



COMMISSION HEARING

TORONTO, ONTARIO – NOVEMBER 19, 2009

**IN THE MATTER OF THE RACING COMMISSION ACT S.O. 2000, c.20;  
AND IN THE MATTER IN THE APPEAL AND REQUEST FOR HEARING OF  
STANDBRED LICENSEE GORDON BROWN**

Gordon Dwight Brown ("Brown"), is licensed by the Ontario Racing Commission ("ORC"), as a standardbred driver/trainer, Licence Number E24947.

On November 6, 2009, Standardbred Ruling Number SB 185/2009 was issued by the Executive Director of the ORC against Brown.

The Order was as follows:

- i. for misleading Commission legal counsel,
  - (a) a fine of \$1,500 and
  - (b) a suspension for 5 days, (effective November 12, 2009).
- ii. for failure to attend a hearing pursuant to a summons to a witness,
  - (a) a fine of \$1,000 and
  - (b) a suspension of 3 days, to be served consecutively.

On November 6, 2009, the penalty was stayed pending the hearing of the appeal.

On November 19, 2009, the matter was heard before a Panel of the ORC, consisting of Chair Rod Seiling,

Brown appeared in person. Brown was self-represented. Anthony Williams appeared as counsel for the Administration.

Upon reading the exhibits filed and upon hearing the submissions presented, the order of the Panel was as follows:

The appeal is denied.

The penalty is varied as follows:

- i. for misleading Commission legal counsel,
  - (a) a fine of \$750, and
  - (b) a suspension of 3 days.
- ii. for failure to attend a hearing pursuant to a summons to a witness,
  - (a) a fine of \$500.

The suspension will take effect following completion of drives for which Brown is already programmed.

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

DATED this 24<sup>th</sup> day of November 2009.

BY ORDER OF THE COMMISSION

  
John L. Blakney  
Executive Director



## REASONS FOR RULING

### Overview

1. Licensee Gordon Brown appealed SB Ruling No. 185/2009 wherein he was suspended 5 full days and fined \$1,500 for misleading Commission legal counsel, and suspended an additional 3 days to be served consecutively and fined an additional \$1,000 for failure to attend a hearing pursuant to a Summons to a Witness. An oral decision with written reasons to follow was rendered denying the appeal but varying the penalty. Count one, the suspension and the fine were reduced to 3 days and \$750 respectively; for count 2, the suspension was nullified and the fine reduced to \$500.

### Background

2. Mr. Anthony Williams, legal counsel for the Ontario Racing Commission (ORC), informed the Panel that Mr. Brown would be representing himself at the hearing as his proposed legal counsel, Larry Todd, was unable to attend the hearing. Mr. Brown agreed that he understood that he had a right to be represented by counsel but was prepared to proceed with the hearing. Mr. Brown had requested and was granted a stay of SB Ruling No. 185/2009 on the provision that his hearing would proceed on November 19, 2009. A variance from that date would see the stay revoked.

3. On July 3, 2009, Mr. Brown was served with a summons to appear at an ORC hearing scheduled for 8:00 a.m. on July 27, 2009, at the ORC's, office at 10 Carlson Court in Toronto.

4. On July 21, 2009, Mr. Brown contacted Jennifer Friedman, legal counsel for the ORC, and left a message for her that he would not be attending the hearing because he was to undergo a medical procedure that day.

5. On July 23, 2009, Ms. Friedman advised Mr. Brown that he would have to provide a copy of a medical note confirming his medical procedure for that day. Ms. Friedman also obtained permission from the Chair of the Panel for the hearing, Rod Seiling, to allow Mr. Brown to testify at the hearing via telephone.

6. On July 27, 2009, Ms. Friedman left a message for Mr. Brown, reminding him she required his medical note regarding his medical procedure on July 27, 2009. On August 3, 2009, Mr. Brown left Ms. Friedman a message admitting that he did not have a medical procedure on July 27, 2009 but was having personal problems that he did not want to discuss on the phone.

7. On August 12, 2009, Mr. Brown was interviewed by ORC investigator, Charles Beirnes, regarding the matter. Mr. Brown was co-operative, admitted to misleading Ms. Friedman. He was having personal issues that he did not want to discuss but questioned why he was summoned given he was not at the track on the date in question and that there were some forty other drivers who did race that day.

8. Mr. Williams submitted that Mr. Brown's actions were deliberate, that both his misleading (lying) to Ms. Friedman and ignoring the summons are serious offences. Such actions have the potential to undermine the hearing process, a vital component to due process which every licensee is entitled to access. The Commission goes to great lengths and considerable cost to both protect and preserve those rights.



9. Mr. Williams referenced a number of mitigating factors. They are as follows:

- no prior related convictions
- he had real personal difficulties
- did have a medical procedure but just prior to hearing date
- his view was not material to the event
- did provide verbal testimony via phone
- did come forward and admit he misled Friedman
- cooperated with Investigator Beirnes
- record of Brown relatively modest
- to his credit he wanted matter resolved this date

### **Issue**

10. Did Mr. Brown mislead Ms. Friedman and did he ignore the Witness to Summons he was duly served? Was the penalty appropriate given the circumstances?

### **Reasons for Decision**

11. Mr. Brown admitted he both misled Ms. Friedman as it relates to his being unable to attend the hearing on July 27, 2009, and by extension, he ignored the summons that was duly served on him to appear.

12. These transgressions are very serious. Licensees, under the Rules of Racing, are required to be honest (SB Rule No. 6.27). His transgressions cannot and should not go unpunished. A penalty is required to denounce the conduct and to deter others in the future.

13. Licensees need to understand and recognize the value and benefits due process affords to each and every one of them. By extension, they need to be willing to be co-operative and work within the process to ensure those inalienable rights are not eroded or curtailed.

14. The Panel is reminded of the Purpose and Principles of Sentencing as laid out in the Criminal Code of Canada S 718 reads, "The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- a. to denounce unlawful conduct
- b. to deter the offender and other persons from committing offences
- c. to separate offenders from society, where necessary
- d. to assist in rehabilitating offenders
- e. to provide reparations from harm done to victims or the community, and
- f. to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and the community 1995, c. 22, s.6."

15. The Code also states at S 718.1 under Fundamental Principle, "A sentence must be proportionate to the gravity of the offence and the degree of the responsibility of the offender, 1995, c. 22, s. 6."



16. Based on the wise counsel obtained from the Criminal Code of Canada as referenced above, coupled with the substantive mitigating factors in Mr. Brown's favour, including his current health and that he did not totally frustrate the hearing process, it is reasonable to reduce his penalty. The principles and objectives of sentencing are held true.

DATED this 24<sup>th</sup> day of November 2009.

Rod Seiling  
Chair