



COMMISSION HEARING

TORONTO, ONTARIO – MARCH 3, 2010

**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 ROBERT ELLIS**

Robert Grant Ellis, ("Ellis"), is licensed by the Ontario Racing Commission, ("ORC"), as a trainer/owner for standardbred racehorses, Licence Number F09255.

On Monday, November 16, 2009, THE BARBER, a standardbred racehorse, trained by Ellis, finished first in the eleventh race, a one mile pace, at Woodbine Racetrack.

Blood samples taken from the horse after the race resulted in a Certificate of Positive Analysis for the Class II drug Reserpine, trade name Serpasil, a tranquilizer.

On Monday, November 23, 2009, the standardbred Judges ("Judges") issued Standardbred Official Ruling 40198, which suspended the horse from racing for 90 days, pursuant to Rule 11.10.01 of the Rules of Standardbred Racing.

On Thursday, December 17, 2009, a Hearing was held for Ellis. The Judges reserved their decision.

On Thursday, January 7, 2010, the Judges issued Standardbred Official Ruling SB 41711, which imposed the following penalties:

- i. A fine of \$5,000;
- ii. A full one-year suspension, (Sunday, January 10, 2010 to Sunday, January 9, 2011, both dates included); for violation of Rules 3.09.01(f), 9.09(a) and (b), 26.02.01, 26.02.02 and 26.02.03(c) of the Rules of Standardbred Racing.

The Judges also issued Standardbred Official Ruling SB 41712, which placed terms on the licence of Ellis, upon his reinstatement, for a probationary period of two years, (Monday, January 10, 2011 to Wednesday, January 9, 2013, both dates included), pursuant to Policy Directive No. 3-2008.

On Friday, January 8, 2010, Ellis filed a Notice of Appeal against the penalties imposed.

The ORC convened a Panel to hear the appeal, consisting of Commission member, John Macdonald, on Wednesday, March 3, 2010, at 9:00 a.m. at Toronto, Ontario.

Ellis appeared in person at the Hearing. Ellis was represented by Brian Tropea, Industry Liaison and Policy Advisor for the Ontario Harness Horse Association.

Anthony Williams appeared as counsel for the Administration.

Upon reading the exhibits filed and upon hearing the evidence of Ellis and upon hearing the submissions of both parties, the Panel ordered as follows:

- i. A fine of \$2,500;
- ii. A full licence suspension of six months (from Sunday, January 10, 2010, to Wednesday, July 9, 2010, both dates included);



- iii. Terms are added to the licence of Ellis upon his reinstatement for a period of two years, (Thursday, July 10, 2010 to Monday, July 9, 2012, both dates included), as follows:
- a) Ellis shall allow Commission investigators access to his stabling area at any time to conduct unannounced random searches for illegal or non-therapeutic medication or drugs;
 - b) Ellis shall allow Commission investigators to seize any illegal or non-therapeutic medication or drugs found at his stabling area; and
 - c) Ellis shall be subject to the Commission's Out-of-Competition Program;
 - d) Ellis may be subject to a Notice of Proposed Order in addition to any penalty imposed by the ORC Judges or Stewards for any breach of the terms of his licence.

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

DATED this 5th day of March 2010.

BY ORDER OF THE COMMISSION


John L. Blakney
Executive Director

ONTARIO RACING COMMISSION
STANDARD BRED HEARING
IN THE MATTER OF THE APPEAL AND REQUEST FOR HEARING OF
ROBERT ELLIS

Held Before:

John Macdonald, Chairman

These are an excerpt of the proceedings in the above mentioned matter held before The Ontario Racing Commission, Re: **ROBERT ELLIS**, taken before Toronto Court Reporters, Suite 1410, 65 Queen Street West, Toronto, Ontario, at 10 Carlson Court, Suite 400, Toronto, Ontario, on the 3rd day of March, 2020.

Appearances:

Anthony Williams for the Ontario Racing Commission
Administration

Brian Tropea (OHHA) for licensee Robert Ellis

Hearing continued ..

MR. CHAIRMAN: All rise. Thank you. Thank you for your patience, gentlemen. These cases are simple. They all look like it on the face of it. I have reviewed all the exhibits and I did listen to the tapes, Exhibit 2 and heard the testimony of Mr. Ellis and the argument of counsel for both and one of the difficulties I have is I looked at the summary of relevant facts which I thought seemed to be fairly stated from what was said. There were four factors there. The first one that Mr. Ellis had bought Reserpine and now we find that in the evidence today that it was disclosed who it was purchased from. This was not evidence that was available to the Commission investigator Mr. Moffat and the Judges. He had no receipt and that was explained today that it was a cash payment. The label did not indicate the content. Today it was explained that yes, there was a label put on by the veterinarian showing that it was a tranquilizer and the fourth item was that the bottle had been discarded. Well, it turned out it wasn't a bottle. It was a syringe, as I understand it in the evidence that came in today.

The aggravating factors also listed in the synopsis material; the first one was an obvious one that Reserpine is designated as a Class II drug and known as Serpasil by the tradename. In the case there was also an aggravating factor that it was acquired from an unknown source. Well, we now know that there was more than one veterinarian that suggested it and as I understand it, the use of that drug it was for a calming influence so the information isn't quite as aggravating a factor as it was at the time from the Judges' perspective when that was all they knew. You have now identified the source of the drug and the amount that you purchased was slightly different than what was actually used at the time and you still have some left I understand, from speaking to Mr. Ellis. He knew what the content was and how to administer it. He had been so advised. So this is all information that

could have been given to the investigating officer and the Judges and was not. An aggravating factor was until the positive test Mr. Ellis had not really made any inquiries about that other than the general inquiries as to the length of time that was needed before the horse would not have a test and now we all know that the other aggravating factor was that, while it is not a performance enhancer in the normal feeling of most trainers that it doesn't make the horse go faster, it was calming him down which would be a type of factor also to enhance and that's why it is in the category of drugs that are prohibited for positive tests.

The mitigating factors are still there, the time that Mr. Ellis has been in the business and no other income stream. The difficulty I have is notwithstanding the use of the drug there was a lack of due diligence on the part of Mr. Ellis. Not being aware that this drug would show up in the system from a blood test where it didn't show on a urine test may be something that Mr. Ellis was not aware of. Counsel has pointed out that testing systems do change and improve but this is still not an excuse. What we did here was waste a lot of time with the investigators and the Judges because the information could have been brought forward, the names and records such as they were, at the time and that would have helped in my mind to mitigate what happened.

The suspension has been in effect for almost two months now and I have read all the cases that seem to apply and particularly Doig obviously and there is no case that is exactly the same, not exactly similar. The mitigating factors I have taken into account and the difficulty I had was that there seemed to be some lack of cooperation on the part of Mr. Ellis and no proper due diligence. Notwithstanding that and taking into account the mitigating factors of his time in the business and that and I will make a ruling that the suspension should be for a total of six months, of which two has already basically been served and the fine will be reduced to \$2,500.00.

Now I am treating this a little bit more like what some cases have for a drug that was in a slightly different Class but which is basically what they did in the Doig case but

there, there wasn't any question about Mr. Doig being totally up front and unfortunately Mr. Ellis seemed to be reluctant to provide the information at the appropriate time.

In addition to the suspension and fine the Policy Directive 3-2008 I think should also apply and the one I have the most difficulty with is the first one which is the licensee shall keep the piece and be of good behaviour. This sounds a little extreme in this case, notwithstanding that that seems to have been the policy, I will just ignore that one and go to the important ones which is the licensee shall allow Commission investigators access to his stabling area at any time to conduct unannounced random searches for illegal or non-therapeutic medication or drugs.

Now there was a search made at the time, as I understand it, and nothing was found which is a good sign. That helped me look at that as a positive item on behalf of Mr. Ellis. The third item in that policy is a licensee shall allow Commission investigators to seize any illegal or non-therapeutic medication or drugs found in his stabling area and the licensee shall be subject to the Commission's Out of Competition Program which I think is one of the important ones when it is done and the last one is the licensee may be subject to a Notice of Proposed Order in addition to any penalty imposed by the ORC Judges or Stewards for any breach of the terms of the license and that is pretty well standard because that is the provision, the Commission has the power to do.

Now does counsel have any questions?

MR. WILLIAMS: No, sir. Thank you.

MR. TROPEA: No, sir. Thank you very much.

MR. CHAIRMAN: Thank you all.

CERTIFIED CORRECT: _____
RAYMOND P. MACDONALD, B.A., CVR
Commissioner of Oaths