



COMMISSION HEARING

TORONTO, ONTARIO – FEBRUARY 27, 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 RUSSELL MEERDINK APPEAL**

Russell Meerdink (“Meerdink”) appealed against the decision of the Ontario Sires Stakes Program Administrator to refuse to accept his application for Exemption.

Date of Hearing: February 27, 2013

ORC Panel Members: Chair Rod Seiling

Representative for Appellant: Robert B. Burgess, Q.C.

Counsel for the Administration: Jennifer Friedman

The Panel denied the appeal.

A transcript with the Panel’s Reasons for Decision is attached to this Notice.

DATED at Toronto this 1<sup>st</sup> day of March 2013.

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Steven Lehman  
Executive Director

ONTARIO RACING COMMISSION

**STANDARD BRED HEARING**

IN THE MATTER OF THE RACING COMMISSION ACT, 2000,  
S.O. C.20 AND THE RULES OF STANDARD BRED RACING:

AND IN THE MATTER OF AN APPEAL AND REQUEST FOR  
HEARING OF **RUSSELL MEERDINK**:

Held Before:

Rod Seiling      Chairman

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These are an excerpt of the proceedings in the above mentioned  
matter held before The Ontario Racing Commission, Re:  
**RUSSELL MEERDINK**, taken before Toronto Court Reporters,  
Suite 1410, 65 Queen Street West, Toronto, Ontario, at 10  
Carlson Court, Suite 400, Toronto, Ontario, on the 27th day of  
February, 2013.

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Appearances:

Jennifer Friedman,

for the Ontario Racing  
Commission Administration

R. Burgess

for licensee Russell Meerdink

1 Hearing continued ...

2 MR. CHAIRMAN: All rise. Please be seated. After carefully listening to the  
3 testimony and reviewing the evidence and documents filed the panel denies the appeal. The  
4 issue to be decided is whether there were any exceptional circumstances that would mitigate  
5 the missed deadline for appeal wherein the Rules clearly state must be made. The appeal  
6 clearly falls outside of the time lines in the rules of the program. On October 1, 2012  
7 program administrator Wendy Hoogaveen notified the appellant via letter that JUST A  
8 TOMCAT was ineligible. Included in the letter Mr. Meerdink was notified at the time that  
9 there was a fifteen day window where he could apply for an exemption. The appellant called  
10 Ms. Hoogaveen on October 18th to ask that while he knew of the letter and its contents but  
11 because he was travelling would he be penalized and could the fifteen day period start at  
12 that time. Ms. Hoogaveen agreed with Mr. Meerdink's request. On October 26th, 2012 the  
13 program administrator forwarded to the appellant's legal counsel, on request, a document  
14 outlining the process to apply for registration. On November 5th the appellant sent a  
15 document to Mr. Burgess. Had that document been sent to the ORC by Mr. Meerdink it likely  
16 would have sufficed to meet the time line for appeal even though it was outside the fifteen  
17 day time frame. On November 20th, 2012 the program administrator sent a letter to Mr.  
18 Meerdink that the thirty days had expired from the appellant's acknowledgement re  
19 exemption appeal. Less than two hours later the appellant's legal counsel filed an appeal  
20 which consisted of an amended document from the appellant's letter dated November 5,  
21 2012. Rules are promulgated and published so that everyone is aware of the rules and  
22 participants expect to be on a level playing field, i.e. compliant. Exemptions can and have  
23 been made to the rules wherein they relate to program eligibility and do not put another  
24 participant in a disadvantage. To get such an exemption requires there to be extenuating

1 and/or mitigating circumstances. Mr. Burgess claimed the missed time frame was entirely  
2 his fault. The November 5th letter to him from his client shows the fault re the missed time  
3 frame rests with his client Mr. Meerdink as he missed that fifteen day deadline even after  
4 being granted the extension as per his request. Precedent is important, especially as to the  
5 business that the Commission conducts on a regular basis. Even if this precedent could be  
6 limited to programs it would create an on going problem related to not just registering foals  
7 for the program but would naturally extend to sustaining payments and entrance payments.  
8 It therefore could create a very unlevel playing field for all other program participants who all  
9 abided by the rules. The precedent factor would also extend into other areas that could and  
10 would impact the entire industry. Areas such as race date applications where time is critical  
11 could and would be impacted. Based on the evidence it is reasonable to conclude that it  
12 would not be in the best interest of racing to allow for this appeal to succeed. Thank you.

13 MS. FRIEDMAN: Thank you.

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22 CERTIFIED CORRECT \_\_\_\_\_

23 RAYMOND P. MACDONALD, B.A., CAR  
24 Commissioner of Oaths