



COMMISSION HEARING

TORONTO, ONTARIO – MAY 19, 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
STANDARD BREED LICENSEE ISAAC WAXMAN**

Isaac Waxman (“WAXMAN”) is licensed by the Ontario Racing Commission (“ORC”) as a Driver, Trainer, Owner (Licence # Z06966).

On February 3, 2011, the Judges issued Ruling SB 43216 wherein WAXMAN was given an interim full suspension pending a hearing in relation to his conduct following race 6 at Kawartha Downs, on February 3, 2011.

On February 4, 2011, prior to an ORC hearing being held, WAXMAN brought an Application in the Ontario Superior Court of Justice (Court File No 11-25384), for an interlocutory injunction to stay Ruling Number SB 43216. The stay was granted pending return of the motion.

On February 24, 2011, a Judges’ Hearing was convened to deal with WAXMAN’S conduct on February 3, 2011, at Kawartha Downs. As a result of this hearing the Judges issued 3 Rulings, SB 43221, SB 43222 and SB 43223.

Pursuant to Ruling Number SB 43221, WAXMAN was fined \$5,000 and fully suspended for one year (February 28, 2011 to February 27, 2012 inclusive) for violation of 6.17 (c) (d), and 6.20 (b) and (c) of the Rules of Standardbred Racing (“the Rules”), as a result of his conduct following the 6th race at Kawartha Downs Raceway on February 3, 2011.

Pursuant to Ruling Number SB 43222, in accordance with 6.13.02 and 6.13.03 of the Rules, the following horses were suspended:

| | |
|------------------|-------|
| Awesome Armbro N | ZW215 |
| Flem N Enm | 0ct46 |
| All Tiger N | 2BX84 |
| Strand Hanover | 8DL39 |
| Cajon Thunder | 7EM46 |
| Dali | 2C307 |
| Dr Dew | 8FN63 |
| McLaren | 3D916 |

Pursuant to Ruling Number SB 43223, in accordance with 5.11 and 1.09 of the Rules all horses owned wholly or in part by WAXMAN on February 4, 2011 and onward, continued to have all purse monies held pending the full and complete disposition of the Ontario Superior Court of Justice granted injunction (number 11-25384).

On March 28, 2011, Justice Parayeski of the Ontario Superior Court of Justice released an Endorsement which held that the interlocutory injunction ought not to have been granted and set it aside. Justice Parayeski also refused WAXMAN’S request to order payment of purse monies currently being held pursuant to Ruling Number SB 43223.

On March 31, 2011, the Judges issued Ruling SB 43226, which required that purse monies continued to be held pending a hearing before a Panel of the ORC. WAXMAN appealed Rulings SB 43221, SB 43222 and SB 43223.



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On May 19, 2011, a Panel of the ORC consisting of Chair Rod Seiling, Vice-Chair James Donnelly and Commissioner David Gorman, was convened to deal with the appeal of Rulings SB 43221, SB 43222 and SB 43223.

Angela Holland appeared as counsel for the Administration. Mary Grosso appeared as counsel for WAXMAN and WAXMAN attended in person.

Upon hearing the testimony of Rick Rier, Joelann Irvine, Marty Cousins, David Gilders, Kenneth Switzer and WAXMAN, upon reviewing the exhibits filed, and upon hearing the submissions of counsel for the Administration and counsel for WAXMAN, the Panel varied the penalty as follows:

- a) The \$5,000 fine remains;
- b) WAXMAN is to have his owner/trainer license immediately reinstated, commencing May 19, 2011, those licenses having been suspended since February 4, 2011;
- c) WAXMAN'S driver's license remains suspended until he successfully completes the remaining portion of his out-patient program at Homewood. WAXMAN will be required to have Homewood officials report monthly to Judge Rick Rier of his continuance in the program and its successful completion;
- d) Upon successful completion of the Homewood program, WAXMAN is eligible to have his driver's license reinstated and until such time, he is prohibited from any public area of any racetrack in Ontario, including the Winner's Circle. However, he is allowed to warm-up his horses on the track, subject to any Trespass Notice;
- e) WAXMAN is not eligible to the \$61,140.00 in purse funds currently being held in escrow. These prize monies are to be released and redistributed upon 30 days of the issuance of this decision; and
- f) WAXMAN is placed on probation until May 18, 2012, with the following conditions:
 - i. He is to keep the peace and be of good behaviour and to have no more personal conduct rule violations; and
 - ii. Failure to comply with his probation will result in a review of his licensing status by the Director.

DATED at Toronto this 30th day of May, 2011.

BY ORDER OF THE COMMISSION

John L. Blakney
Executive Director



REASONS FOR DECISION

Overview

1. Licensee Isaac Waxman appealed the penalties related to SB Rulings Nos. 43221, SB 4322 and SB 43223. Pursuant to SB 43221 he was fined \$5,000 and suspended for one year (2/28/11 to 2/27/12) for violating SB Rules Nos. 6.17 (c) language, and (d) conduct and 6.20 (b) conduct prejudicial and (c) act injurious. Pursuant to SB 4322, eight horses owned all or in part by the appellant were suspended. Pursuant to SB 43223, in accordance with SB Rules Nos. 5.11 and 1.09, horses owned wholly or in part by the appellant as of February 4, 2011 and onward had their purse monies held awaiting the final disposition of the Ontario Superior Court injunction application by Waxman (Number 1-25384).

2. An oral decision was rendered following the hearing (attached); these are the Reasons for Decision.

Background

3. On February 3, 2011, the Ontario Racing Commission (ORC) Judges issued SB Ruling No. 43216 wherein the appellant was given an interim full suspension pending a hearing related to his conduct in front of the grandstand in full public view following the sixth race at Kawartha Downs (KD).

4. The Chair of the Panel, Rod Seiling, raised two important procedural matters at the opening of the de novo hearing. He noted that the appellant, in his factum (Ex.5) at Part 2, Para 2, made unsubstantiated comments related to unfair, targeted treatment by the ORC towards him submitting that it was making it difficult to exist in the horse racing industry. This was a very serious charge that required addressing before the start of the hearing. Also referenced was a concern that the appellant had filed notice of application for judicial review on February 10, 2011 (Ex. 3) in relation to the decision of this hearing which hearing had not yet proceeded.

5. Mary Grosso, legal counsel for the appellant, submitted that Mr. Waxman can't prove such an allegation but that he believed it to be true. Regarding the notice for judicial review, she submitted that it had been done "for ease" and should not impact on the Panel despite a suggestion from the Vice Chair that it had a potential to be viewed as a form of intimidation.

6. Ms. Grosso asked that the Panel reduce Mr. Waxman's fine to \$2,500 and his suspension to the time from February 24, 2011 to May 19, 2011 and that the purse funds of \$61,140 be released to Mr. Waxman on the basis that the period of time from February 4, 2011 to February 24, 2011 be treated as a stay.

7. Angela Holland, legal counsel for the ORC, put forth three witnesses; Joalene Irving, Morty Cousins and David Guilders. Each works for KD and on the night in question witnessed Mr. Waxman's antics which occurred directly in front of them, on the track near the winner's circle. Those antics which lasted a minimum of two to three minutes were not disputed as to content or locale or was the intended direction of them, the Judges. They consisted of giving the Judges the finger, yelling obscenities and simulating masturbation, all in full public view and broadcast live on the track's in-house television circuit.



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8 Mr. Waxman did not dispute his actions. He admitted in his testimony that he did not blame a mother and child who left the track upon witnessing his outburst. Subsequent to his on track antics he arranged to have his picture giving the Judges the finger inserted into the winner's circle photo. There was no disagreement that the appellant left the public area of the track (escorted by track security at the request of Judges) nor did he dispute that KD has barred him for one year because of his antics that night.

9. On February 4, 2011, the day after Mr. Waxman's antics at KD, he made application in the Ontario Superior Court of Justice in Hamilton (Court file No. 11-25384) for an interlocutory injunction to stay SB Ruling No. 43216. The ORC was given very short notice and was unable to attend; the stay was granted pending a return of the motion for a full hearing.

10. As a result of the stay being granted, Mr. Waxman continued to race his horses from February 4, 2011 to February 24, 2011. As a consequence, the Judges, on February 7, 2011, pursuant to SB 43013 ordered that all purse monies won by Mr. Waxman's horses would be held pending disposition of the injunction from the Superior Court of Justice, Court No 11-25384. During this time period, his horses earned a total of \$61,140.

11. On February 24, 2011, the Judges held a hearing with Mr. Waxman and his legal counsel present. Following the hearing, Mr. Waxman received, as per SB Ruling No. 43221, a fine of \$5,000 and a suspension of one year (2/28/11 to 2/27/12). He was found in violation of SB Rules 6.17 (c) and (d) and 6.20 (b) and (c) for his conduct on February 3, 2011, at KD following the sixth race (Ex.1, tab 17).

12. As per SB 4322, in accordance with SB Rules 6.13.02 and 6.13.03, six horses owned wholly or in part by him were suspended. SB Ruling No. 43223, in accordance with SB Rule Nos. 5.11 and 1.09 continued the purse winnings hold on the appellant's horses from February 4, 2011 onward awaiting the disposition of the Ontario Superior Court of Justice granted injunction (Number 11-25384) (Ex.1, tab 17).

13. In their reasons for decision (Ex. 1. Tab 18) emanating from the February 24, 2011 hearing, the Judges, according to Judge, Rick Rier, considered a number of aggravating factors. They included a) that Mr. Waxman had five separate conduct violations in the past twelve months, b) despite the fact that the penalties had increased each time, it appeared they were not having any deterrent effect, c) Waxman had a picture of himself giving the Judges the finger inserted into the "winner's circle photo and d) that his antics occurred when he was on probation (SB Ruling No. 065/2010) which required him to keep the peace and be of good behaviour. Judge Rier stated he never felt physically threatened; Mr. Waxman's actions were very aggressive that night in question.

14. The catalyst for the appellant's antics according to Mr. Waxman was the decision of the Judges on February 3, 2011, to scratch his horse Windsun Rachel from an earlier race for being late to the paddock (16 minutes). The rules of racing require the trainer to have his/her horse checked into the paddock a minimum of one hour before the scheduled post time for its race (SB Rule No. 26.12.). Mr. Waxman was programmed as the trainer of Windsun Rachel (Ex. 1, tab 1). Once the paddock Judge notified the Judges that Windsun Rachel was late, Mr. Rier said that they had to invoke the rule. Both Mr. Waxman and Mr. Switzer contended that Judges in the past have made exceptions, but no specific example was provided.



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15. Mr. Waxman said that he was upset because he had decided to listen to fellow trainer and former employee, Ken Switzer, who told him to bypass checking into the paddock, and go directly onto the track to warm up his horse. He contended that the Judges could have looked out their window and observed him on the track with the horse, check with security to see that he was on the grounds or have someone check to see that the warm-up saddle pad had been picked up from the paddock. On being notified of the scratch, he acknowledged not having the horse in the paddock by the proper time and also warned the judges that a huge lawsuit was coming.

16. Judge Rier said that Judges are too busy in between races to watch for a particular horse on the track but they did have someone check to see if the horse's equipment was in its assigned paddock stall. Mr. Switzer confirmed that he had it with him but never made it to the stall within the required time period. The inference was that if that equipment had been in the allotted paddock stall, the Judges would not have scratched the horse on the assumption that the horse was in the paddock on time and simply was not checked off with the Paddock Judge.

17. Judge Rier submitted that the Judges did not have a bias against Mr. Waxman. In fact he had an outstanding \$1,000 fine that the Judges, under the rules of racing, could have made him ineligible to race until it was paid in full. Furthermore, the Judges opted not to fine Mr. Waxman \$100 for the late-to-paddock rule violation.

18. Mr. Waxman, prior to February 3, 2011, had five previous conduct violations (Ex. 6) within one year and on February 3, 2011, was on two years' probation, effective in December, 2010 that required him to keep the peace and be of good behaviour and enrol in an anger management course. This latter requirement flies in the face of his testimony that he entered into Homewood for anger management treatment of his own volition.

19. Rather than wait for due process rights under the Ontario Racing Commission Act, Ms. Grosso made an application on the appellant's behalf for an injunction in Hamilton the very next day, February 4, 2011. In as much as the ORC had insufficient time to respond, Madam Justice Milanetti granted an interlocutory injunction to Mr. Waxman. The matter came before the Courts again on March 23, 2011. Following this Superior Court of Justice hearing, in his Ruling (Ex. 2), Justice Parayeski stated at Para 12, "The applicant's request for an injunction was premature, and, in my view, was likely to have been dismissed if that argument had been advanced, as no doubt it would have been had the respondent participated in the hearing before Madam Justice Milanetti".

20. With respect to Mr. Waxman continuing to race his horse after the February 4, 2011 injunction and the Judges ordering the purses held, the Court found at Para 17 that holding the purse funds in trust until a final determination was made, thus preserving the status quo, was the correct thing to do in as much as if Mr. Waxman had not been eligible to race 2/4/11 to 2/24/11 he would not be entitled to those winnings. The Court declined to make an order to have the purse monies paid to the applicant.

21. Progressive penalties to Mr. Waxman for his personal conduct, for whatever reason, had no deterrent impact on Mr. Waxman. Precedent cases sighted by both legal counsel were not helpful in terms of an appropriate penalty, particularly as nothing referenced occurred in full public view or featured such a multiple offender. They were insightful and relevant in as much as they did confirm the need to respect the Judges and the appropriateness of immediate



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suspension for such action (McNamara, SB 261/1997). That Panel confirmed the immediate suspension following verbal abuse and threatening gestures towards the Judges in the Judges' office, with the suspension increased from 30 to 60 days. In Auger, the appellant was suspended for 10 days and fined \$500 for yelling at the Judges and ripping up the hearing notice. This penalty was termed lenient given the possible range. In Van Meer, the licensee received a fine of \$1,500 and a 15-day suspension for a fight in the grandstand with another licensee. Fortunately precedents of such action taking place in full public view could not be referenced and as Judge Rier testified, he could not recall anything like it.

Reasons for Decision

22. Mr. Waxman's antics were clearly targeted towards the Judges, demonstrating a clear and utter disrespect for them. The antics occurred in full public view thus conveying a total disregard for the very people the appellant expects to support his industry. Such actions cannot be tolerated as they clearly are not in the best interests of racing.

23. Penalties are to act as a deterrent. In Mr. Waxman's case, the five penalties imposed within the past year for personal conduct rule violations had not resulted in any modified behaviour change. It is reasonable to conclude that "upping the ante" with respect to penalty is logical and proper.

24. To that end, an approximate three-month suspension as an owner /trainer is reasonable given the ongoing circumstances. This Commission has a policy of rehabilitation. Shortening the suspension as an owner/trainer, given Mr. Waxman's remorse and success to date in dealing with his acknowledged issues bears witness to that policy. Keeping him out of direct competition as a driver and away from the public at the track will allow more time for the outpatient program in which he is enrolled to help ensure there will be no relapse.

25. Shortening the time frame, i.e., accepting Ms. Grosso's submission for a de facto stay from February 4, 2011 to February 24, 2001 would reward the appellant for his premature attempt to bypass due process and depriving the Court of a full presentation of the evidence and argument before deciding the issue of the interlocutory injunction. He had no right to the Court order.

26. The evidence tendered does not demonstrate any bias by the Judges against Mr. Waxman as alleged. In fact, the evidence is just the opposite. They asked the paddock to see if the horse supplies were in the paddock indicating that the horse had been there and allowed him to race despite an outstanding \$1,000 fine and did not levy an additional \$100 fine for being late to the paddock. The onus was on the appellant to check in to the paddock as required. It was his decision to proceed directly onto the track despite knowing that he had to comply with the rule. If Mr. Switzer had proceeded directly to the paddock with the horse's equipment instead of stopping to talk, the scratch of Windsun Rachel would have not occurred.

27. A variance in the \$5,000 fine would send the wrong signal to the appellant and the industry as to severity of the conduct. The amount of the fine is reasonable given his gross behaviour in front of the public coupled with the fact he was already on probation.

28. Mitigating factors benefiting the appellant were a) his admittance of wrong doing, b) the apology offered to Judge Rier and c) his enrolment at Homewood for in-patient care for his



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anger management issues followed by a nine-month out-patient program. Notwithstanding, Mr. Waxman would not apologize to the other Judges who were working at KD that evening.

29. The \$61,140 in held purse monies do not belong to Mr. Waxman. It is clear his suspension of February 4, 2011 was valid as per the Court. Therefore, the horses were not eligible to race. He has no entitlement to the purse monies from those races. The Judges acted properly to protect the public interest.

DATED this 30th day of May 2011.

A handwritten signature in cursive script that reads "Rod Seiling".

Rod Seiling
Chair

ONTARIO RACING COMMISSION

STANDARD BRED HEARING

IN THE MATTER OF AN APPEAL AND REQUEST FOR
HEARING OF **ISAAC WAXMAN**, OWNER/DRIVER/TRAINER
FOR STANDARD BRED RACE HORSES

Held Before:

Rod Seiling, Chairman

James Donnelly, Vice Chair

D. Gorman, Commissioner

These are an excerpt of the proceedings in the above mentioned matter held before The Ontario Racing Commission, Re: **ISAAC WAXMAN**, taken before Toronto Court Reporters, Suite 1410, 65 Queen Street West, Toronto, Ontario, at 10 Carlson Court, Suite 400, Toronto, Ontario, on the 19th day of May, 2011.

Appearances:

Angela Holland,

for the Ontario Racing
Commission Administration

Mary Grosso, for Waxman

1 Hearing continued ...

2 MR. DONNELLY: All rise please.

3 MR. CHAIRMAN: Please be seated. After carefully listening to the
4 testimony, reviewing the evidence and documents submitted and having Mr. Waxman
5 admit a breach of the rules the penalty succeeds and is varied as follows. I'm sorry,
6 the appeal succeeds and is varied as follows. First, the \$5,000.00 fine remains. Mr.
7 Waxman's license as an owner/trainer is to be reinstated immediately, those licenses
8 having been suspended since February 4, 2011. Mr. Waxman's license as a driver
9 remains suspended until he successfully completes the remaining nine month portion
10 of his out patient anger management program at Homewood. He will be required to
11 have Homewood officials report monthly to Judge Rier of his continuance in this
12 program and successful completion. Upon successful completion he is eligible to
13 have his driver's license reinstated. Until such time, he is prohibited from any public
14 area of any racetrack in Ontario, including the Winner's Circle. Mr. Waxman is not
15 eligible to the \$61,140.00 purse funds held in escrow. These prize monies are to be
16 released upon 30 days of the issuance of this decision. This will allow the appellant
17 to file any Judicial Review it may deem appropriate. Mr. Waxman is placed on
18 probation. His probation commences as of the date of this hearing and runs until May
19 18, 2012. He is to keep the peace and be of good behaviour and to have no more
20 personal conduct rule violations. Failure to comply his licensing status will be subject
21 to a review by the Director. Written reasons are to follow. Questions?

22 MS. HOLLAND: None, sir.

23 MR. CHAIRMAN: Thank you.

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