



COMMISSION HEARING

TORONTO, ONTARIO – NOVEMBER 29, 2010

IN THE MATTER OF THE RACING COMMISSION ACT S.O. 2000, c.20;
AND IN THE MATTER OF THE APPEAL AND REQUEST FOR HEARING BY
STANDARD BRED LICENSEES MICHAEL MANDERS AND KELLY LESTER

Standardbred Licensee Michael Manders (“MANDERS”), is licensed by the Ontario Racing Commission (“ORC”) as an owner, licence number 1A5568.

Standardbred Licensee Kelly Lester (“LESTER”), is licensed by the ORC as an owner/trainer, licence number W80058.

In April 2010, due diligence investigations were completed with respect to MANDERS and LESTER which uncovered criminal records and licensing histories not previously disclosed on either MANDERS’ or LESTER’S license applications. In particular, both MANDERS and LESTER failed to disclose an incident on December 18, 2009, involving Randy Pullen, an ORC licensee who testified against LESTER 3 years previously at an ORC Hearing regarding a tubing violation. On this basis, the Director issued Notices of Proposed Orders to revoke the licenses of both MANDERS and LESTER.

MANDERS and LESTER appealed the Notices of Proposed Orders.

On November 18, 2010, a Panel of the ORC consisting of Commissioner John Macdonald as Chair, Commissioner David Gorman and Commissioner Pam Frostad was convened to hear the matter.

However, despite being properly notified, and having a representative, Brian Tropea, in attendance, both MANDERS and LESTER failed to appear for the November 18, 2010 hearing.

Pursuant to Ruling Number COM SB 056/2010, the hearing was adjourned until November 29, 2010 on consent and was peremptory. The Panel also ordered MANDERS and LESTER to collectively pay \$1,000 in costs thrown away, with payment to be made prior to November 29, 2010.

On November 29, 2010, the ORC Panel consisting of Commissioner John Macdonald as Chair, Commissioner David Gorman and Commissioner Pam Frostad was reconvened to hear the matter.

Angela Holland appeared as counsel for the Administration, Brian Tropea appeared as a representative for both MANDERS and LESTER and MANDERS and LESTER attended in person.

Upon consent of MANDERS and LESTER and the Administration, the appeals were heard together.

Upon hearing the testimony of Investigator Rasa Malinauskas, Randy Pullen, MANDERS and LESTER, upon reviewing the exhibits filed and upon hearing the submissions of counsel for the



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Administration and of Brian Tropea, the Panel dismissed MANDERS' appeal but varied the penalty and dismissed LESTER'S appeal.

Specifically, with respect to MANDERS the Panel ordered the following:

1. MANDERS' license is suspended for one year (November 29, 2010 – November 30, 2011);
2. If MANDERS reappplies for a license upon completion of his suspension, he shall have the following conditions placed on his licence for two (2) years:
 - (i) He shall keep the peace and be of good behaviour;
 - (ii) He shall allow Commission investigators access to his stabling area at any time to conduct unannounced random searched for illegal or non-therapeutic medications or drugs found at his stabling area;
 - (iii) He shall allow Commission investigators to seize any illegal or non-therapeutic medications found at his stabling area; and
 - (iv) He will be subject to the Commission's "out-of-competition" testing program.

With respect to LESTER, the appeal is dismissed and her licence is revoked as of November 29, 2010, pursuant to the Notice of Proposed Order.

The Panel also reaffirmed that MANDERS and LESTER are required to collectively pay \$1,000 in costs thrown away, ordered pursuant to Ruling Number COM SB 056/2010.

A transcript of the Panel's Reasons for Decision is attached to this Ruling.

DATED at Toronto, Ontario this 9th day of March 2011.

BY ORDER OF THE COMMISSION


John L. Blakney
Executive Director

ONTARIO RACING COMMISSION

RE: STANDARDBRED HEARING

IN THE MATTER OF AN APPEAL AND REQUEST FOR HEARING OF

MICHAEL MANDERS and KELLY LESTER

Held Before:

John Macdonald, Chairman

David Gorman, Commissioner

Pamela Frostad Commissioner

This is an excerpt of a Hearing of the Ontario Racing Commission re: **MICHAEL MANDERS and KELLY LESTER**, taken before Toronto Court Reporters, Suite 1410, 65 Queen Street West, Toronto, Ontario, at 10 Carlson Court, Suite 400, Toronto, Ontario, on the 29th day of November, 2010.

Appearances:

Angela Holland, counsel for the Ontario Racing Commission
Administration

Brian Tropea agent for Manders and Lester

1 Hearing continued ...

2 MR. CHAIRMAN: All rise. Please be seated. We have reviewed
3 the material that was presented, the various exhibits, heard the arguments submitted
4 by counsel and looked at all the documents that we have and the first item, as
5 mentioned, still the panel are of the opinion that \$1,000.00 for the costs thrown away
6 at the last hearing should remain. How it is paid, and this is why we left it collectively
7 for the appellants and I know Mr. Tropea you were somewhat kind by saying that you
8 had some responsibility but if you and OHHA would like to pay that we'd accept that
9 too. Anyway, that will stay on the order and that will be part of the conditions of the
10 decision.

11 I want to deal with the appellants separately, starting with Mr. Michael
12 Manders. In his case certainly there is a violation of Rule 6.17. In both cases that
13 was an offence that could be charged under that rule. It relates to the attitude and
14 the position that keys in which we do not tolerate as a licensee whether it happens to
15 another owner or some other person but specifically since it is another ORC licensed
16 person. Now in this case it becomes a little more serious to the extent that that
17 person also was a witness in a hearing involving one of the appellants, although, Mr.
18 Manders, to be clear, he was not involved in that.

19 One of the things that we are concerned with is the ORC application
20 forms not being properly filled out. Now whether that was just carelessness in
21 completing it, it was certainly incorrect and it borders on falsifying the application
22 since we all know that not everybody who is going to look at those applications is
23 going to scrutinize them to the extent that we might do so if it was a first time
24 application and the person had a serious record. If we knew about that we'd
25 scrutinize it a little bit more. In this case Mr. Manders was at least careless if nothing
26 else and we have considered this a serious offence. What we feel in the case of Mr.

1 Manders is that while we can understand the position of the Commission wanting
2 notice of proposed order for a suspension we feel it would be a burden for someone
3 who is a fairly new owner by comparison that he be suspended for one year with the
4 conditions that if he chooses to reapply to become an owner that the rulings, and I
5 don't know; someone else will make that the exact number but it would be the
6 conditions that were imposed on the license of Ms. Lester which are found in Exhibit
7 2 page 37 which is at tab 6 and further to those conditions later but this is one of
8 those where we have a number of different items but the first one is the one that
9 relates to the incident in the bar, shall keep the peace and be of good behaviour and
10 if Mr. Manders does choose to apply for an owners license again those conditions will
11 be imposed on his license. We can understand that his father is supportive of him
12 and helped him in business along with horses and it may be at that time his father
13 could have a license but in the meantime his license as an owner is suspended.

14 Now in the case of Kelly Lester we take that even more seriously
15 because she has violated those conditions that we have just talked about that were
16 imposed on her on August the 25th, 2009 and again the reference is to that is Exhibit
17 2, tab 6 on page 37 and the violations of those conditions is something that, as I have
18 just indicated, that the Commission considers quite serious. There is also the
19 violation, although it was not charged specifically, the 6.17 Rule where they have
20 been involved in the verbal and physical abuse to another licensee. It becomes even
21 more serious in this case when that licensee was a witness involved in proceedings
22 that Ms. Lester had been involved with a few years ago and it was that violation at
23 that time that resulted in her problems with the Commission and her suspension and
24 the results of the order that had been imposed on her license for keeping the peace.
25 She has a third strike which is that ORC applications which I just indicated are
26 supposed to be filled in completely without being falsified and by not disclosing that it
27 is leaving us with the impression that maybe nobody will notice if we don't say

1 anything about this, if we don't put it in. If we do tick it then we have to put in - tick the
2 box that is - then we have to put in what the offences were and you can see the
3 difficulty we'd have with someone with a long rap sheet is going to have a number of
4 pages to fill out but then it is drawn to the attention of the Commission Administration
5 and that person does not receive a license nor should they get a license in our view.
6 Now in the case of Ms. Lester we are going to agree with the submission of the
7 Administration that the notice of proposed order of suspension and her license will be
8 suspended pursuant to that order as of this date as will the license of Mr. Manders as
9 of this date. The difference between the two is in his case it is one year hoping that
10 he will act more appropriately in the future if he decides to become a licensee. Now
11 having said that, Ms. Lester is always free to reapply and that will be the decision of
12 the Administration as to whether or not her application will be successful.

13 MS. HOLLAND: I don't have the rule in front of me, Mr. Chairman but
14 under the Racing Commission Act she has to wait two years.

15 MR. CHAIRMAN: Yes, there is a minimum time but that doesn't
16 prohibit her from reapplying. It is not our position to state when that would be
17 acceptable or not acceptable. That would be a decision of the Administration at that
18 time but as of this time we agree with the Administration and the notice of proposed
19 order should go as applied for. Any questions?

20 MS. HOLLAND: No, sir.

21 MR. CHAIRMAN: Thank you all. The matter is terminated.

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