



COMMISSION HEARING

TORONTO, ONTARIO – JUNE 27, 2013

NOTICE OF DECISION

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

**AND IN THE MATTER OF THE ROBERT FELLOWS, BRAD MAXWELL,
HOWARD TAYLOR, BJORN NOREN AND ROBERT KEY APPEALS**

Robert Fellows, Brad Maxwell, Howard Taylor, Bjorn Noren and Robert Key appealed against Rulings Numbers SB 63/2013 (Lucky Journal), SB 64/2013 (Adaymer Seelster), SB 62/2013 (Northern Spark) SB 61/2013 (Creampuff MacDaddy), and SB 59/2013 (Posey Tina) respectively.

Date of Hearing:	June 27, 2013
ORC Panel Members:	Chair Rod Seiling
Counsel for Robert Fellows	Robert Burgess
Counsel for Brad Maxwell	Howard Taylor
Counsel for Howard Taylor	Howard Taylor
Counsel for Bjorn Noren	Robert Burgess
Counsel for Robert Key	Robert Burgess
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 4th day of July 2013.

Steven Lehman
Executive Director

REASONS FOR DECISION

Overview

1. Licensees Robert Fellows, Brad Maxwell, Howard Taylor, Bjorn Noren and Robert Key appealed SB Rulings Numbers SB 63/2013 (Lucky Journal), SB 64/2013 (Adaymer Seelster), SB 62/2013 (Northern Spark), all dated June 25, 2013, SB 61/2013 (Creampuff MacDaddy) dated June 25, 2013 and SB 59/2013 (Posey Tina) dated June 21, 2013 wherein the Executive Director of the Ontario Racing Commission (ORC) denied a stay for each of the 5 horses.
2. An oral decision was rendered denying the appeal with written reason to follow. Included in the reasons was a suggestion that if any of the 5 horses were entered in to an Ontario Sires Stakes race and were unable to start in the race because of the ongoing issues related to this matter, that the appellants avail themselves of the variance provisions associated with the event. Furthermore, that the Panel would be recommending to the Administration that the investigation into all the positive tests related to this issue be completed ASAP and then to have a Judges' hearing held as quickly as possible thereafter.
3. These are those reasons.

Background

4. An emergency hearing was convened at the request of the appellants on June 27, 2013.
5. Representing the ORC as legal counsel was Angela Holland. Howard Taylor represented himself and Brad Maxwell as legal counsel with Robert Burgess representing Robert Fellows, Bjorn Noren and Robert Key.
6. The parties agreed to combine their respective appeals to be heard as one as per the Commission's Rules of Procedure, S 10.7.
7. All five horses were suspended by the Judges for 90 days as per SB Rules Nos. 11.10.01 and 20.01.01 (i) following positive test results for the Class II drug, Ractopamine. Those Rulings were SB 45579 dated June 15, 2013 for Lucky Journal, SB 45572 dated June 13, 2013 for Adaymer Seelster, SB 45573 dated June 13, 2013 for Northern Spark, SB 45684 dated June 20, 2013 for Creampuff MacDaddy and SB 45578 dated June 15, 2013 for Posey Tina.
8. Requests for a stay for each horse was filed and denied by the Executive Director. The Rulings denying the stay were SB 63/2013 for Lucky Journal, SB 64/2013 for Adaymer Seelster and SB 62/2013 for Northern Spark, all were dated June 25, 2013, The Ruling number for Creampuff MacDaddy was SB 61/2013 dated June 25, 2013 and for Posey Tina the Ruling number was SB 59/2013 dated June 21, 2013.
9. The ORC has a policy of not granting stays unless an appellant can demonstrate extraordinary circumstances are present.
10. The "90 day" Rule (SB Rules 11.10.01 and 20.01.01 (i)) was implemented by the ORC to stop a practice whereby owners, on receipt of a positive test, would simply move their horse to a "high percentage" trainer and continue on a "business as usual" basis. Testimony from the appellants was unanimous in the support of the Rule and the reasons therein.
11. The appellants were of the view that the extraordinary circumstances were the cause of the positive tests on all the horses and the financial hardship the penalty of missing 90 days of racing for each horse would create.

12. The only commonality to the positive tests, according to the appellants, was the trainers all used the same feed supplied by the same feed supplier. That feed came from Tribute Solutions from Ohio and was supplied by Sharp Feeds in Ontario.

13. The ORC has a broad mandate under the Racing Commission Act. That Act also ensures all licensees are entitled to due process.

14. As an integral part of due process, the ORC, as it does with all positive test results, starts an investigation into the matter. A key component of the investigation is the appointment of an investigator from the Commission's investigative team.

15. Once the investigation is completed, the investigator will file a report with the Commission's Judges. Upon receipt of the report, the Senior Judge at the track where the alleged rule violation occurred will hold a hearing with the alleged rule violator or their connections. The appellants have a right to be represented by legal counsel at this hearing.

16. Following a decision by the Judges, that decision can be appealed to the Commission wherein a panel from the Commission's Board will convene to hear the appeal. Again, the appellant has the right to be represented by legal counsel.

17. That Panel will issue a decision either denying or accepting the appeal. The appellant can, if they so wish, appeal to the court to have a Judicial Review conducted on the Panel's decision.

18. The trigger to this due process which is designed to ensure the rights of all licensees are protected is the investigation. Undisputed testimony was led that the investigation into these matters was not complete and therefore the Judges hearing to rule on the matters could not be held.

19. It was submitted that some of these horses earnings power would be diminished if they were prevented from racing as the richer races (stakes) were about to start. It would be a financial hardship for the owners of these horses and the connections such as the trainers.

20. Undisputed testimony was led regarding the "good" records of all three trainers, Maxwell, Noren and Fellows and that there were no connections between the three.

21. It was submitted that there was precedent on their side regarding obtaining a stay from the 90 day rule as per the Richard Carroll and Mark Williams appeal (SB 006/2013).

Issue

22. Are there extraordinary circumstances that would warrant the granting of stays to the appellants?

Reasons for Decision

23. No extraordinary circumstances were brought forward by the appellants that would warrant action by the Panel at this time. Due process is not complete. It may very well be that the investigation may reveal mitigating circumstances as to the source and cause of the positives tests as the appellants believe. It would be wrong for this Panel to act before due process, which this Commission actively works to protect for licensees, is complete.

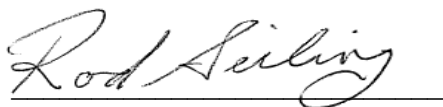
24. It would also be wrong for this Panel, or Panels to come, to tinker with the 90 Rule as aptly put by former Vice Chair Donnelly, outlined in the Scott McFadden case ORCD No. 6, 29, 30, 34, 35.

25. The objectives and policy as they relate to the 90 day Rule remain as sound today as they did on implementation. Owners need to take an active role in the manner in which their horses are trained and raced and the people they engage to do those jobs.

26. Financial hardship in and of itself is not an extraordinary circumstance. Potential loss of income is an integral part of the Commission's penalty regimen. As has been stated many times, the principles of it are deterrence and denunciation.

27. The cited precedent case of Carroll/Williams is irrelevant. The stay was granted after due process was complete and the trainers were held blameless.

DATED this 4th day of July 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