



COMMISSION HEARING

TORONTO, ONTARIO – NOVEMBER 1, 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 BRED LICENSEE BRIAN LAWSON**

On July 12, 2011, the Director of the Ontario Racing Commission ("ORC"), issued the following:

- i. Order of Immediate Suspension of Licence; and
- ii. Notice of Proposed Order to suspend licence; pursuant to Sections 23 and 22 of the Racing Commission Act ("RCA"), against Brian R. Lawson ("Lawson"), standardbred licensee, as an Owner, Trainer and Driver, (Licence No. 540203).

On July 22, 2011, Lawson requested a Hearing before a Panel of the ORC.

On November 1, 2011, a Panel of the ORC was convened, consisting of Chair, Rod Seiling, Vice Chair, James Donnelly and Commission Member Dan Nixon.

Lawson attended the Hearing in person. Howard W. Cohen appeared as counsel for Lawson. Anthony Williams appeared as counsel for the Administration.

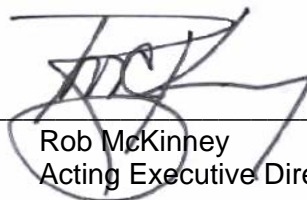
Upon hearing the testimony of witnesses Troy Moffatt, Investigator; Angela Wilson, Licensing Agent; Brian Arrand, Detective Constable, Ontario Provincial Police; Dr. Kathleen Heys, (D.V.M.); Dr. Brett Anderson, (D.V.M.) and track veterinarian for Kawartha Downs Raceway and Dr. Bruce Duncan, (D.V.M.) and Commission veterinarian for the ORC, called on behalf of the Administration; and witnesses Brian Lawson, licensee; and Christine Van Fleet, Groom, called on behalf of the licensee, and upon reviewing the exhibits which were filed, and upon hearing the submissions of both counsel, the Panel ordered the following:

- i. The position taken by the Director of the ORC on July 12, 2011 is confirmed;
- ii. Lawson is not eligible for any type of Commission licence for a minimum of 5 years;
- iii. The fine imposed is varied from \$10,000 to \$5,000 on compassionate grounds and furthermore;
- iv. The 3 appeals adjourned sine die on May 10, 2005 (the 3 appeals from occurrence dates December 8, 2003, December 9, 2003 and March 16, 2004):
 - (a) must be scheduled within 3 months of this date (November 1, 2011), and
 - (b) must be heard no later than 2 months thereafter, or
 - (c) the appeals will be dismissed by this order.

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

DATED this 8th day of November 2011.

BY ORDER OF THE COMMISSION



Rob McKinney
Acting Executive Director



REASONS FOR DECISION

Overview

1 Standardbred licensee, Brian Lawson, appealed a Notice of Proposed Order (NOP) issued by the Director of the Ontario Racing Commission (ORC) on July 12, 2011, wherein he would be suspended for 5 years and fined \$10,000. An oral decision was rendered denying the appeal, confirming the Director's decision with written reasons to follow. Mr. Lawson will not be eligible for any type of Commission licence for a minimum of 5 years; the fine is varied from \$10,000 to \$5,000 on compassionate grounds and furthermore, the 3 appeals adjourned sine die on December 8, 2003, December 9, 2003 and March 16, 2004, must be scheduled within 3 months of this date and must be heard not later than 2 months thereafter, or the appeals will be dismissed by this order.

2 These are those reasons.

Background

3 The NOP is premised on the following areas of concern:

- Three charges and a NOP in the 2003 to 2005 timeframe.
- Issues of false statements in ORC licensing applications.
- An allegation of cruelty to a standardbred race horse in the 2010 time frame.
- The appellant's licensing history with the ORC.

4 Howard Cohen represented the appellant, ORC licensee Brian Lawson, with Anthony Williams acting as legal counsel for the ORC.

5 The appellant applied for a new ORC licence at Mohawk Raceway on September 10, 2010 using as his permanent residence the municipality of Zephyr Hills, Florida. In completing his application, he answered "no" to the question "Do you have any charges pending in any jurisdiction?" The application contains a warning, "False answers given herein may lead to refusal or cancellation of your licence." Mr. Lawson answered "no" to the question notwithstanding he had 3 charges and a NOP dated March 2, 2005, pending with the ORC.

6 The 3 charges and NOP were stayed and the hearings adjourned. The details are as follows:

- SB 29954, for violating Rule 6.20 (a) (b) (c) wherein he was fined \$2,000 and suspended 90 days.
- SB 29955, for violating Rule 10.01 wherein he was fined \$10,000 and suspended 1 year.
- SB 29994, for violating Rule 10.01 wherein he was fined \$10,000 and suspended 1 year.
- NOP, issued March 2, 2005.



7 The licence application also contained the question, “Have you ever had a licence or registration certificate of any kind refused, denied, suspended or revoked in any jurisdiction?” Mr. Lawson answered “no”.

8 Rule 1.11 of the Rules of Standardbred Racing stipulates that the records compiled by Standardbred Canada shall be considered the official records for the industry. Those records indicate Mr. Lawson had incurred multiple suspensions issued by the ORC. Some of which are as follows:

- a. SB 29954 issued May 20, 2004, which imposed a fine of \$2,000 and a 1-year suspension for violating Rule 6.20 (a), (b) & (c).
- b. SB 29955 issued May 20, 2004, which imposed a fine of \$10,000 and a 1-year suspension for violating Rule 10.01 (b).
- c. SB 29994, which imposed a fine with a fine of \$10,000 and a 1-year suspension for violating Rule 10.01.
- d. SB 29093, which imposed a fine a \$3,000 fine and a 120-day suspension for violating Rule 6.20 (a).
- e. A withdrawal of an appeal on May 14, 2003 that carried a \$5,000 and a 20-day suspension for violating Rule 10.01 (a) & (b).
- f. Withdrawal of an appeal on August 10, 1998 per Ruling 10414 which imposed a fine a \$500 fine and a 15-day suspension re a pre-race test.
- g. Ruling 14184 issued August 24, 1993, which imposed a fine a \$250 fine and a 15-day suspension for a positive test.

9 A hearing was set for May 9, 10 & 11, 2005, with respect to the three appeals issued to Mr. Lawson. His counsel appeared before the Commission on that date requesting an adjournment based on serious health issues for Mr. Lawson. The NOP was scheduled for June 13 and 14, 2005, however, the appellant had let his licence lapse.

10 The parties agreed to an adjournment of the 3 appeals and the NOP under the following terms:

- Adjournment sine die.
- Lawson’s undertaking not to apply for an ORC licence of any kind for 9 months from May 19, 2005.
- Lawson to give ORC 30 days advance notice of any application for an ORC licence for him.
- If such application is made, the NOP hearing would be reactivated.
- The NOP hearing would proceed before any of Lawson’s 3 appeals.

11 Neither of the parties sought to re-activate any of the 4 hearings and, as a result, all 4 matters remained unresolved and pending when the appellant applied for his ORC licences.

12 Mr. Lawson made 3 separate applications for various ORC licences in 2009 and 2010. They are as follows:

- | | | |
|----------------------|----------------|----------|
| • April 20, 2009 | trainer-driver | denied |
| • September 10, 2010 | owner | approved |



- September 24, 2010 owner-driver approved

13 As per above, two of the licence applications were successful. On July 12, 2011, the Director proceeded with an Immediate Suspension and the NOP to stop Mr. Lawson's licensing.

14 Relevant to the appeal was Mr. Lawson's conduct relating to the horse, Rustlin Goodtime. The appellant was trainer and co-owner when he attempted to race the horse on May 12, 2011, at Kawartha Downs.

15 The horse had been examined by Dr. Kathleen Heys on April 30, 2011. The Patient History Report (Ex. 1, tab 12) indicated that the horse needed more time off and may not make it back.

16 On May 12, 2011, Dr. Bruce Duncan, Supervisor of Veterinarians for the ORC, received a call from a Veterinarian (Ex. 1, tab 14) informing him that the horse which had sustained a left front sesamoid fracture in a race at Kawartha Downs on December 8, 2010, was entered in to go at Kawartha Downs.

17 Dr. Brett Anderson, the official veterinarian at Kawartha examined the horse in the ship-in stall at the track that day. The horse was in apparent discomfort (Ex. 1, tab 14).

18 Mr. Lawson was summoned to the Kawartha Paddock Office where he was told by Dr. Anderson, that the horse was unfit to race and that it was put on the long-term Veterinarians List and that the horse was scratched from the race. He was also informed that before the horse could race again, both he and Dr. Duncan had to be convinced it was fit to race. It was Dr. Duncan's view that it was inhumane to try and race the horse in the condition it was in that day. Mr. Lawson disagreed claiming the horse was okay to race.

19 ORC officials at Mohawk Racetrack on June 21, 2011, denied Mr. Lawson's attempt to enter Rustlin Goodtime into a qualifying race. The horse was still on the long term Veterinarians List and the appellant had not attempted or received approval from either Dr. Duncan or Dr. Anderson for its removal from the list.

20 In an interview with OPP Detective Constable Brian Arrand on June 22, 2011, Mr. Lawson belatedly told him that he had the horse treated by Dr. Blaine Kennedy. By order of the ORC as of September 22, 2005, Dr. Kennedy was fully suspended for 7 years. As a result of that suspension, ORC licensees were prohibited from having Dr. Kennedy treat their horses (SB 225/2005, Ex. 1, tab 25). That order reads as follows: "No horse for whom Dr. Blaine Kennedy provided veterinary services on or after September 24, 2005 shall be eligible to be declared to race at any raceway in Ontario..." "Any participant entering or attempting to enter a horse for whom Dr. Kennedy provided such services after September 25, 2005 may be found in violation of the Rules of Standardbred Racing." Furthermore, there was evidence that the appellant misled ORC officials regarding a report by Dr. McKee as to the health of the horse for racing.

21 On September 22, 2005, both the suspension and notification about the use of Dr. Kennedy's services were disseminated throughout the industry in the usual manner by posting at tracks, race offices, paddocks, Standardbred Canada's website and faxes.



22 The horse did run well in a qualifying race on April 11, 2011. Dr. Duncan submitted that it could have raced well, given it is common knowledge that there is no testing of horses in qualifying races and with some medication administered to the horse it could perform as it did. The appellant claimed he could not train a horse that way but he admitted he lied as to the whereabouts of the horse to ORC investigators, stating that the horse had been in Florida on June 22, 2011 when in fact it was stabled at Mohawk.

23 The appellant, who has been involved in harness racing his whole life, has a history of mental illness. He was hospitalized for it in 2005 with recovery coming in 2008. He was out of racing from the time of his 2003/2004 appeals that were adjourned sine die on May 10, 2005 until 2010 notwithstanding he attempted to gain a Pennsylvania harness driver's licence 20 days after his adjourned appeals and was denied awaiting clearance of his issues in Ontario.

24 Mr. Lawson tried to get a licence in 2009 and was denied. In 2010, undisputed evidence was led that he contacted Brent Stone, Supervisor of Racing for the ORC, who reportedly told him that he would be eligible to be licensed if he paid an outstanding fine of \$3,000 which he did.

25 On September 10, 2010, Mr. Lawson applied for and was granted an ORC Owner's Licence at Mohawk Raceway. He did not dispute that he answered "no" to the questions, "Do you have any charges pending in any jurisdiction?" and "Have you ever had a licence or registration certificate of any kind refused, denied, suspended or revoked in any jurisdiction?"

26 The appellant testified that ORC Licensing Agent, Angela Wilson, told him to answer "no" to both questions. This testimony conflicted with Ms. Wilson's who treated the application as a new one given Mr. Lawson had not been licensed within the past 5 years and that, as per normal procedures with any application she checked her computer for any "red flags" related to the applicant. Finding none, she issued the licence. She expects applicants to be honest, only assists when requested and in this case none was asked. If she discovers issues with an application, she refers it to the ORC head office.

27 Regarding the September 24 application, Mr. Lawson referenced the \$3,000 fine from June 27, 2004 at Flamboro, adding it was under appeal but did not reveal the accompanying suspension for 120 days. His other 24 rule infractions were also omitted. Ms. Wilson granted the licence upgrade on the basis she had just checked the computer for red flags on him for the September 10 application and based on nothing showing to give her concern she approved the upgrade.

28 Christine Van Fleet, the groom for Rustlin Goodtime, claimed the horse was not lame. Her testimony conflicted with three veterinarians, Dr. Heys, Dr. Anderson and Dr. Duncan. Ms. Van Fleet's credibility was shredded by ORC Investigator Troy Moffatt's testimony.

29 Mr. Lawson, wanting another opinion as to the status of the horse for racing, took the horse to Dr. Blaine Kennedy's farm. He claimed not to be aware of the suspension of 2005 that prohibited licensees from utilizing his veterinary services. He claimed to only have found out after the fact from the co-owner of the horse. He paid cash with no receipt for the appointment. Mr. Cohen suggested that it was unprofessional but nothing untoward was intended. On being interviewed by ORC Investigator Arrand as to who the Vet was that he took the horse for the



opinion as to its race ability, he would not reveal the name because either that person or himself might get in trouble. Mr. Lawson claimed that he misunderstood the terms of the horse being on the Long Term Veterinarian's List and believed another Vet's opinion would suffice. There was no reference to the report attributed to Taylor (Ex. 1, tab 13) which was hand written, unsigned and had no identifying letterhead as to its origin.

30 The appellant submitted undated letters, (Exhibits 10 & 11) as to the soundness and health of the horse. Their probative value as Mr. Cohen admitted is questionable at best.

Issue

31 Were there reasonable grounds for the Director to issue the NOP as per Section 19 of the Racing Commission Act (a) and (b)? It reads as follows: "The Director shall refuse to issue a licence to an applicant or to renew the licence of an applicant if:

- (a) there are reasonable grounds to believe that, while the applicant carries out activities for which the licence is required, the applicant will not act in accordance with the law, or with integrity, honesty, or in the public interest, having regard to the past conduct of the applicant; or
- (b) the applicant is carrying on activities that are, or will be, if the applicant is licensed, in contravention of this Act, the regulations, the rules or terms of the licence."

Reasons for Decision

32 Mr. Lawson's claim that Ms. Wilson told him to answer "no", in effect, put her on trial. On a balance of probabilities, as an experienced Licensing Agent for the ORC, it is not reasonable to accept this defence. She has been the full-time agent for 9 years at Ontario's premier track. Her experience in such matters and awareness of the need to follow all the proper procedures frames Mr. Lawson's assertion as unreasonable. As per *R. v Briscoe* (2010) SCC 13, [2010] 1 S.C.R. 411, at paras 22 and 24, Mr. Lawson's actions, as they relate to his licence applications, can be categorized as "willful blindness which arises where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth." It is reasonable to conclude that Mr. Lawson did not ask Ms. Wilson if he should list his past licensing history that included 25 suspensions because he was aware of the need for him to resolve those issues beforehand just as Pennsylvania instructed him on his failed 2005 application. Mr. Lawson, via his counsel, Mr. Cohen, had been in discussions to resolve his 2003 and 2004 appeals prior to his acquiring his licence in 2010, not surprisingly, discussions ceased when he was licensed.

33 Lawson's statements in his ORC licensing applications cause concern as follows:

- In each of the 3 applications he answers the question "Do you have any charges pending in any jurisdiction" in the negative. No reference was made to any of the still pending hearings, the 3 appeals and the NOP.
- In the September 10, 2010 application, the following question appears: "Have you ever had a licence or registration certificate of any kind refused, denied, suspended or revoked in any jurisdiction?" Lawson answered "no". According to Lawson's licensing history as compiled by Standardbred Canada, Lawson's licence had been suspended 25 times. The 7 longest suspensions are outlined in the ORC's Factum (Ex. 2).



- The application for licensing provided: “False answers given hereon may lead to refusal or cancellation of your licence.”

34 Applying Section 19 standards, the Director’s decision must be confirmed. Particulars of Mr. Lawson’s deficiencies are:

- a. Mr. Lawson sought to obtain an ORC licence when he knew he must first deal with the outstanding NOP.
- b. Mr. Lawson failed to disclose his prior suspensions and his pending charges on his September 10, 2010 application as required.
- c. Mr. Lawson was untruthful to OPP Detective Constable Arrand regarding the location of the horse and the veterinary report for it.
- d. Mr. Lawson, it can reasonably be stated, has little, or no regard for the health of this horse.
- e. He trained a horse that in the opinion of Dr. Heys needed time off and may never make it back. He failed to obtain the approval of either Dr. Duncan or Dr. Anderson before attempting to race the horse.
- f. He did nothing to resolve the issue of orders under appeal as listed in para 4 of these Reasons.
- g. He was in violation of SB Rule No. 1.09 by attempting to race a horse treated by Dr. Kennedy.

35 The submission by Mr. Cohen of “officially induced error” is not supportable by the facts. Mr. Lawson would not have met the test as set out in para 22 of *Willows 2010 ONJC 100* wherein it reads: “The defence of officially induced error is available as a defence.... where an accused has reasonably relied upon the erroneous legal opinion or advice of an official.” In addition, *R. v Sault Ste. Marie (1978) 2 S.C.R.1299 p 1326, para 2*, it reads: “Offences in which there is no necessity for the prosecution to prove the existence of mens rea; the doing of the prohibited act prima facie imports the offence, leaving it open to the accused to avoid liability by proving he took all reasonable care.” Mr. Lawson failed to demonstrate that he took all reasonable care.

36 Once licensed on September 10, 2010, Mr. Lawson then proceeded to breach 4 separate Rules of Standardbred Racing. They were SB 6.22, cruelty; SB 26.13, permit a horse to race not physically fit; SB 20.01.01, racing while on the Vet’s List and SB 1.09, use of a suspended Vet. His attempts to explain his actions are diametrically opposed to the evidence of expert professionals, Doctors Anderson and Duncan, and have little weight, if any. On other accounts, ignorance of the rules is not an acceptable defence (SB 1.04). Willful blindness as per para 32 above in these Reasons applies in this instance as well.

37 Horse racing depends upon integrity for its survival. In this matter, Mr. Lawson’s credibility and therefore his integrity, on a balance of probabilities, are called into question. Aggravating factors supporting that position include:

- i. lies about his suspension;
- ii. lies about pending charges;
- iii. lie about horse being in Florida;



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- iv. lie about his Pennsylvania licence application;
- v. timing of his Pennsylvania application 20 days after his adjournments in Ontario on medical grounds;
- vi. his selective memory;
- vii. his unethical treatment of a horse by trying to race it wherein both Vets, Anderson and Duncan rule it unfit; and
- viii. attempting to qualify a horse that he knew was on the Vets' Lists.

Mitigating factors include:

- i. his mental health at certain times;
- ii. possible lack of awareness of the Kennedy suspension, however, his professional dealings cast a pall on this aspect.

38 The claim that Mr. Lawson believed his 2003 and 2004 matters had disappeared via the lapse in time was countered by Mr. Williams' information that as part of an effort to resurrect the 2003 and 2004 adjourned hearings, he had prepared a summary of the matters for the appellant. However, on obtaining his licence, the appellant lost interest in resolving the outstanding matters.

DATED this 8th day of November 2011.

Rod Seiling
Chair