



COMMISSION HEARING

TORONTO, ONTARIO – SEPTEMBER 9, 2015

NOTICE OF DECISION

**IN THE MATTER OF THE RACING COMMISSION ACT, S.O. 2000, c.20;
AND IN THE MATTER OF THE APPEAL BY THOMAS KRYON, DR. MAURICE STEWART,
BRIAN PAQUET and BAYAMA FARMS, INC., OWNERS OF WRANGLER MAGIC and
STEPHANE LAROCQUE, TRAINER OF WRANGLER MAGIC**

AND

THE ONTARIO RACING COMMISSION

AND

**DAVID WILLMOT and CLAY HARLAND HORNER, OWNERS OF SOLAR SISTER
and DOUGLAS MCNAIR, DRIVER OF SOLAR SISTER
AND IN THE MATTER OF THE ONTARIO SIRES STAKES THREE-YEAR-OLD FILLY
GOLD EVENT AT THE GRAND RIVER RACEWAY ON AUGUST 3, 2015
AND IN THE MATTER OF A JUDGES' RULING THAT SOLAR SISTER DID NOT VIOLATE
THE RULES OF STANDARDBRED RACING, 2012, DURING THE HOME STRETCH
IN THE SECOND RACE**

Date of Hearing: September 9, 2015
ORC Panel: Anthony Williams, Vice Chair
Counsel for the Appellants: Larry Todd
Counsel for the Respondents: Robert Burgess, Q.C.
Representative for the Administration: Craig Walker, Senior Standardbred Judge

Decision:

The Appeal is allowed.

The Reasons for Decision of the panel is attached to this Notice.

DATED at Toronto this 8th day of October 2015.

Jean Major
Executive Director

REASONS FOR DECISION

SUMMARY

1. The Ontario Sires Stakes Gold Event, Leg #3, was held as the second race, on August 3, 2015, at the Grand River Raceway at Elora, Ontario.
2. Eight three-year-old fillies competed over a distance of 1 mile, at a pacing gait for a purse of \$105,000.
3. Solar Sister, horse #1, was the winner.
4. Solar Sister was driven by Douglas McNair, trained by Gregg McNair and owned by David Willmot and Clay Harland Horner.
5. Wrangler Magic, horse #5, finished in second place.
6. Wrangler Magic was driven by Sylvain Filion, trained by Stephane Larocque and owned by Thomas Kryon, Dr. Maurice Stewart, Brian Paquet and Bayama Farms Inc.
7. Immediately after the race, the Judges posted an INQUIRY
8. The Judges spoke by telephone, to both drivers in the paddock.
9. The Judges reviewed all camera angles for the 2nd race.
10. "The Judges determined there were no violations of ORC Rules 22.05.01(a) and 22.05.02.2(ii). ... No Placing."
(Standardbred Official Ruling SB 46801, August 3, 2015, Disclosure Book, Ex. 1 at p. 6)
11. A Notice of Intent to Appeal against part of this Ruling was filed on August 3, 2015 "within 48 hours of receipt of the Ruling," pursuant to SB Rule 24.04.
12. A Notice of Appeal was filed "in writing" on August 5, 2015, "with the Director", as required by SB Rule 24.04.
13. The Appeal is against the finding by the Judges that Solar Sister did not violate the "passing lane" rule in the home stretch.
14. If a violation of the passing lane rule is found, the Appellant seeks a placing of Solar Sister, the race winner, behind Wrangler Magic.
15. A Notice of Hearing was issued by the Commission on August 20, 2015, which set Wednesday, September 9, 2015, at 11:00 o'clock in the forenoon, at the Ontario Racing Commission hearing room in Toronto, for the hearing of this Appeal.

HEARING

16. On September 9, 2015, the Appeal was heard by a panel of the ORC.
17. The representative for the ORC called two witnesses:
 - (i) Jeff Minler, Senior Standardbred Judge, ORC
 - (ii) Douglas McNair, Driver of Solar SisterCounsel for the Appellants called one witness:
 - (i) Sylvain Filion, Driver of Wrangler Magic

18. Four exhibits were entered into evidence.

- Ex. 1 Disclosure Book, Administration
- Ex. 2 Factum and Document Brief, Appellants
- Ex. 3 Factum, Respondents
- Ex. 4 Standardbred Official Ruling SB 21197, dated June 26, 1999 at Flamboro Downs Raceway, Respondents.

19. EVIDENCE

(i) Witnesses

(a) Jeff Minler ("Minler")

Minler is a Senior Standardbred Judge.

Minler watched the second race from a monitor in the central adjudication room at Toronto. Minler said that Wrangler Magic was "a length and a quarter off (Solar Sister) at the head of the stretch" and "three-quarters of a length" at the finish.

Minler said that Filion "used the whip the whole time" in the stretch drive.

"The lines were loose".

"The horse was running straight".

"No shots indicated that he was ever interfered with".

(b) Douglas McNair ("McNair")

McNair is a Driver/Trainer of standardbred racehorses.

McNair was the driver of Solar Sister in the second race.

McNair said: "I went to the front and I won".

McNair stated that: "my horse (Solar Sister) did run in a little bit" in the homestretch.

McNair agreed that the "nose (of the trailing horse, Wrangler Magic) was on (his) helmet" at the start of the homestretch.

(c) Sylvain Filion ("Filion")

Filion is a Driver/Trainer of standardbred racehorses.

Filion was the driver of Wrangler Magic.

Filion said that the horse "can leave real fast".

Filion said that when Solar Sister moved into the passing lane, "she (Wrangler Magic) dropped the bit, she lost the bit".

Filion said that "he had nowhere to go for four or five seconds".

Filion agreed that "I never stop driving".

Filion asked McNair after the race:

Q. "What the hell was that?"

A. "She (Solar Sister) just darted in, couldn't do nothing about it."

(ii) Video

The video of the second race was transferred to a DVD for presentation at the hearing. (Disclosure Book, Ex. 1, at p .2)

The video is 9 minutes and 26 seconds in length.

The video displays in full colour, "All Shots" of the race.

There is no sound.

The stretch drive lasted approximately 9 seconds.

The stretch drive is shown from 4 different camera angles:

Upper Pan from 2:07 to 2:16

Front Tower from 4:27 to 4:36

Back Tower from 6:48 to 6:57, and

Lower Pan from 9:08 to 9:17

(iii) Notebook Entries

The explanation provided to Fillion in the telephone conversation with the Judges after the race is set out in the notebook entries of August 3, 2015.

(Disclosure Book, Ex. 1 at p. 3)

Q. "Can you explain the passing lane rule?"

A. "Lead horse can drop down as long as he does not impede or cause confusion or interference to horse trying to come up lane."

(iv) Track

The Grand River Raceway is a ½ mile track. The Raceway, with the approval of the Commission, extended the width of the homestretch inward in relation to the width of the rest of the racetrack, SB Rule 22.05.02.1.

"In the event the homestretch is expanded" ... the following shall apply on ½ mile ... tracks:

- i) no horse shall pass on the extended inside lane entering the stretch the first time,
- ii) the lead horse in the homestretch shall maintain as straight a course as possible while allowing trailing horses full access to the extended inside lane, and
- iii) horses using the open stretch must first have complete clearance of the pylons," SB Rule 22.05.02.2.

20. TWO ISSUES

- I Q. Did Solar Sister, the lead horse in the homestretch, violate the "passing lane" rule, SB Rule 22.05.02.2 (ii)?
- II Q. If the answer to Q. 1 is yes, is a placing of Solar Sister behind Wrangler Magic in the order of finish appropriate, in view of all the circumstances, SB Rule 22.09?

21. RULES OF ENGAGEMENT

The rules of engagement which apply to this hearing are as follows:

- (i) this is a trial de novo or retrial, where the Ruling of the Judges remains outstanding, subject, however, to being reversed, by evidence called afresh, or by entirely new evidence;
- (ii) the burden of proof is on the Appellants;
- (iii) the standard of proof is on a balance of probabilities;
- (iv) the evidence must be "clear, cogent and compelling".

22. REASONS

- I Q. Did Solar Sister, the lead horse in the homestretch, violate the "passing lane" rule, SB Rule 22.05.02.2 (ii)?
A. Yes

23. A violation of this rule requires proof, on a balance of probabilities, of two essential elements:
 - (i) the lead horse in the homestretch shall maintain as straight a course as possible; and
 - (ii) while allowing trailing horses full access to the extended inside lane.
24. Both essential elements must be proven to be in existence, at the same time, before a violation can be found.
25. No further elements are necessary to prove a violation of SB Rule 22.05.02.2 (ii).
26. Solar Sister was the lead horse in the homestretch.
27. Solar Sister, at the start of the stretch drive, had a one and one quarter length lead over Wrangler Magic, the trailing horse.
28. Solar Sister was in lane 1, angled slightly right. Wrangler Magic was directly behind Solar Sister, "in the pocket", with her head "on the helmet" of McNair, the driver of Solar Sister.
29. Wrangler Magic gained complete clearance of the pylons.
30. Wrangler Magic immediately moved to the left, towards the unoccupied extended inside lane.
31. Solar Sister then changed course and moved or swerved inward which did not allow Wrangler Magic full access to the extended inside lane to which she was entitled.
32. Solar Sister continued to move to the left.
33. Solar Sister straddled both lane 1 and the passing lane.
34. Filion, the driver of Wrangler Magic said that he had "nowhere to go for four or five seconds."
35. Solar Sister did not allow Wrangler Magic full access to the passing lane for about four and one-half seconds, for just over one-half the distance of the homestretch.
36. Solar Sister did allow late, full access to the passing lane.
37. Wrangler Magic then began to close the gap.
38. Solar Sister, at the finish line, had a three-quarter length lead over Wrangler Magic, the trailing horse.
39. Solar Sister was:
 - (i) the lead horse in the homestretch;
 - (ii) on a ½ mile track;
 - (iii) with an extended inside lane.
40. Solar Sister was required, as the lead horse in the homestretch:
 - (i) to maintain a straight a course as possible; and
 - (ii) to allow trailing horses full access to the extended lane.
41. On consideration of all the evidence, there is proof, on a balance of probabilities that Solar Sister was in violation of both essential elements of the "passing lane" rule, SB Rule 22.05.02.2 (ii).
42. II Q. Is a placing of Solar Sister, behind Wrangler Magic, in the order of finish, appropriate, in view of all the circumstances, SB Rule 22.09?
 - A. Yes.

43. A violation of any rule “may” result in “the offending horse” being placed back “one or more positions in that ... dash.” SB Rule 22.09.
44. Solar Sister violated the passing lane rule.
45. Solar Sister is “the offending horse”.
46. The placing of a horse for the violation of a rule is not mandatory.
47. The placing of a horse for a violation of a rule is a matter of discretion.
48. A decision as to whether or not to place a horse for a violation of a rule should involve a consideration of all the circumstances.
49. The rule violation by Solar Sister:
- (i) prevented Wrangler Magic from the opportunity to gain momentum early in the stretch drive in her attempt to overtake Solar Sister;
 - (ii) delayed the ultimate advance of Wrangler Magic until there no longer remained any realistic chance for her to win the race;
 - (iii) lasted for approximately four and one-half seconds, for just over one-half the length of the homestretch, in a closely contested race.
50. There is proof, on a balance of probabilities, that a placing of Solar Sister, behind Wrangler Magic, in the order of finish, is appropriate, in view of all the circumstances.
51. RESULT
- (i) Solar Sister, the lead horse in the homestretch violated the “passing lane” rule, SB Rule 22.05.02.2 (ii)
 - (ii) Solar Sister is placed behind Wrangler Magic in the order of finish, in Race 2, at Grand River Raceway on August 3, 2015, SB Rule 22.09.

Dated this 8th day of October 2015.



Anthony Williams
Vice Chair