



COMMISSION HEARING

TORONTO, ONTARIO – APRIL 2, 2012

**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
STANDBRED LICENSEE MIROSLAW CZUPA
AND IN THE MATTER OF THE NOTICE OF MOTION OF MIROSLAW CZUPA**

On March 15, 2012, Ontario Racing Commission (“ORC”) Judges at Flamboro Downs issued Standardbred Official Ruling No. SB 44628 wherein Miroslaw Czupa (“CZUPA”) was subject to a one-year suspension as a consequence of violating Rules 6.20(b), 6.22, and 6.27 of the Rules of Standardbred Racing (“SB Rules”).

On March 21, 2012, James Evans (“Evans”), counsel on behalf of CZUPA, requested a stay of the penalty.

On March 21, 2012, the Deputy Director of the ORC issued Ruling Number SB 30/2012 wherein the request for a stay was denied.

On March 22, 2012, Evans submitted a Notice of Appeal of Ruling Number SB 30/2012.

On March 28, 2012, a Notice of Hearing was issued to advise the parties that the Motion would be heard on April 2, 2012.

On April 2, 2012, a Panel of the Ontario Racing Commission, comprised of Chair Rod Seiling, was convened to hear the Motion.

Evans appeared as counsel on behalf of CZUPA. Jennifer Friedman appeared as counsel for the Administration of the ORC.

Upon reviewing the exhibits filed and hearing the submissions of counsel, the Panel rendered an oral decision denying the Motion for a stay and confirming Ruling Number SB 30/2012, with Reasons to follow.

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

DATED at Toronto this 11th day of April 2012.

BY ORDER OF THE COMMISSION


John L. Blakney
Executive Director



REASONS FOR DECISION

Overview

1. Standardbred licensee, Miroslaw Czupa, appealed SB Ruling No. 30/2012 wherein he was denied a stay pending a hearing emanating from his appeal of SB Ruling No. 44628. That ruling suspended him for one year and required him to complete the Standardbred Canada's Trainers Certification prior to obtaining his Commission licence.
2. An oral decision was rendered following the hearing denying the appeal with written Reasons to follow.

Decision

After carefully listening to the presentations and reviewing the documents filed, the motion is denied as it relates to both Part A and B. Specifically, there is no stay granted related to the Standardbred Ruling No. 44628 dated March 15, 2012 and that SB Ruling Number 30/2012 dated March 22, 2012 remains in effect. With respect to an order that costs be payable by the Administration of the ORC to the appellant, that request is denied as well. Regarding the request by the ORC pursuant to the frivolous appeal charge, that request is denied as well. In terms of a hearing date for the appellant, the Panel notes in early June, I think it is June 4, 2012, the date is already scheduled. The Panel, upon checking with the hearings calendar, can now offer May 17, 2012 at 9:00 a.m. as an alternative. The appellant must advise Ms. Friedman by the end of April 4, 2012, if it wishes to move up the hearing date.

3. These are those Reasons.

Background

4. On March 15, 2012, the Ontario Racing Commission Judges issued SB Ruling No. 44628 suspending the appellant for one full year and requiring him to complete Standardbred Canada's Trainer Certification prior to being re-licensed for violating SB Rules 6.20 (b), 6.22 and 6.27. Rules 6.20 (b) and 6.22 relate to horse welfare. Rule 6.27 deals with integrity. All three rules are serious in that they relate directly to the mandate of the Commission.
5. Legal Counsel for the appellant, James Evans, submitted that Mr. Czupa should be granted his stay for the following reasons as outlined in his motion (Ex. 2).
6. They are as follows:
 - Pursuant to Directive 7/2007 the ORC is committed to providing licensees with the opportunity to have their appeals heard before a tribunal of the Commission in an expeditious manner;
 - Pursuant to S 25(1) of the Statutory Powers and Procedures Act (SPPA), "An appeal from a tribunal to a court or other appellate body operates as a stay in the matter unless (a) another Act or a regulation that applies to the proceeding expressly provides to the contrary; or (b) the tribunal or the court or other appellate body orders otherwise." (argument abandoned);
 - The offences which the Appellant is alleged to have committed are not exceptional offences listed in the general Directive 7/2007 for which the Director requires written application with supporting materials and to be satisfied that the granting of a stay is in the best interests of racing;



- The granting of a stay will not reflect adversely on the integrity of racing;
- The granting of the stay will not prejudice the parties;
- The granting of the stay will not interfere with the administration of justice;
- The appellant may suffer unjust irreparable harm if a stay is not granted and his appeal is subsequently allowed and/or the penalty is varied by the panel;
- No other licensee is susceptible to irreparable harm by granting of a stay;
- To deny the appellant a stay is against the principles of procedural fairness;
- The balance of convenience favours the granting of a stay; and
- A stay, should it be granted in this proceeding, will supersede Ruling SB 30/2012.

7. Jennifer Friedman, legal counsel for the Ontario Racing Commission (ORC), took the position that the motion should be denied. The Director, notwithstanding the appellant's position, has the broad delegated authority in the Racing Commission Act [(s. 11 (3))] to either approve or deny a stay.

8. Under the Act, in s. 6, the powers and duties of the ORC are laid out. It reads, "The Commission shall exercise its powers and perform its duties in the public interest and in accordance with the principles of honesty, integrity, and social responsibility." In s. 7 of the Act, the powers of the Commission are set out. They include in 7 (a) "to govern, direct, control and regulate horse racing in any and all of its forms", and in 7 (d) to license owners, trainers and to impose those terms on a licence that the Commission considers expedient."

9. Rule 24.06 of the Rules of Standardbred Racing states "Pending disposition of an appeal, all penalties imposed shall continue in full force and in effect except when stayed by order of the Director."

10. General Directive No. 7/2007 states "The Director will only grant a stay upon receipt of a written application with supporting materials and upon being satisfied that granting a stay is in the best interests of racing. Under s 1.05 of the Rules, "Directives of the Commission shall have all the force and effect of the Rules." With the Directive in place and having the full force of the Rules, the appellant's submission that the Director should be neutral and grant the stay runs counter to the expressed role of the Director in the process.

11. The Commission developed a no stay policy unless extraordinary circumstances were demonstrated via cogent and compelling evidence. The impetus for the policy, as put forth by the appellant, was to deal with medication issues. However, on implementation, it was the express intent of the Commission to apply the policy on a broad basis to protect both the good of racing and the public interest as needed. The Director has followed that policy as precedent cases aptly demonstrate.

12. The appellant agreed that no stay should be granted if the granting of the stay would impact negatively on the public perception of racing or other licensees.

13. The appellant submitted that given that there was no harm to other licensees, the ORC and that the appellant had no other source of income, the balance of convenience should fall to him and the stay should be granted.



14. The appellant put forth that it is difficult to assess the merits of the rationale for granting the appellant the stay without getting into the merits of the appeal. The reference was made as the Chair had reminded the parties at the outset of the hearing that the purpose of the hearing was to deal with the motion and not to consider the merits of the appeal from the March 15, 2012 ruling.

15. It was Mr. Evans position that stays should not be granted if the granting would affect public perception, other licensees or that the person was attempting to use the system. In his opinion the Administration should remain neutral until the merits of a case have been heard and therefore, grant a stay upon request. He was aware stays had been granted in the past for minor offences. He submitted that often stays were denied when there was a prima facie case before the Director. Jennifer Friedman responded that in this case there was also evidence without considering the merits via witnesses and photographs as to the alleged rule violations.

Issue

16. Should the appellant be granted a stay? Did the appellant present cogent and compelling proof that an extraordinary circumstance was present and that granting the stay was in the best interests of racing and or the public interest?

Reasons for Decision

17. There are three tests for a stay. They are as follows: (a) is there a serious mitigating factor? (b) where does the balance of convenience lie? and (c) where is the public interest?

18. The onus was on the appellant to demonstrate via cogent, compelling reasons why the motion should be granted. No serious mitigating factor was put forward by the appellant with any cogent, compelling evidence. No extraordinary case was put forward as required. An alleged loss of income to the individual is not, in of itself, a compelling reason when balanced against the potential harm to racing in general, to other licensees and the health and safety of the horse or the public interest.

19. The balance of convenience clearly supports the denial of the motion for a stay. The potential harm to racing in allowing the appellant to continue his privileges is far outweighed by the potential damage to the sport. Licensees need to be assured that such alleged acts will not be tolerated and that there is a meaningful deterrent at play. The public also needs to know that the regulator is fulfilling its mandate in terms of protecting the health and welfare of the horse. To allow the appellant the privilege of his licence before his hearing would not be in the best interests of racing.

20. In terms of the public interest and the good of racing, to ensure these vital elements to racing's future are not impinged, Mr. Czupa should not enjoy the privilege of an ORC licence until his appeal is heard.

21. Allegations of violating Rules 6.20(b), 6.22 and 6.27 are very serious charges. Cruelty to the horse goes directly to one of the key mandates of this Commission, to protect the health and welfare of the horse; therefore it is in the public interest for the Commission to act accordingly. It is not enough for the Commission to fulfill this responsibility; it must be perceived by both licensees and the public as actively engaged. This Commission has been very clear on its willing acceptance of this role as witnessed in precedent cases. Failure in this role could quickly turn public opinion against the sport.

22. In Parkin, [2008] O.R.C.D. No. 27, Ruling Number COM TB 011/2008, the Panel states at para 35 "This Commission operates with three primary mandates, one being the protection of



the health and welfare of the horse, the others the protection of the safety of participants and the protection of the public interest. It is charged with this responsibility under the Racing Commission Act 2000 and assumes that undertaking willingly with the recognition that the vast majority of licensees care for their horses and do all they can to protect them, However, there are as in any society, a few who chose not to do so and the Commission must act to both signal such actions will not be tolerated and to impose penalties that will act as a deterrent.”

23. In Roleau, [2009] O.R.C.D. No. 23, Ruling Number COM SB 010/2009, the Panel states at para 27, “Horse racing can and does have a sustainable future but only if adapts to the realities of what the public is prepared to accept and support. In this regard, the verdict is in, they demand and expect humane treatment of the industry’s athletes, which by definition includes the horse. The Commission has long been on record that one of its key mandates is to protect the health and welfare of the horse and will not look kindly on any offender.”

24. In Gendron, [2009] O.R.C.D. No. 48, Ruling Number COM SB 036/2009 the Commission stated at para 21 “The Commission has a responsibility, one it takes very seriously, to protect the health and welfare of the horse. Licensees need to recognize and be aware that they also share this responsibility as a licensee.”

25. Similar pronouncements are found in other precedent cases as per Jamieson [2010] O.R.C.D. No. 1, Alexander [2010] O.R.C.D. No. 30, and Schickedanz, [2010] O.R.C.D. No. 74 at para 95 wherein it reads, “In the public interest, a high standard of care for horses must be enforced and visibly so. That public interest extends to the quality of the racing product and to the treatment of the horses producing that product.”

26. The appellant is also alleged to have violated Rule 6.27, misleading investigators. This is also a very serious alleged violation as all licensees are required under the Rules of Racing to be honest. Integrity is the fuel upon which horse racing rides. No integrity, no future for racing and the thousands of hard working licensees who depend on it for their livelihood.

27. The no stay policy, based on precedent cases, clearly is not limited to those related to a positive test requests for a stay. Precedent cases outlined by Ms. Friedman demonstrate that stays were denied related to non medication matters. The Alexander ruling, TB 1510, the Waxman ruling SB 30/2011 and the Dillon ruling, SB 15/2012 are but three examples.

28. The Director clearly has the authority and is mandated to act when a request for a stay is sought by a licensee. Rule 24.06 reads, “Pending disposition of an appeal, all penalties imposed shall continue in full force and effect except when stayed by order of the Director.” The Director must act and cannot remain neutral as suggested by the appellant. The Director serves as the gatekeeper in protecting both the industry and the horse and therefore, serves a pivotal role in the due diligence process. The denial of the stay by the Deputy Director was appropriate.

29. General Directive 7/2007 states, “The Director will only grant a stay upon receipt of a written application with supporting materials and upon being satisfied that denying a stay will be in the best interest of racing.” This directive has the full force as a rule under 1.05 of the Rules of Racing. This is but another example of the rightful role of the Director in the denying of a stay and also reinforces the need to take into account the public interest. It is also the genesis of the Commission’s “no stay policy”, to protect the public interest, the horse and participants. The onus for anyone seeking a stay is to demonstrate extraordinary circumstances. The means is via cogent, compelling evidence.

30. The appellant is being dealt with fairly and in an expedient manner. There is no basis for a stay on this point. Given the three requirements of disclosure, the need to manage scarce



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resources in the public interest and scheduling conflicts, the appellant has and is being provided an expeditious resolution of his appeal.

31. The denial of the stay has not been demonstrated to be contrary to the interests of justice. The no prejudice argument is irrelevant as the merits of the appeal were not argued at this hearing.

32. Both parties submitted it should benefit from an order for costs. On a balance of probabilities, the Commission's submission for a frivolous appeal decision had some merit. In future, licensees should be aware that not to be subject to a frivolous appeal decision he or she needs to demonstrate an extraordinary reason via cogent and compelling evidence.

DATED this 11th day of April 2012.

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

Rod Seiling
Chair