



COMMISSION HEARING

TORONTO, ONTARIO – AUGUST 11, 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
GERALD MANNEKE**

On March 10, 2009, a Notice of Proposed Order to Revoke the Licence of Gerald Manneke ("Manneke") was issued.

On March 19, 2009, Manneke filed a Notice of Appeal with the Panel of the Ontario Racing Commission ("ORC").

On April 21, 2009, a Notice of Hearing was issued to advise that a Panel of the ORC would convene on May 21, 2009 for Manneke's appeal.

On May 21, 2009, a Panel of the ORC, comprised of Vice Chair Hon. James M. Donnelly, was convened to hear the appeal.

Jennifer Friedman appeared as counsel for the Administration. Manneke failed to attend.

Upon hearing the submissions, the Panel dismissed the appeal as follows:

- i) As abandoned without prejudice;
- ii) Manneke be served personally with the Ruling;
- iii) The right to resurrect the appeal will be confined to the 30 days following personal service;
- iv) If no appeal is launched within that time, the Director's Notice of Proposed Order is hereby confirmed.

On June 15, 2009, Gerald Sternberg, on behalf of Manneke, launched a subsequent appeal.

On August 11, 2009, a Panel of the ORC, comprised of Chair Rod Seiling, Commissioner David Gorman and Commissioner Pamela Frostad, was convened to hear the appeal.

Jennifer Friedman appeared as counsel for the Administration. Gerald Sternberg attended as counsel on behalf of Manneke.

Upon considering the Agreed Statement of Facts, hearing the testimony of Lorra Deasy and Manneke, reviewing the exhibits filed, and upon hearing the closing submissions, the Panel denied the appeal. The Panel's Reasons for Decision included the following:

- i) The Director had reasonable grounds on which to base his decision that Mr. Manneke would not act in accordance with the law, or with integrity, honesty or in the public interest;
- ii) Manneke can reapply for his licence if he can prove to the Director of the ORC that he has satisfied his outstanding financial obligations. Notwithstanding the aforementioned, Mr. Manneke can reapply for his licence two years from this date. In doing so, he must be able to satisfy the Director of the ORC that he has and will continue to act in

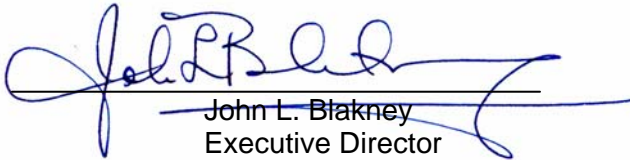


accordance with the law, integrity, honesty and in the public interest ss. 26 (1) & (3) of the *Racing Commission Act*, 2000).

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

DATED at Toronto this 20th day of August, 2009.

BY ORDER OF THE COMMISSION



John L. Blakney
Executive Director



REASONS FOR DECISION

Overview

1. Standardbred licensee, Gerald Manneke, appealed the issuance of a Notice of Proposed Order (NOP) to revoke his licence (Ex. 3, tab 8) by the Executive Director of the Ontario Racing Commission (ORC).

Background

2. At the commencement of the hearing, legal counsel for the Administration for the ORC, Jennifer Friedman, informed the Panel that a hearing was held on this matter on May 20, 2009. The appellant did not attend the hearing and the Chair of the Panel dismissed the appeal without prejudice with the proviso Mr. Manneke could resurrect his appeal if he applied within 30 days. The appellant's legal counsel, Gerald Sternberg, filed a notice of intent to appeal on June 15, 2009. Both counsel agreed to treat this hearing as a new appeal. On that basis, a copy of the decision and the transcript of the May 20, 2009 hearing were entered as Exhibits 1 and 1 (a) respectively.

3. Ms. Friedman informed the Panel that in as much as Mr. Manneke's licence had expired in between the time frame of the May 20th, 2009 hearing and this hearing, the issue related to the appellant was now a proposal to refuse to license. Mr. Sternberg informed the Panel that his client was in possession of a valid 2009 ORC licence as of June 30, 2009. After a brief recess to allow the parties to confirm this claim, Ms. Friedman reported that Mr. Manneke had a valid licence.

4. Mr. Manneke completed a 2009 licence application at Western Fair Raceway. This application disclosed his past criminal convictions and licence violations and suspensions. The ORC's licensing agent, Lorna Moffatt, according to Ontario Provincial Police Officer, Lorra Deasy, informed Mr. Manneke that she would need direction from the ORC before she could process his application. Mr. Manneke then made a similar application at Woodstock Raceway. He did not disclose his past history on the advice of the ORC's licensing agent, Karen McFadden, as she discussed the matter with Ms. Moffatt who informed her that he had already disclosed on his application with her. Ms. Moffatt was advised that two different officials at head office had reported that it was okay to issue the appellant his licence. He was licensed on the basis that no decision had been rendered on his appeal and therefore he could not be denied his renewal. Unfortunately, Ms. Moffatt shredded Mr. Manneke's application that he completed with her after his licence was issued at Woodstock. The net result of the aforementioned details was that the Proposed Order now would apply to the appellant's 2009 licence.

5. Ms. Friedman informed the Panel that Mr. Sternberg had not followed the Commission's Rules of Procedure as they relate to the filing of a Factum. The Panel accepted Mr. Sternberg's apology and stated his omission would not prevent him from representing his client.

6. An Agreed Statement of Facts was presented to the Panel. It read as follows:

1. *Gerald Manneke ("Manneke") is licensed with the Ontario Racing Commission as a trainer. Manneke has been licensed with the ORC since 1989.*



2. Further to a 2009 licence application for standardbred licence filed on June 27, 2008, Manneke's licence with the ORC as a trainer/owner (#R65236) was renewed.
3. On February 27, 2008, a due diligence investigation commenced in relation to Manneke.
4. The investigation revealed that Manneke had not been forthright on most of his ORC applications regarding licensing history and/or offence background.
5. Since 1989, Manneke has always answered no to questions posed on the ORC applications in connections with offence background and licensing history. Despite Manneke's responses on his ORC applications, Manneke does, in fact, have a criminal record, which is as follows:

Date	Location	Offence	Penalty
Sept. 15, 1999	London	Driving with more than 80 mgs of alcohol in blood	\$650 fine, 1 yr prohibited driving
Jan. 20, 2009	Elgin County	Fraud over \$5000	12-month conditional sentence

6. Manneke's conviction for fraud over \$5000 (i.e. Manneke entered a guilty plea) was for fraud in the amount of \$453,547.36 which occurred between 1999-2003. While acting in the course of his employment as a grain scale operator, Manneke manipulated the weighing and payment procedures for corn, soy, and other grain products.
7. Manneke's former employer obtained a civil judgement against Manneke in the amount of \$373,049, together with pre-judgement interest.
8. The investigation also yielded the following history with the Ministry of Transportation:

Conviction Date	Offence	Expired
July 19, 1993	Suspended, unpaid fine	April 13, 1995
September 23, 1998	Suspended, unpaid fine	March 19, 1999
December 19, 1998	Suspended-ADLS	March 19, 1999
September 15, 1999	Suspended-Exceed 80mgs	September 15, 2000
March 26, 2005	Suspended-unpaid fine	January 25, 2007
17 other driving related convictions were listed covering from March 10, 1983 to February 8, 2006		

9. As part of the due diligence investigation, Detective Constable Lorra Deasy contacted Manneke on February 12, 2009 to inquire about the basis for his failure to disclose his criminal record or charges.
10. On March 10, 2009, a Notice of Proposed Order to Revoke the Licence of Manneke was issued.
11. On March 19, 2009, Manneke filed his Notice of Appeal to the Panel of the ORC.
12. On April 21, 2009, a Notice of Hearing was issued to advise that a Panel of the ORC would convene on May 21, 2009 for Manneke's appeal.
13. On June 30, 2009 Manneke's licence as a trainer was renewed.

7. On the ORC licence applications, applicants are required to disclose as part of their personal history, if they have been convicted of an offence, if there are any charges pending and has the person ever had a licence refused, denied, suspended or revoked. Over the course of about 10 years, the appellant failed to disclose charges, convictions and licence suspensions (Ex. 3, tab 5) including suspension of his driver's licence, driving with over 80 mgs of alcohol and a conviction for fraud over \$5000. With



respect to this conviction, he testified that he was innocent but given that he could not afford a lawyer and no jail time was involved, he agreed to a guilty plea. Pertaining to his driving suspensions for non-payment of fines, it was his testimony that he could not afford to pay the fines given his family obligations. He testified that he did not think that he had to answer the questions and blamed the form for not being clearer. With respect to his failing to disclose his pending fraud conviction, he stated that his lawyer told him not to tell anyone until it was settled. It was noted that as it pertains to his horse racing record, he has had only one violation, an NSF cheque for which he later made restitution.

8. Ms. Deasy confirmed that the appellant's failure to disclose was discovered during the ORC's regular due diligence check up of all licensees. This check-up (Ex. 3, tab 3), conducted by ORC investigator, Richard Pellarin, on February 27, 2008, revealed he never disclosed any of his past violations as required. On February 5, 2009, Ms. Deasy conducted a follow up due diligence check-up (Ex 3, tab 4) on Mr. Manneke and also interviewed him. The only significant variance revealed that his charge for fraud over \$5000 had been resolved by way of a conviction.

9. On February 12, 2009, Ms. Deasy interviewed Mr. Manneke wherein he admitted to her that he had failed to disclose his personal history on his ORC licence applications. In Exhibit 3, tab 2, a synopsis of her interview with the appellant, he told her "impaired was not a big deal" and could not provide an answer to the more recent charges. It was her opinion this failure to disclose was a serious matter given honesty in racing is very important.

10. On March 10, 2009, the Director of the ORC issued his Notice to Mr. Manneke. In the reasons listed he stated that:

- a) there are reasonable grounds to believe that, while Manneke carries out the activities for which a licence is required, he will not act in accordance with the law, or with integrity, honesty, or in the public interest, having regard to his past conduct;
- b) Manneke is carrying on activities that are, or will be in contravention of the Act, the Rules or the terms of the licence;
- c) Manneke's conduct has placed the integrity of the horse racing industry in Ontario in question;
- d) the public interest requires that Manneke's licence be revoked.

11. He then went on to list 11 particulars. They are as follows:

- Manneke has been a licensee with the Ontario Racing Commission since 1989
- Further to a 2009 Application for Standardbred Licence filed on June 27, 2008, Manneke's licence with the ORC as a Trainer/Owner (#R65236) was renewed
- On February 27, 2008, a due diligence investigation commenced in relation to Manneke
- The investigation revealed that Manneke has not been forthright on most of his ORC applications regarding licensing history and/or offence background
- Since 1989 Manneke has always answered no to questions posed on the ORC applications in connection with offence background and licensing history. Despite Manneke's responses on his ORC applications, Manneke, does, in fact, have a criminal record, which is as follows:

Sept. 15, 1999, London, driving with more than 80 mgs alcohol in blood, \$650 fine, 1 year drive prohibited.



Jan. 20, 2009, Elgin County, fraud over \$5000, 12-month conditional sentence.

- Manneke's conviction for fraud over \$5000 was for a fraud in the amount of \$453,547.36 which occurred between 1999-2003 against his former employer. A civil judgement was obtained against Manneke in the amount of \$373,049.00 in favour of his former employer. Manneke has not satisfied the debt.
- The investigation yielded the following with the Ministry of Transportation: 22 violations from July 19, 1993 to February 8, 2006.
- As part of the due diligence investigation, Detective Constable Lorra Deasy contacted Manneke on February 12, 2009, to inquire about the basis for his failure to disclose his criminal record or charges. In relation to the conviction for driving with more than 80 mgs of alcohol in blood, Manneke indicated words to the effect of him believing that impaired was not a big deal. Manneke's explanation for why he failed to disclose particulars pertaining to his conviction for impaired driving demonstrates that it was not an act of inadvertence, oversight or misunderstanding but rather a deliberate omission with the effect, deceiving the ORC.
- Manneke's failure to disclose his criminal record and suspension history demonstrates dishonesty and lack of integrity.
- As a regulated industry in Ontario, the provision of services in racing requires that licensees demonstrate the utmost honesty and integrity. All licensees must be aware of and comply with the Act, the Rules and the terms of the licence in order to maintain the confidence of the public in the integrity of racing.
- Manneke's past conduct, including his criminal record, his suspension history with the Ministry of Transportation, and his lack of respect for the ORC's application process, provides reasonable grounds for the Director to conclude that he will not act in accordance with the law, or with integrity, honesty, or in the public interest, and he will not carry on activities in compliance with the Act, or terms of the licence.

12. Mr. Manneke testified that he is currently training 6 horses for one owner. The Panel notes that on his most recent application, he only listed one horse.

Issue

13. Had the Administration demonstrated there was merit in the Director of the ORC's decision to issue the Notice of Proposed Order to Mr. Manneke?

Decision

14. After carefully reviewing the testimony and evidence and reading the submissions, the Panel denies the appeal of the appellant. The Director had reasonable grounds on which to base his decision that Mr. Manneke would not act in accordance with the law, or with integrity, honesty or in the public interest. Manneke can reapply for his licence if he can prove to the Director of the ORC that he has satisfied his outstanding financial obligations. Notwithstanding the aforementioned, Mr. Manneke can reapply for his licence two years from this date. In doing so, he must be able to satisfy the Director of the ORC that he has and will continue to act in accordance with the law, integrity, honesty and in the public interest. (ss. 26 (1) & (3) of the Racing Commission Act, 2000)



Reasons for Decision

15. An ORC licence is a privilege, not a right. The Panel endorses the statement made in the Flamboro Downs Holdings and Belmont Hotel, SB 129/1995, July 14, 2005. "Horse racing must be conducted and seen to be conducted with the utmost integrity. The future of the industry depends on maintaining the public's confidence that it is being operated totally 'above board'." Without integrity, or even the perception that it is lacking, is enough to threaten its wellbeing. Every precaution must be taken to protect and preserve it. Mr. Manneke's actions clearly demonstrate that his continued participation as a licensee does not meet this standard.

16. The evidence is clear, that Mr. Manneke did not disclose his personal history on his ORC licence applications for a period of about 10 years as he was required. Some of these were very serious offences as they included driving over 80 mgs and fraud over \$5000. He was only truthful on his 2009 application once he became aware the ORC had discovered his dishonesty.

17. The Panel does not accept Mr. Manneke's reasons for not complying, they are not credible. For example, if he was not sure of what was required in completing the application form, he could have asked a licensing agent for assistance. His response to Ms. Deasy, *it's no big deal* as it relates to the impaired charges, and no answer to her as to the fraud charges speaks directly to his character and lack of forthrightness. With respect to his testimony that his lawyer advised him not to reveal anything regarding his fraud charge, he did not offer any proof to substantiate his claim. Regarding his allegation of innocence to the fraud charge, and only pleading guilty as he was not able to afford a lawyer, it bears no weight as it relates to his duty to reveal. Again, if it were factual, no evidence was tabled to support his allegation. As in the matter of licensee Frank Cardinale, [2006] O.R.C.D. No. 1, Series Nos. COM SB 002/2006 and COM TB 002/2006 in para 32 where it reads, "A Racing Commission licence application includes a promise by each applicant to abide by the Rules of Racing and the rulings of the Commission..." When it issues a licence, the Commission exercises its discretion in favour of the applicant based on that promise. The evidence is clear; Mr. Manneke broke his promise numerous times over a ten-year period.

18. Penalties are an important weapon for the regulator. They inform the public on whom the industry depends for its wagering dollars, that dishonesty will not be tolerated. They also act as a deterrent to others who may think it to their advantage to break the rules. As well, the vast majority of licensees who obey the rules must see that they operate on a level playing field and that there is justice. It would be unfair to them to allow Mr. Manneke immediate re-entry into the industry, given his transgressions and the disrepute he brought to it. This Commission does have a policy regarding rehabilitation, that is why he has been given an opportunity to return to the industry just as Mr. Ryan was, [2007] O.R.C.D. No. 32, Ruling Number TB 008/2007. Mr. Sternberg argued that his client's case was like the Schickendanz case, [2001] O.R.C.D. No. 25 Series No. COM TB 9/2001. In that case, Mr. Schickendanz' suspension was deemed such a negative impact to many innocent individuals who depended on him for their livelihood that an alternative to suspension was followed. Those same factors are not present as they relate to Mr. Manneke.

19. No evidence was tabled that Mr. Manneke earns his living from horse racing or, for that matter, ever did. He did testify that he wants to remain in it as he is training six horses. The investigation reports indicated the horses belong to his girl friend. Notwithstanding the aforementioned, the Panel believes this decision more than meets the standard as set forward in the Coates case, *Coates v. Ontario*



(Registrar of Motor Vehicle Dealers and Salesmen) (Ont. Div. Ct.) 65 O.R. (2d) 526 [1968] O.J. No. 1351. The Court said on p. 10 "Nothing short of clear and convincing proof based on cogent evidence will justify an administrative tribunal in revoking a licence to practice medicine or to gain a livelihood." The evidence certainly met the test.

Dated this 20th day of August 2009.

Rod Seiling
Chair