



COMMISSION HEARING

TORONTO, ONTARIO – MAY 11, 2011

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
STANDARDbred LICENSEES ELIZABETH THOMPSON AND JAMES BARTON**

Standardbred licensees, Elizabeth Thompson ("Thompson"), owner, Licence No. W21219 and James Barton ("Barton"), driver/trainer/owner, Licence No 0334V9, filed an Appeal and requested a Hearing against, inter alia,

- (i) The decision of the track judges on September 8, 2007 at Woodstock Raceway to find Barton in violation of Standardbred Rule 3.09.01(c), (no written contract), as trainer for the horse Sound Relation and to impose a fine of \$200, and
- (ii) The decision of John L. Blakney ("Blakney"), Executive Director of the Ontario Racing Commission ("ORC"), on September 1, 2011, that no further proceedings are appropriate against the decision of Bruce Murray ("Murray"), Vice President of Standardbred Racing at Woodbine Entertainment Group ("WEG") to exclude the horse Fans Phantom from a September 7, 2007 race at Mohawk Raceway.

On Wednesday, May 11, 2011, a Panel of the ORC consisting of Chair Rod Seiling was convened to hear this matter.

Thompson was unrepresented.

James Whelan ("Whelan") provided assistance to Thompson.

Barton was not in attendance at the Hearing.

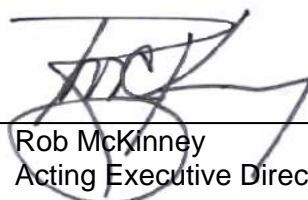
Anthony Williams ("Williams") appeared as counsel for the Administration.

On hearing the evidence of Charles Beirnes, Investigator, and of Charles Fraleigh, Senior Standardbred Judge, and upon reading the exhibits filed, and upon hearing the submissions of Thompson, Whelan and counsel for the Administration, the Commission found as follows:

The Appeal is dismissed.

DATED this 17th day of May 2011.

BY ORDER OF THE COMMISSION



Rob McKinney
Acting Executive Director



REASONS FOR DECISION

Overview

1. Dr. Elizabeth Thompson requested a hearing before a Panel of the Ontario Racing Commission (ORC) (Ex. 1, tab 25). In the interests of fairness and transparency, it was agreed to grant her request given that in addition to a number of meetings with ORC officials including the Director she had written at least six letters to the ORC raising her ongoing concerns. The hearing was held on May 12, 2011.

Background

2. Anthony Williams, legal counsel for the ORC, was not challenged in his opening remarks when he categorically stated that there was no basis for an appeal in three of the four reasons listed in her request for a hearing. (Ex. 1, tab 25, p.76). The basis for his statement was SB Rule No. 24.03. Those three listed reasons were as follows:

1. "If our concerns had truly been 'carefully considered' it would have been obvious that our horse was never scratched. Our concern was — why had our entries in general been rejected for almost two weeks by WEG?"
2. "Mr. Blakney had agreed to this investigation despite there not having been a hearing in 2007. Why did this investigation last from Feb. 2009 to Sept. 2010?"
3. "We had requested a meeting with Bruce Murray to explain his actions. We were never granted this meeting and never received any documentation after he was interviewed by Mr. Charlie Beirnes."

3. Regarding the fourth reason listed for the appeal, Mr. Williams stated that there was no merit to it, and even if there were, it was too late to proceed (six and ½ months), therefore the appeal should be dismissed. During the course of the hearing, Mr. Jim Whelan, who was assisting the self-represented Dr. Thompson, acknowledged the ORC timelines for filing an appeal were limited to forty-eight hours on receipt of notice with a further eight days allowed to submit it in writing. The fourth reason listed by Dr. Thompson was as follows:

"In the Small Claims Court in which we had to resort to be paid by these two owners who were not ORC listed, the Judge ruled that a contract did exist and the two owners had to pay us for services rendered plus interest. We strongly disagree with the ORC ruling re no contract as did the Judge in a court of law."

4. Dr. Thompson, stated that she was looking for closure to what had been a very frustrating affair for her and her husband, James Barton, who is a licensed trainer with the ORC.

5. With the assistance of the Chair, Dr. Thompson agreed that the actual basis of her appeal came down to two issues. They were as follows:

1. The \$200 fine for her husband; and
2. Why no action was taken against Bruce Murray?



COMMISSION HEARING

TORONTO, ONTARIO – MAY 11, 2011

6. On October 17, 2005, James Barton and Dr. Thompson along with Michael and Carmen Dillon purchased a horse, Sound Relation, at the Forest City Sale. Unfortunately, the horse did not make it to the races.

7. The Dillons paid their share of the costs from the purchase date to January of 2007. In February of that year they stopped paying and alleged a number of reasons for doing so. ORC investigator, Charles Beirnes, conducted an investigation to deal with the Thompson/Barton and Dillon dispute. That investigation included an interview with Thompson/Barton. His report (Ex.1, tab 2) confirmed that the allegations such as unsafe conditions to be false but he did report that Mr. Barton admitted that he did not have a written contract with the Dillons for the horse, Sound Relation, as required by SB Rule No. 3.09.01 (c). This rule, which Dr. Thompson admitted came into force in 2002 and, not recently as she submitted, requires a trainer to have a written contract covering his/her services and the remuneration to be paid (terms).

8. Subsequently, on being notified of the rule violation, the ORC Judges held a hearing with Mr. Barton and Dr. Thompson on September 6, 2007. Following the hearing, the Judges issued SB Ruling No. 36855 on September 8, 2007 (Ex. 1, tab 4) wherein he was fined \$200 for violating SB Rule No. 3.09.01 (c) for not having a written contract for the horse, Sound Relation.. Mr. Barton paid the fine on September 9, 2007; he did not appeal the ruling, nor did he request a stay as were his options under the Rules of Racing (Chapter 24). The reason submitted for not exercising his rights was that Mr. Barton wanted to be able to race his horses right away and that they were not aware of their options under the rules just as they were not aware of the rule requiring a written contract.

9. The September 6, 2007 hearing with the Judges was to have occurred on September 4, two days earlier. The proposed date was set on July 31, 2007 by the Judges to deal with the alleged violation, SB Rule No. 3.09.01 (c). Dr. Thompson submitted that the proposed date setting was August 22, 2007 (Ex. 6). Mr. Barton notified Judge Chuck Fraleigh on August 27 that he could not participate in the meeting and asked that it be re-scheduled at Flamboro Downs versus Woodstock. The reason given for the date change request was work related.

10. On March 11, 2008, Dr. Thompson was accompanied by Jim Whelan in a meeting with the ORC Director, John Blakney. The purpose of the meeting was the \$200 no contract fine and to hold Bruce Murray accountable. On September 1, 2010, after another ORC investigation (Ex. 1, tab 17) re Murray, the Director wrote that further proceedings by the ORC "are not appropriate and that in hindsight, an emergency hearing may have provided timely relief from the decision made by Mr. Murray of WEG." Dr. Thompson wrote on February 24, 2011 and March 18, 2011 to express her ongoing complaints. They were preceded by six letters, January 21, 2008, April 25, 2008, July 28, 2008, August 4, 2008, December 20, 2008 and February 9, 2009. In response, Anthony Williams sent 5 responses dated February 27, 2009, February 28, 2009, two letters dated March 3, 2009, and October 9, 2009. Unfortunately, all these letters did not provide closure for Dr. Thompson. On March 25, 2011, the ORC offered Dr. Thompson a hearing or failing such, would consider the matter closed.

11. On March 13, 2008, the matter was heard in Small Claims Court wherein Thompson/Barton won a judgement against the Dillons. The Judge found that no written contract existed but found an oral contract was in place and therefore ruled in favour of the plaintiffs.



COMMISSION HEARING

TORONTO, ONTARIO – MAY 11, 2011

12. In July of 2008, Judge Fraleigh attempted to set up a meeting between Thompson/Barton and the Dillons to see if a resolution could be found to the ongoing dispute between the parties notwithstanding the court order. Dr. Thompson sent Judge Fraleigh a letter (Ex. 1, tab 8) dated August 3, 2008, that they had handed over the matter to their lawyer and that “anyone wishing to discuss this matter is to connect directly with him.” Judge Fraleigh’s response, as confirmed in Dr. Thompson’s August 4, 2008 letter to John Blakney, was that the lawyer was welcome to come (Ex. 1, tab 9).

13. With regards to the scratch of Fans Phantom, on or about September 4, Mr. Barton went to enter the horse at Mohawk. WEG officials were not aware that the proposed September 4, 2007 meeting had been rescheduled to September 6 of that month. Mohawk refused the entry (scratch), the decision being made by Bruce Murray (VP, Standardbred Racing), on the basis of outstanding issues with the ORC.

14. Judge Fraleigh was not asked about the variance in dates but gave undisputed testimony that he talked to the appellant after he learned the entry had been refused and told them it was not because of any ORC action and to get back to him if they experienced any further problems. He never received a call back.

15. It appears that with the Dillon concerns being made known to Mr. Murray in conjunction with the decision not to participate in the September 4, 2008 Judges meeting, those factors led to Mr. Murray giving direction not to allow Mr. Barton’s horse to race. Mr. Murray wanted to allow the Judges to rule on the matter and was not aware of the reasons for the September 4 hearing being deferred by two days.

16. Mr. Barton, for whatever reason did not contact the Judges or the ORC head office to request a hearing regarding the refusal for Fans Phantom as was his right as a licensee. Dr. Thompson stated that they were not aware of this avenue of appeal.

17. On September 1, 2010, the Director wrote to Thompson/Barton (Ex.1, tab 21) stating that “further proceedings are not appropriate in view of all the circumstances and the role of the Ontario Racing Commission in this matter is now complete”. This letter was written following an investigation into the WEG refusal regarding Fans Phantom to race at Mohawk by ORC investigator, Charles Beirnes (Ex. 1, tab 17).

18. Thompson/Barton were successful at Small Claims Court versus the Dillons. The Judge ruled that an oral contract did exist (Ex. 1, tab 13) but also recognized that the required ORC written contact was non-existent.

Issues

19. Is there merit to Dr. Thompson’s four listed reasons for the appeal? Was the Judges’ ruling and \$200 fine for violating SB Rule No. 3.09.01(c) appropriate? Is there any basis for the ORC taking any action against WEG or Bruce Murray for the ‘scratch’ of Fans Phantom and did the Director exercise his discretion appropriately?



Decision

20. After carefully listening to the testimony and reviewing the evidence and documents submitted, the appeal is dismissed.

Reasons for Decision

21. Under SB Rule No. 24.03, there is no basis for an appeal under the first three listed reasons for Dr. Thompson's appeal request.

22. Mr. Barton was in violation of SB Rule No. 3.09.01(c) and did admit to Investigator Beirnes that he did not have a written contract with the Dillons for the horse, Sound Relation. The penalty levied by the Judges was in accordance with ORC policy. To vary the fine would set a bad precedent in terms of enforcement however tempting it may seem in this instance.

23. Notwithstanding that the Court recognized an oral contract existed between the parties she confirmed there was no written contract and added that the case was a shining example of why the rule existed. An oral contract does not and should not suffice as to the ORC requirement for a written contract. The dispute between Thompson/Barton and the Dillons demonstrates as per the Court's recognition why the ORC requires written contracts, to protect the parties involved.

24. It appears that the communication of misinformation likely led to WEG "scratching" Fans Phantom from racing at Mohawk. The evidence clearly proves it was in no way related to Jim Whelan's issues with WEG. It appears reasonable that had Thompson/ Barton agreed to the September 4 meeting in Woodstock that the miscommunication and or erroneous information would not have occurred leading to the 'scratch'.

25. Nevertheless, Mr. Barton had avenues of appeal available to him as they relate to both his penalty for violating SB Rule No. 3.09.01(c) and WEG's refusal (scratch) of his horse, Fans Phantom. For whatever the reasons, he opted not to avail himself in either situation and he must, therefore, bear the ultimate responsibility.

26. Licensees are required and expected to both know and obey the rules of racing. Just as under the Highway Traffic Act, one cannot use ignorance of the rules as a defence. Surely it is reasonable to expect a licensee to read the rule book. On reading it, that person would soon come upon SB Rule No. 1.04, "Ignorance of the rules will not be accepted as a defence for their violation". On reading that same rule book, a licensee would become aware of his/her rights as they relate to appeals from a Judges' decision and stays from those same decisions.

27. The Panel understands the frustration experienced by Thompson/ Barton. It reasonably stems, in large part, from not being aware of their rights under the rules of racing. Those rights, which the ORC goes to great lengths and cost to protect, could have saved Thompson/Barton much anguish. On the other hand, the Administration of the ORC went to great lengths to try and help Thompson/Barton given the limitations imposed on it by the appellant not exercising their rights at the appropriate times.

28. The onus is on the licensee to exercise the right of appeal. That right was not exercised in relation to the violation of SB Rule No. 3.09.01(c) or the refusal of Fans Phantom to race at



COMMISSION HEARING

TORONTO, ONTARIO – MAY 11, 2011

Mohawk. Furthermore the appellant opted not to have the ORC Judges assist them with the payment dispute with the Dillons and proceed to the Court as was their right.

29. The Director went to the nth degree to satisfy Dr. Thompson to the extent available to him under the rules and regulations. This included having two separate investigations, five explanatory letters and a meeting. Surely the investment of all this time and resources clearly demonstrate he used his powers appropriately.

Dated this 16th day of May 2011.

Rod Seiling
Chair