



COMMISSION HEARING

TORONTO, ONTARIO – MAY 15, 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  
STANDARD BRED LICENSEE RICHARD AQUILINA**

On November 30, 2011, the Director of the Ontario Racing Commission (“ORC”) issued a Notice of Proposed Order to Refuse to Issue a Licence to Richard Aquilina (“AQUILINA”).

On December 19, 2011, the Deputy Director of the ORC issued Ruling Number S.B. 178/2011 confirming that AQUILINA has been refused licensure with the ORC and, further, that he may not re-apply to the Deputy Director for at least two years.

On March 15, 2012, AQUILINA wrote to the ORC requesting an appeal of the Director’s decision.

On April 11, 2012, a Notice of Hearing was issued to advise the parties that AQUILINA’s appeal would be heard On May 15, 2012.

On May 15, 2012, a Panel of the ORC, comprised of Chair Rod Seiling, was convened to hear this matter.

AQUILINA appeared on his own behalf. Jennifer Friedman appeared as counsel for the Administration of the ORC.

Upon considering the submissions of counsel for the Administration of the ORC and of AQUILINA, the Panel rendered an oral decision, dismissing the appeal, with written reasons to follow. The Panel dismissed the appeal because it does not possess jurisdiction given that AQUILINA failed to file his appeal of the Notice of Proposed Order within the prescribed fifteen-day period.

The transcript with the Panel’s Oral Decision, along with the Written Reasons for Decision, are attached to this Ruling.

DATED at Toronto this 22<sup>nd</sup> day of May, 2012.

BY ORDER OF THE COMMISSION

John L. Blakney  
Executive Director

ONTARIO RACING COMMISSION  
STANDARD BRED HEARING  
IN THE MATTER THE APPEAL AND REQUEST FOR HEARING OF  
**RICHARD AQUILINA**

Held Before:

Rod Seiling, Chairman

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These are an excerpt of the proceedings in the above mentioned matter held before The Ontario Racing Commission, Re: **RICHARD AQUILINA**, taken before Toronto Court Reporters, Suite 1410, 65 Queen Street West, Toronto, Ontario, at 10 Carlson Court, Suite 400, Toronto, Ontario, on the 15th day of May, 2012.

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Appearances:

Jennifer Friedman,

for the Ontario Racing  
Commission Administration

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1 Hearing continued ...

2 MR. CHAIRMAN: Okay. After carefully listening to the testimony and reviewing the  
3 documents filed the panel rules that it does not have jurisdiction and Mr. Aquilina did not file  
4 his appeal within the required 15 day time period and in fact was 57 business days late.  
5 Written reasons will follow.

6 Given Ms. Friedman's report that there is no impediment originating from the ORC as  
7 to the horse racing for its new owner I will not refer Mr. Aquilina's allegation to the Commission  
8 staff for investigation. Thank you

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CERTIFIED CORRECT \_\_\_\_\_  
RAYMOND P. MACDONALD, B.A., CVR  
*Commissioner of Oaths*



## REASONS FOR DECISION

### Overview

1. Richard Aquilina appealed a decision of the Director of the Ontario Racing Commission (ORC), SB 178/2011 wherein a Notice of a Proposed Order (NOP) was issued on 11/30/11 refusing to grant him a licence. Aquilina was entitled to a hearing to appeal that ruling if he filed a written appeal within fifteen days after being served with the NOP. Aquilina filed a written appeal on March 15, 2012, fifty-seven days after the official time limit expired for filing the appeal.

2. An oral decision was rendered stating that the appeal was dismissed as the Panel had no jurisdiction, with written reasons to follow. These are those reasons.

### Background

3. On October 28, 2011 the appellant submitted to ORC officials and was granted a Claiming Certificate. That same day he claimed the horse "Red Star Zoro". On November 1, 2011, he submitted an application to the ORC for a Standardbred Licence as an Owner.

4. Following its normal due diligence procedures for any new licence application, the Director issued a Notice of Proposed Order to refuse to license Aquilina. He was entitled, as per the Rules of Racing, to request a hearing of that decision if he filed a written request within fifteen days. With no request filed within the specified fifteen-day time period, the Deputy Director of the ORC confirmed the refusal to license Aquilina via SB Ruling No. 178/2011 issued on 12/19/11.

5. On March 15, 2012, Aquilina filed a written request for a hearing relative to the decision to refuse to grant him a licence. This request was fifty-seven days late from the specified time for filing the request as per the Act (S. 22.3).

6. On May 15, 2012 a hearing was held to consider the appellant's appeal. Jennifer Friedman, legal counsel for the ORC, raised a preliminary matter prior to the commencement of the hearing. She submitted that the ORC no longer had jurisdiction of the matter given that the appellant had failed to file his written appeal within the prescribed fifteen-day time period.

7. Friedman did acknowledge that under its own Rules of Procedure, the Commission did have the authority to hear the appeal, but urged it not to invoke that authority as no extraordinary circumstances existed and that it would serve as a "bad" precedent. She submitted the appeal should be dismissed as there was no jurisdiction for it to proceed.

8. The appellant, who represented himself, confirmed he understood Ms. Friedman's position. He was informed that he would have to provide cogent and compelling evidence to counter the ORC's position and that he was to refrain from delving into the merits of his appeal and deal with the delay in filing his request for his appeal which he did not deny was fifty-seven days late.

9. Aquilina stated his appeal was late because he is now frustrated with the person to whom he sold the horse as she is unable to pay him and wants out of the deal. The payments were allegedly to be made from the winnings of the horse and it has not earned the money required to pay him.



10. The appellant now needs a licence to be able to race the horse. The only mitigating factor he submitted was a financial hardship as to why the ORC should grant him his hearing. He could not cite any extraordinary circumstances in response to Ms. Friedman's assertion that prerequisite needed to be present for an exception to the Rules.

11. It was explained to him the problems going forward related to precedent. He had no reasonable answer as to why his case would not be the means for others to reference his request to have their respective case heard should his request for an appeal be granted.

12. Aquilina made unsubstantiated allegations that ORC officials were not allowing Red Star Zoro to race and thus interfering with the new owner's ability to pay him. Prior to the oral decision being read, Ms. Friedman confirmed that ORC staff had checked up on the allegation and that there were no impediments for the horse to race from a regulatory perspective.

### **Issue**

13. Should Aquilina be granted a hearing notwithstanding he did not file his written request for a hearing within the time frame specified by the Rules?

### **Reasons for Decision**

14. The onus was on the appellant to demonstrate what extraordinary circumstances existed as to why the ORC should not follow its own Rules and provide him an exception and hold a hearing. The means to that end is via cogent, compelling evidence. None was forthcoming.

15. Aquilina submitted that the appeal request should be granted for financial hardship reasons. First and foremost, financial hardship in and of itself, as has often been stated by this Commission, is not a reasonable means or expectation to provide an exception to the rules. Furthermore, the appellant did not even bring forward any evidence to substantiate his financial hardship claim nor did he provide any evidence that the new owner of the horse could not or would not pay him.

16. If the appellant did in fact sell the horse to another person there are legal means for him to take action to collect on that sale. If he now is prepared to take the horse back he should not expect the Commission to create, what would be a terrible precedent, to accommodate him for his own decisions.

17. As with any sport, rules are important for the orderly and fair play for both participants and fans. Without rules, chaos results to the detriment of those same participants and fans. Deterrence is the main means to ensure there is compliance to the rules. Licensees need to follow those rules and need to know they will be applied fairly and that there is a consequence for their violation. While Aquilina is not a licensee, it is reasonable to expect that any applicant be held accountable to the same rules as licensees and that they are applied in the same fair manner.

18. Aquilina's financial hardship is one of his own decision making. He made the decision to claim the horse; he made the decision to supposedly sell the horse and now wants to take it back. If it were a bona fide sale, the liability for the sale rests with the new owner. It is unreasonable to expect the ORC to create what would be a "bad" precedent to hold a hearing given the blatant time frame lapse for filing.



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19. The use of precedents is a valuable time honoured tool utilized by both the ORC and appellants. Following the old adage of “garbage in, garbage out” it is incumbent for the Commission to ensure that it does not knowingly create bad precedents that could interfere with the fair application of due process. Providing the applicant an exception to the Rules with no extraordinary circumstances at play and no mitigating factors present would be a terrible precedent. It is for the good of racing that this appeal request is denied.

20. The Panel suggests that the ORC Administration revisit the process by which a non-licensee is granted a Claiming Certificate before any due diligence is completed. It seems there is a better way to ensure another Aquilina situation does not come forward.

DATED this 22<sup>nd</sup> day of May 2012.

Rod Seiling  
Chair