



COMMISSION HEARING

TORONTO, ONTARIO – SEPTEMBER 12, 2013

**NOTICE OF DECISION**

**IN THE MATTER OF THE RACING COMMISSION ACT, S.O. 2000, c.20;  
AND IN THE MATTER OF THE APPEAL OF GERRY BELANGER**

Gerry Belanger (“Belanger”) appealed against Ruling Number SB 45381.

Date of Hearing: September 12, 2013

ORC Panel Members: Chair Rod Seiling  
Commissioner John W. Macdonald  
Commissioner Sandra Meyrick

Representative for Appellant: Brian Tropea as a friend

Counsel for the Administration: Angela Holland

The Panel accepted the submitted Agreed Statement of Facts.

The Panel denied the appeal. Belanger is fined \$2,500, fully suspended for 45 days from September 16, 2013 to October 30, 2013, inclusive, and placed on two years’ probation from October 31, 2013 to October 30, 2015 inclusive.

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

DATED at Toronto this 17<sup>th</sup> day of September 2013.

Steven Lehman  
Executive Director

## REASONS FOR DECISION

### Overview

1. Standardbred licensee, Gerry Belanger, appealed the July 30, 2013 SB Ruling 45381 wherein he was suspended for 45 days and fined \$2,500 for violating SB Rules 22.38.(a), 26.02.01, 26.02.02 and 26.02.03 (d) as a result of a positive test result for TCO<sub>2</sub> from the horse, Lyonsshadyacres, in a race at Flamboro Downs on April 14, 2013.
2. An oral decision was rendered denying the appeal. The penalty was varied to allow Mr. Belanger to race his 3 horses which were "in to go" at Sudbury Downs on Sunday, April 15, 2013 after which his penalty would commence.
3. Written reasons were to follow. These are those reasons.

### Background

4. The appellant was the licensed owner, trainer and driver of the horse, Lyonsshadyacres when it raced at Flamboro Downs on April 14, 2013. The horse, following a post-race test, tested positive for the Class III drug, TCO<sub>2</sub>. The actual reading was 39.3 which is above the allowed limit per the Rules of Standardbred Racing.
5. Following a hearing before the Ontario Racing Commission (ORC) Judges on July 30, 2013, Mr. Belanger received a 45 day suspension and a \$2,500 fine via Ruling No. 45381 issued that same day. The Judges also issued SB Ruling No. 45380 attaching conditions on his licence once he served his suspension.
6. Mr. Belanger appealed his penalty on July 30, 2013 (Ex. 2, tab 18). On August 6, 2013, the Deputy Director of the ORC issued SB Ruling No. 79/2013, granting the appellant a stay (Ex. 2, tab 19).
7. A de novo hearing was held on September 12, 2013.
8. Angela Holland represented the ORC as legal counsel with Brian Tropea of the Ontario Harness Horse Association (OHHA) representing the appellant as a "friend".
9. An Agreed Statement of Facts was tabled and marked as Exhibit #3. This is attached to these reasons as Appendix #1.
10. The basis of the appeal was the penalty. The TCO<sub>2</sub> positive test result is an absolute penalty as per SB Rule No. 26.02.03. Notwithstanding, a strict liability defense is available to licensees as it relates to penalty. The onus therefore shifts to the appellant to provide cogent, clear and compelling evidence.
11. ORC Judge, Peter Gillies, testified that the standard penalty for a Class III offense as per the appellant was 60 days and \$1,500 (Ex. 2, tab 2). The Judges varied that penalty to 45 days and \$2,500 to his benefit. The reasons given were that Mr. Belanger is an owner, trainer and driver, plus the additional mitigating factors including his good recent past history re positive tests and the weather conditions the day of the race that caused his late arrival at the track. The late arrival did not allow time for the horse time to empty out or warm up. Aggravating factors were the positive test, his feeding a product (Minerade) which contains sodium and potassium and that there were no health records produced to prove any veterinary work done on the horse or that it was experiencing health issues as claimed by the appellant.

12. Trainers are responsible for what they feed and or administer to their horses. There was no dispute that the ORC has communicated this fact to the industry a number of times.

13. TCO<sub>2</sub> positive test results occur more often around the change of seasons. Undisputed evidence was led that the reason is the change in the level of hydration in the horse. This positive test result occurred within the time period. Warming up a horse, it was suggested, will help to lower its TCO<sub>2</sub> level. No evidence was led to prove the horse had a naturally high TCO<sub>2</sub> level.

14. The appellant submitted that the test result should be declared invalid as the test inspector that day, Angela Cain, worked that day with an expired licence. Ms. Holland argued that the licence status did not affect the validity of the test. Ms. Cain is a licensed veterinary technician.

15. Ms. Cain, who received a 5 day suspension for working without a valid licence, tried to renew her licence at Flamboro when she arrived to work that April 14, 2013. The ORC licence official was not yet there, she could not wait as she had to be in the backstretch as she is also the technician that administers lasix to those horses enrolled in the Commission's "lasix program" Those administrations must be given within a specified time frame or the horse will not be allowed to race. Ms. Cain was incorrectly informed by the guard employed by the track that her licence was valid until the end of the month.

16. There was nothing out of the ordinary as it relates to taking the sample on Lyonsshadyacres on April 14, 2013. Ms. Cain performed her duties the same as she did on any other working day.

### **Issue**

17. Should the licence status of Ms. Cain invalidate the positive test result? Are there additional mitigating factors to vary the penalty assessed to the appellant on top of the changes by the Judges?

### **Reasons for Decision**

18. The appellant failed to provide cogent, compelling and clear evidence that would merit a variance in the penalty assessed by the Judges. The allowance to let him race his horses already drawn in to race and drive the horses he is listed in the program is not a variance as per Judge Gillies' confirmation.

19. Mr. Belanger bears the responsibility for the high TCO<sub>2</sub> test result as the trainer of the horse. He admittedly was feeding a supplement high in sodium and potassium that, as per the evidence, could have led to the high test result. He suggested his horse was sick. No veterinary records were produced in support nor did he consult the veterinarian at the track. He arrived at the track very late. He could have scratched his horse due to the late arrival or for health reasons of the horse. Not allowing time for the horse to empty out or warm it up is not in the best interests of the horse or the public nor is racing a sick horse.

20. Mr. Belanger had already received a more than fair variance in his penalty from the Judges as per SB Ruling No. 45381. Based on the aforementioned facts, no further variance related to days or fine was warranted.

21. Mr. Belanger was allowed to race his horses that were already "in to go" in Sudbury and those that he was programmed to drive. This practice is not new and is consistent according to Judge Gillies with other similar situations where horses are already entered and a suspension is forthcoming.

22. It is reasonable (Dunsmuir at para 47) to conclude that the validity of the test was not, and should not be allowed to be affected by the expiration of Ms. Cain's licence. The Court wrote: "Reasonableness is a differential standard animated by the principle that underlies the development of the two previous standards of reasonableness; certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range

of acceptable solutions....” As a licensed veterinary technician, she has the qualifications to administer the TCO<sub>2</sub> tests. There was undisputed testimony that nothing out of the ordinary occurred with respect to the test on Lyonsshadyacres on April 14, 2013. Her ORC licence status bears no relationship to her qualifications which were not challenged.

23. Ms. Holland referenced two precedent cases. The Rose appeal reasons, Ruling Number COM SB 015/2009 is relevant. At para 16 it reads: “the technical error ....would not be a reason to void the rule violation... To have allowed a technicality to trump the deed would be a failure.” This Panel concurs.

24. Ms. Cain was punished by the Judges for not having a valid licence with a 5 day suspension. The Panel notes that the ORC Administration should look at what responsibility tracks have in checking licenses for trades people, suppliers etc. entering the backstretch.

DATED at Toronto this 17<sup>th</sup> day of September 2013.



Rod Seiling  
Chair

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**ONTARIO RACING COMMISSION**

**IN THE MATTER OF THE APPEAL AND REQUEST FOR HEARING OF  
GERRY BELANGER**

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**AGREED STATEMENT OF FACTS**

RESPECTFULLY SUBMITTED BY  
ANGELA HOLLAND  
COUNSEL FOR THE ADMINISTRATION  
OF THE ONTARIO RACING COMMISSION  
HEARING DATE: SEPTEMBER 12, 2013

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## AGREED STATEMENT OF FACTS

1. Gerry Belanger (“BELANGER”) is licensed by the Ontario Racing Commission (“ORC”) as a Trainer, Driver and Owner (Licence # V43114). At all material times, he was the trainer of the horse, Lyonsshadyacres.
2. On April 14, 2013, Lyonsshadyacres was selected for testing at Flamboro Downs, following the 1<sup>st</sup> race.
3. The sample was sent to Racing Forensics for analysis and a reading of 39.3 was recorded which constitutes a positive test.
4. As a result of the positive test, on July 30, 2013, the Judges issued Ruling SB 45381, which suspended BELANGER for 45 days (August 9 – September 22, 2013), and fined him the sum of \$2500.
5. The Judges also issued Ruling SB 45380, dated July 30, 2013 which placed the following conditions on BELLANGER’s reinstatement for the period of September 23, 2013 – September 22, 2015:
  1. The licensee shall keep the peace and be of good behaviour;
  2. The licensee shall allow commission investigators access to his stabling area at anytime to conduct random searches for illegal or non-therapeutic medication;
  3. The licensee shall allow the seizure of such drugs if found;
  4. The licensee shall be subject to the commissions out of competition testing; and
  5. The licensee may be subject to a notice of proposed order in addition to any penalty imposed by the ORC Judges or Stewards for any breach of the terms of his licence.
6. Prior to the hearing on July 30, 2013, it was discovered that the TC02 technician who took the sample, Angela Cain (Licence # Y68216) had an expired licence at the time of testing.
7. On August 6, 2013, BELANGER submitted a Notice of Appeal.
8. On August 6, 2013, the Deputy Director issued Ruling SB 79/2013, staying BELANGER’S fine until such time as his appeal is heard.
9. A Notice of Hearing was provided on or about August 12, 2013.