



COMMISSION HEARING

TORONTO, ONTARIO – APRIL 11, 2013

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**NOTICE OF DECISION**

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

**AND IN THE MATTER OF THE BRENDA SPENCE APPEAL**

Brenda Spence requested a stay of Ruling Number SB 40/2013.

Date of Hearing: April 11, 2013

ORC Panel Members: Chair Rod Seiling

Representative for Appellant: Self-represented

Counsel for the Administration: Jennifer Friedman

The Panel allowed the appellant's request to withdraw her appeal.

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

DATED at Toronto this 15<sup>th</sup> day of April 2013.

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Steven Lehman  
Executive Director

## REASONS FOR DECISION

### Overview

1. Standardbred licensee, Brenda Spence, requested a stay on April 4, 2013 (Ex. 1, tab 7). That request was related to SB Ruling Number 40/2013 issued on that same day wherein she was immediately suspended pending the outcome of an Ontario Racing Commission (ORC) investigation.
2. An oral decision was rendered granting her request to withdraw both her request for a stay and for the suspension as per Ruling SB 40/2013 and assessing her costs of \$1,500.
3. Written reasons were to follow. These are those reasons.

### Background

4. A hearing was scheduled for 9:00 a.m. on Thursday, April 11, 2013. On Wednesday, April 10, 2013, Ms. Spence sent an email to the ORC at 3:53 p.m. withdrawing her appeal.
5. Due to the unusual weather circumstances, Ms. Spence, who waived her right to legal counsel, was permitted to participate in the hearing via telephone. Jennifer Friedman represented the ORC as legal counsel.
6. Ms. Spence confirmed her request to withdraw her appeal was for both the stay and the suspension related to Ruling No. SB 40/2013.
7. The ORC adopted Policy Directive No. 3 -2010 which provides a process for licensees to withdraw appeals and to improve the efficiency and time lines of proceedings and to assist the ORC in fulfilling its statutory mandate.
8. Those Rules of Procedure require the appellant seeking the withdrawal to appear before a Panel of the Commission and be responsible for costs incurred by the Commission such as document preparation, staff time for preparation, summonses and costs associated with the actual hearing.
9. Ms. Friedman requested that Ms. Spence be assessed cost of \$1,500 as per Policy Directive No. 3-2010. The appellant did not dispute the dollar amount and submitted that she was aware that she would be subject to costs of some amount.
10. Ms. Friedman referenced both the Patton case (TB 003/2013) and the Davis case (SB 050/2012) in support of the Commission's basis for costs to be assessed.

### Issue

11. Should The Panel grant the appellant's request to drop her appeal and should ORC Policy Directive No. 3-2010 be invoked?

### Decision

12. After carefully listening to the testimony and reviewing the evidence and documents filed, the Panel grants Ms. Spence's request to withdraw her appeal. She is assessed costs of \$1,500 to cover the costs incurred by the ORC to date, that included documentation preparation, staff preparation, witness participation and hearing costs.

### Reasons for Decision

13. Licensees have a right to withdraw an appeal. With that right comes a responsibility not to abuse that right and to be responsible for costs incurred should they so choose not to proceed with a hearing. Costs are only assessed if and when the Commission starts to incur costs related to preparation for the appeal. With the request to withdraw coming less than 24 hours before the hearing was to commence, it is reasonable that the appellant be responsible for the costs.

14. The ORC receives its funding from the industry. That industry expects and deserves the Commission to utilize those funds diligently and to seek reparations accordingly.

15. This amount of \$1,500 is the same that licensee Bill Davis (Ruling Number COM SB 050/2012) was assessed when he withdrew his appeal less than 48 hours before his appeal hearing was set to commence. Given the similar circumstances, it is reasonable to conclude a similar assessment is appropriate.

16. The Panel opts not to assess a frivolous appeal in addition to the costs assessment as recommended by Ms. Friedman.

DATED this 15<sup>th</sup> day of April 2013.



Rod Seiling  
Chair