Background

2. A de novo hearing was held On February 27, 2013. As per ORC Rules of Procedure, the two appeals were joined into one hearing. Jennifer Friedman represented the Ontario Racing Commission as legal counsel. The appellants were represented by Brian Tropea as a friend.

3. The parties agreed prior to the hearing that the facts were not at issue. The matter was the 90-day Owner Responsibility penalty to both horses.

4. On January 4, 2013, the horse, St. Lads Eclipse, raced at Western Fair in the 7th race. A subsequent post race urine test resulted in a positive test result for the Class II drug, Ractopamine. Mark Williams was the trainer of the horse.

5. On January 13, 2013, the horse, Slots Of Fun, raced at Western Fair in the 5th race. A subsequent post race urine test resulted in a positive test result for the Class II drug, Ractopamine. Richard Carroll was the trainer of the horse.

6. The Judges at Western Fair issued SB Rulings 45631 and 44038 respectively suspending the horses for a period of 90 days under the Commission's Owner Responsibility Rule.

7. An investigation conducted by the Commission into the positive tests revealed that the source of the drug was in the feed purchased by both trainers from the manufacturer. The manufacturer acknowledged that it might have been possible there was cross contamination at their facility in the mixing of the feed.

8. On February 12, 2013, the Judges at Western Fair held a hearing related to the two positive test results for Ractopamine. Following the hearing they issued SB Rulings 45649 (Williams) and 45650 (Carroll) wherein the trainers were absolved of their responsibility for the positive tests because of the contaminated feed that was the responsibility of the manufacturer.

9. Both trainers filed appeals on February 16, 2013, requesting stays for their respective horses from the 90-day suspensions each horse received.

10. The Commission submitted that to allow the appeals would violate the spirit and intent of the Owner Responsibility Rule. Ms. Friedman referenced a number of precedent cases including Aimoneti [2009] O.R.C.D. No. 28, Ruling No. COM TB 009/2009.

11. The appellants believe that the Rule should not apply to the horses for the same reasons that they were not held responsible for the positive test results.

Issue

12. Would granting the appeals violate both the spirit and intent of the Owner Responsibility Rule (90 days suspension), or conversely, provide it added legitimacy and industry support when the facts clearly prove that the trainers were held blameless and no penalty was warranted by the ORC officials? The question, therefore arises, in the spirit of fairness and transparency, should the owners not benefit to the same extent?

Decision

13. After carefully listening to the testimony and reviewing the evidence and documents submitted, the Panel denies the appeal but varies the penalty. The remaining time of the suspension is to be stayed immediately.

Reasons for Decision

14. It is reasonable to conclude that it is only fair that the owners of the horse benefit to the same degree as the trainers. The responsibility for the positive test was the feed manufacturer and with the trainers blameless so should the owners in this specific case.

15. There was a positive test for a Class II drug. This is a very serious matter and the Commission, in its role of protecting the public interest and the health and welfare of the horse, should take action. Commission officials were right in invoking the Rules. They were right, based on the evidence to absolve the trainers of their responsibility. They were also right to invoke the Owner Responsibility Rule, not only from an integrity aspect but to also protect the health and welfare of the horse.

16. The Commission must be continually on guard in protecting the Owner Responsibility Rule, and its objectives as Vice Chair Donnelly wrote in Aimoneti beginning at para 26.

17. It reads, "The Ninety Day Owner Responsibility Rule was implemented in the context of industry-wide response to the insidious advance of drugs and illegal medications in the racing industry. That industry, although not perfect, is functional. Through its various phases and locations, it provides a livelihood for many families. Opportunity is provided for an interesting, challenging and satisfying occupation for a significant component of the population, principally beyond the urban centres. The common goal of ORC licensees is to sustain a viable industry. (para 26)

18. On how to achieve that goal, opinions differ. Self interest, a powerful motivator, may obscure perception and subconsciously or otherwise influence judgment. (para 27)

19. The objective of the 90-day Rule was to engage the owner on the drug issue. The specific risk was that with strict liability standards applying to trainer responsibility, the industry was defenseless and inordinately victimized by this scenario: (para 28)

- * A positive test

- * The owner disclaims – "I have no responsibility. I pay the bills and tell the trainer to obey the rules."

- * The trainer claims - "Neither I nor anyone in my employ administered the illegal substance. I took all reasonable precautions, locked medication cabinet" and so on.

- * There is no direct evidence as to whose was the guilty hand.

20. The final result – with no one called to account, illegal drugs and medication can be administered with impunity. (para 29)

21. The death threat to the industry precipitated a broad strategy:

- * The Medication Task Force supported by the ORC, the racetracks and Horse Peoples' Associations
- * Out-of-competition testing of horses
- * Increased in-competition of testing of horses
- * Increased investigative activity
- * Extensions of search and seizure authority
- * Change of performance vigilance
- * Probationary licensing with restrictive terms and conditions
- * Requirement that Commission licensed veterinarians shall be the only persons to administer certain drugs and medications
- * Radically increased penalties for serious violations. Those penalties were approved by Divisional Court in the Scott case (SB Ruling 021/2007 as a reasonable response to the drug threat)
- * Classifying certain trainer responsibility and drug related offences as absolute liability offences (formerly strict liability offences)

22. The penalties introduced were known by the Commission as to be necessary as they were harsh. Their purpose was not to be inflicted upon violators. The purpose was to deter potential violators so ideally the penalties would never be required. They were intended to be of such powerful deterrence that the risk of punishment on that scale would dissuade even the most foolhardy. (para 31)

23. As a component of that industry response the owner responsibility 90-day rule was introduced. Owners fund the industry. Their active and aggressive involvement with trainers will be a major component in preserving that industry. At the time the 90-day rule was introduced, it was recommended that the rule requiring owner/trainer contracts be more vigorously enforced - further that provisions relating to owner responsibility be incorporated into the written contract. (para 32)

24. To introduce a policy of tinkering with the length of the suspension under the authority of Rule 24.03 would be folly for two reasons: (para 36)

- * The underlying principles of drug-free racing and general deterrence as public interest concerns simply overwhelm individual hardship. An ambivalent approach to penalty erodes the general deterrence component. Integrity is not measured by halves – or by any other fraction.
- * To foster appeals through an arbitrary and inconsistent application of penalty is unfair to the licensees (inducing a false hope for success) and the ORC (wasting adjudicative costs).

25. This decision is not tinkering as Vice Chair Donnelly referred to above. The 90-day penalty should remain absolute. However, if all the connections with the horse are held blameless, then it is both reasonable and fair to stay the penalty. That stay should only become effective once there is certainty provided by CPMA that the drug will have cleared the horse's system.

26. For greater certainty, let no one think this decision has precedent value other than if the same facts were to apply. The Panel remains in full support of Owner Responsibility penalty remaining at 90 days for the reasons outlined above. The policy was sound on introduction and remains sound today and should not be altered.

DATED at Toronto, Ontario this 1st day of March 2013.

A handwritten signature in cursive script that reads "Rod Seiling". The signature is written in black ink and is positioned above a horizontal line.

Rod Seiling
Chair