



COMMISSION HEARING

TORONTO, ONTARIO – JULY 8, 2013

NOTICE OF DECISION

IN THE MATTER OF THE RACING COMMISSION ACT, S.O. 2000, c.20;

AND IN THE MATTER OF THE ROBERT FELLOWS, BRAD MAXWELL, BJORN NOREN APPEAL

Robert Fellows, Brad Maxwell, Bjorn Noren appealed against Rulings Numbers SB 63/2013 (Lucky Journal), SB 64/2013 (Adaymer Seelster), SB 62/2013 (Northern Spark) SB 61/2013 (Creampuff MacDaddy), and SB 59/2013 (Posey Tina) respectively.

Date of Hearing: July 8, 2013

ORC Panel Members: Chair Rod Seiling

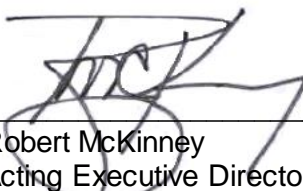
Counsel for the Appellants: Robert Burgess and Howard Taylor (telephone)

Counsel for the Administration: Angela Holland

The Panel allowed the appeal.

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

DATED at Toronto this 9th day of July 2013.



Robert McKinney
Acting Executive Director

REASONS FOR DECISION

Overview

1. Robert Fellows, Bjorn Noren and Brad Maxwell requested hearings with respect to horses trained by them being suspended as per SB Rule Nos. 11.10. 01 and 29.02.01 (i) for a positive test result for the Class II drug, Ractopamine. Mr. Fellows' horses were Adaymer Seelster, Ruling No. SB 45572 issued on June 13, 2013, Lucky Journal, Ruling No. SB 45579 issued on June 19, 2013 and Northern Spark, Ruling No. 45573 issued on June 13, 2013. Mr. Noren's horse was Posey Tina, Ruling No. 45578 issued on June 15, 2013, with Mr. Maxwell's horse, Creampuff MacDaddy, Ruling No. 45684 issued on June 20, 2013. All of the horses' suspensions were for 90 days from the date of the respective Rulings.
2. An oral decision was rendered staying the 90 day suspensions on all five horses, Adaymer Seelster, Lucky Journal, Northern Spark, Posey Tina and Creampuff MacDaddy with written reasons to follow.
3. These are those reasons.

Background

4. An electronic hearing was convened on July 8, 2013. Angela Holland represented the Ontario Racing Commission (ORC) as legal counsel; Howard Taylor acted on behalf of Mr. Maxwell with Robert Burgess representing both Mr. Fellows and Mr. Noren.
5. Under the ORC's Rules of Procedure, S 10.1, it was agreed to hear the appeals as one. The parties also agreed to have Commission Chair, Rod Seiling, Chair the Panel.
6. An agreed Statement of Facts was entered as Exhibit 1. Included at para 21 is a recap of the results of a July 4, 2013 Judges' hearing. It reads, "*All trainers (APPELLANTS) received no penalty as the positive tests were found to be the result of contaminated feed. Ruling Numbers SB 45585, SB 45586 and SB 45587 are attached as Schedule "B".*"
7. Evidence was provided via Dr. Adam Chambers, Manager of Veterinary Services for the Ontario Racing Commission that the drug would have cleared the horses' systems. He based his opinion on the clean tests for each horse, the time frame for when the contaminated feed was last fed and the low level of the drug contained in the feed tested.

Issue

8. Are there extraordinary reasons present to grant stays as requested?

Reasons for Decision

9. The evidence contained in the Agreed Statement of Facts is self-evident. The positive tests were all the result of contaminated feed purchased independently from an at arms length supplier. If the trainers have been resolved of any wrongdoing, then it follows naturally, that the owners should benefit likewise. That benefit is the staying of the remaining days for each horse effective immediately given, per Dr. Chambers' statement that he believed there is no evidence that the drug might still be in the horses' systems.
10. In contrast to SB Ruling Number 031/2013 wherein the parties applied to have the 90 day penalties stayed, this application was submitted at the appropriate time frame within the Commission's due process system. That is, after the completion of the investigation and the Judges' hearing.

11. This decision to stay the remaining penalty for each horse from its respective 90 day suspension is not "tinkering". The ORC policy as to why Panels should not "tinker" with the 90 day Rule as referenced in the Scott McFadden case, ORCD No 6 by Vice Chair Donnelly remains. It was reasonable then and remains so today.

12. The extraordinary circumstance, as it was in the Richard Carroll/Mark Williams case (SB 006/2013) is the fact that the trainers (Fellows, Noren, Maxwell) were held blameless for the positive test results. On that basis, it is fair that the owners be provided that same relief.

13. The other important consideration for providing the stay is the assurance that the drug has cleared the system of each horse. No matter what the reason for a positive test, a stay cannot and should not be provided until there is assurance that the drug in question has cleared the horse's system.

14. It is important to note that the rationale and support from the industry for the 90 day Rule and its reasons for implementation are still valid. Owners are responsible for the individuals they engage to care for and race their horses. The 90 day Rule is an integral component of the ORC's policy on penalties, deterrence and denouncement.

15. Future applicants seeking relief from the 90 Day Rule need to be aware that financial hardship in and of itself is not an extraordinary circumstance. It is an intended consequence based on the aforementioned policy on penalties.

DATED this 9th day of July 2013.



Rod Seiling
Chair