



COMMISSION HEARING

TORONTO, ONTARIO – NOVEMBER 2, 2009

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**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  
EVZEN PINDUR**

Evzen Pindur, ("Pindur") was licensed by the Ontario Racing Commission ("ORC") as a driver/trainer/owner/authorized agent, Licence Number P31455.

On March 18, 2008, blood samples were drawn from four horses trained by Pindur during out-of-competition testing at Mohawk Raceway.

The sample drawn from racehorse DOUGHNUT HANOVER tested positive for Darbepoetin-Alpha, (Aranesp).

On April 23, 2008, the Executive Director of the ORC made an Order for the immediate suspension of the licence of Pindur together with a Proposed Order for both suspension and fine.

Pindur requested a hearing before the ORC.

On November 2, 2009, a hearing was held before a Panel of the ORC, consisting of David Gorman, Commissioner.

Evzen Pindur appeared in person at the Hearing.

Pindur was represented by Howard Cohen, counsel.

Anthony Williams appeared as counsel on behalf of the Administration.

Upon reading of the exhibits filed and upon hearing the submissions of both counsel, the Commission accepted the proposed resolution agreement from counsel and ordered as follows:

- i) The ORC licence of Pindur will be suspended from April 23, 2008 to April 22, 2020, and
- ii) A fine of \$25,000 is imposed.

DATED this 6<sup>th</sup> day of November 2009.

BY ORDER OF THE COMMISSION

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Rob McKinney  
Acting Executive Director



## REASONS FOR DECISION

### Background

1. Evzen Pindur (Pindur) was a licensee of the Ontario Racing Commission, licensed as a driver/trainer/owner/authorized agent, Licence Number P31455.
2. On Tuesday, March 18, 2008, three employees of the Ontario Racing Commission attended the training centre of Mr. Pindur to conduct “out of competition” testing of four horses. These horses were presented for testing at Mohawk Raceway. Blood samples were drawn by a veterinarian.
3. The samples were submitted for EPO/Aranesp testing to Racing Forensics, Inc. of Markham, Ontario, an approved testing laboratory.
4. One of the samples had an elevated Elisa Antigen test. It was sent to the University of Pennsylvania for confirmatory testing, and the presence of Darbepoetin-Alpha was confirmed.
5. This positive sample had been drawn from a horse called DOUGHNUT HANOVER. Pindur had been the trainer of record for DOUGHNUT HANOVER since 2006.
6. On April 23, 2008, the Executive Director of the Ontario Racing Commission:
  - (i) Made an “Order for the Immediate Suspension” of the licence of Evzen Pindur and further,
  - (ii) Issued a “Notice of Proposed Order” of the suspension of Pindur for a period of 12 years together with a fine of \$40,000.
7. Pindur, at his request, was provided with a “list of official laboratories” and in August 2008, the “arranged custom testing” was ordered and completed at Iowa State University. The sample was confirmed as positive.
8. A hearing before a Panel of the Ontario Racing Commission was then scheduled, originally for June 2, 2009 and then, on consent, for November 2, 2009.

### Joint Statement of Consent

- (1) Commissioner David Gorman sat alone on this matter.
- (2) At the commencement of the hearing, counsel for the Administration, Mr. Anthony Williams, advised that following discussions with Mr. Howard Cohen, counsel for the appellant and Mr. Rod Seiling, Chair of the Ontario Racing Commission, agreement had been reached with respect to penalty.
- (3) Mr. Williams also advised that those witnesses scheduled to appear had been notified that their presence would not be required.
- (4) Mr. Williams advised the Panel that the agreed upon penalty is for a suspension of 12 years beginning April 23, 2008 and ending April 22, 2020. The proposed fine is lowered to \$25,000.
- (5) Mr. Williams filed Exhibit #4, the Reasons for Decision in the recent Elliott case which, he said, had a substantial impact on today’s proceedings. He particularly referenced paragraph #70, which explained why the Panel in that case increased the fine which was originally



proposed. It was noted that Elliott's level of industry involvement was such that an increased fine was warranted.

- (6) Mr. Williams noted that Mr. Pindur's level of involvement was much less than that of Mr. Elliott and thus warranted a lower fine.
- (7) Mr. Cohen advised the Panel that after discussions with his client, it was decided that the best course of action was to accept the Administration's position and move on.
- (8) Accordingly, an Order will issue:
  - a) stating that the date of Mr. Pindur's licence suspension will be from April 23, 2008 to April 22, 2020;
  - b) A fine of \$25,000 will be imposed on Mr. Pindur.

DATED this 6<sup>th</sup> day of November 2009.

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David Gorman  
Commissioner