



COMMISSION HEARING

TORONTO, ONTARIO – OCTOBER 20, 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 LICENSEE RON BEBACK**

Ron Beback Jr. ("Beback") appealed against Standardbred Official Rulings SB 43843 and SB 43844, dated July 26, 2011, wherein Beback was fined \$5,000 and subject to a one-year suspension and a two-year probation for a violation of SB Rules 9.09(a), 26.02.01, 26.02.02, and 26.02.03(c) as a consequence of a positive test for the Class II drugs, Levamisole and Aminorex.

On July 28, 2011, counsel on behalf of Beback submitted a Notice of Appeal as to "penalty only".

On August 18, 2011, a Notice of Hearing was issued advising that a Hearing will be held on October 20, 2011.

On October 20, 2011, a Panel of the Ontario Racing Commission consisting of Chair Rod Seiling, and Commissioners David Gorman and Dan Nixon was convened to hear this matter.

Larry Todd appeared as counsel on behalf of Beback. Jennifer Friedman appeared as counsel for the Administration.

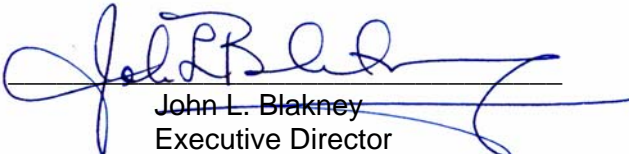
Upon hearing the testimony of ORC Senior Judge Jeff Minler, ORC Supervising Veterinarian Dr. Bruce Duncan, ORC Judge Craig Walker, Dr. Ronald Higginbotham, and Beback and upon hearing the submissions of counsel, the Panel varied the penalty as follows:

- 1) The suspension of one year is varied to one year (with eight months stayed) less time served from August 5, 2011 to October 20, 2011;
- 2) The fine of \$5,000 is reduced to \$4,000;
- 3) The two-year probation is upheld. Should any medication rule be violated during the course of the probation, the stay will automatically expire.

The transcript with the Panel's Reasons for Decision is attached to this Ruling.

DATED at Toronto this 24th day of October 2011.

BY ORDER OF THE COMMISSION


John L. Blakney
Executive Director



REASONS FOR DECISION

Overview

1. Standardbred licensee, Ron Beback Jr., appealed the penalty related to the Ontario Racing Commission (ORC) Judges' Ruling SB No. 43843 wherein he was suspended for one year, fined \$5,000 and put on probation for two years for a Positive Test Result for the Class II drugs Levamisole and Aminorex. A minority decision of the Judges recommended a penalty of a one-year suspension with eight months stayed, a \$5,000 fine and two years probation.

2. An oral decision was rendered denying the appeal but varying the penalty to one year with eight months stayed plus allowance for time served, a fine of \$4,000, probation with the normal terms for two years and should Mr. Beback be found guilty of any medication rule violation while under probation, the stay will automatically expire. Written reasons were to follow. These are those reasons.

Background

3. Mr. Beback was the trainer of record for the horse, Queen Creek, when it raced at Woodbine Racetrack on December 30, 2010, in the third race. There was no dispute that a subsequent post race test resulted in a Positive Test Result for the Class II drug Levamisole and Aminorex. Mr. Beback accepted his responsibility for the positive as the trainer of record.

4. Jennifer Friedman, legal counsel for the ORC, submitted that there were insufficient mitigating factors for the Panel to interfere with the decision of the Judges. Larry Todd, legal counsel for the appellant, argued for a penalty of time served with a \$2,500 fine or a penalty as proposed by Judge Craig Walker as the minority opinion.

5. Undisputed evidence was led that Queen Creek suffered from chronic respiratory problems. Dr. Ronald Higginbotham, the appellant's veterinarian, testified that he prescribed Levamisole as treatment for the horse with the proviso that there be a seventy-two hour withdrawal period before racing. Mr. Beback confirmed that he followed the instructions of his vet with the exception that the prescribed large pills were not available for purchase so he bought smaller ones and administered the medication to a similar amount as prescribed.

6. Neither the appellant nor his veterinarian were aware of the notices (Ex. 1, tabs 4 & 5) regarding the administration of Levamisole metabolizing into Aminorex in a horse nor the listing of Levamisole by the Canadian Pari-Mutuel Agency (CPMA) as a prohibited substance for race horses in Canada. Levamisole is not prohibited in New York State and Dr. Higginbotham stated he was unaware of any positive test for it until the Beback incident.

7. Dr. Bruce Duncan, Supervisor of Veterinarians for the ORC testified that Aminorex is a "potent stimulant" thus the reason for it being listed by the CPMA. In his view, the appellant set himself up for a problem by not using a veterinarian from the country he was racing in. That person would know the rules as opposed to Dr. Higginbotham or Dr. Kanter, the appellant's other veterinarian who also is the official state vet at Batavia Downs and Buffalo Raceway.

8. Judge Walker believed there were sufficient mitigating circumstances for a penalty less than those as set out in the RCI Guidelines (Ex. 1, tab 13). Those factors included Beback being honest, upfront, told the Judges how, why and where he obtained the medication as well as his reliance on his veterinarian.



In his view, this case differed from the Kerr case which was used by the Judges as comparable in that Beback was honest as to Kerr offering no defence.

9. The majority decision as per Judge Jeff Minler's testimony relied on the RCI Guidelines and identified the matter as a first offence which calls for a one-year suspension and a fine of \$5,000. The Judges took into consideration his past record which included two previous positive tests. They were also cognisant of the ORC policy of consistency in penalties and relied on the Kerr case (Ruling SB 39488), wherein he received the same penalty as Beback and had no previous drug rule violations.

Issue

10. Is there sufficient mitigating circumstance to vary the penalty assessed to the appellant by the majority decision of the Judges?

Reasons for Decision

11. The Panel supports the ORC policy of consistency wherein penalties for similar offences should receive similar penalties. However, when the ORC moved to make certain drug violations absolute offences it also was clear that it would allow strict liability arguments as they relate to penalty. Therefore, the need for the weighing of mitigating and aggravating factors which can lead to differing views as was the situation in this case. Neither is right or wrong, it is to the degree and should be viewed as such.

12. The Panel accepts Judge Walker's view that there were sufficient mitigating factors to vary the penalty to a lesser amount than called for in the RCI Guidelines for a first offence for a Class II violation which was the opinion of the majority. In support of his opinion for a variance from Kerr, Mr. Beback was honest, forthright and accepted responsibility as opposed to Kerr who offered no defence. This Commission has a policy of rehabilitation. Surely acceptance of responsibility and co-operation is an integral part of that policy and merit reward.

13. The Panel was guided wherein in the Rose decision (SB 015/2009) at para 19, Chairman Seiling stated: "The other significant factor was Ms. Rose's use of her veterinarian, Dr. Weatherston, which weighs greatly in her favour. Licensees should be able to rely on the professional expertise of their veterinary doctor in the administration of medicines to their horses such that when they employ them such use will not result in a positive test."

14. Absent in this case was the "wilful act of wrongdoing" as outlined in Preszcator by Vice Chair Donnelly (SB 012/2007). The positive was a direct result of a decision to treat the horse with a medication that both the trainer and the veterinarian were not aware the Rules of Racing prohibited in Canada.

15. Mr. Beback relied on Dr. Higginbotham who was not aware of the prohibition of Levamisole in Canada, a medication which is legal and still utilized in race horses in New York State. Hindsight is always 20/20 and in that rear view mirror, one can easily postulate that Mr. Beback could have at least contacted a Canadian based veterinarian. To have so acted would reasonably require either him or his veterinarian to suspect there may be issues. There was no evidence led to support such a theory.

16. The elephant in the room in this case clearly speaks to a lack of uniform rules in horse racing and the obvious need for action. Canada and Ontario have been and continue to be leaders. Inaction by some jurisdictions should not and cannot come into play in ensuring that horses, participants and the public



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viewing Ontario as having high regard for their safety and public interest. One can only hope those other jurisdictions will move sooner than later, before it is too late.

DATED this 24th day of October 2011.

Rod Seiling
Chair