



COMMISSION HEARING

TORONTO, ONTARIO – OCTOBER 27, 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 OF
THOROUGHBRED LICENSEE BRUNO SCHICKEDANZ**

Bruno Schickedanz ("SCHICKEDANZ") is licensed as an owner (ORC Licence # 117459).

On December 20, 2010, the Director issued Ruling # TB ADMIN 94/2010, wherein he ordered the following:

- (a) SCHICKEDANZ is hereby suspended for a period of 12 months, commencing January 1, 2011 (January 1, 2011 – December 31, 2011), with six months of the suspension to be stayed (July 1, 2011 – December 31, 2011); and
- (b) SCHICKEDANZ is fined \$8,000, said fine to be payable to the LongRun Thoroughbred Retirement Society, and SCHICKEDANZ is placed on probation for two years (January 1, 2011 – December 31, 2012) with the following conditions:
 - i. The licensee shall keep the peace and be of good behaviour;
 - ii. The licensee shall allow Commission investigators access to his stabling area at any time to conduct unannounced random searches to check on the health and welfare of his horses;
 - iii. The licensee may be subject to a Notice of Proposed Order in addition to any penalty imposed by the ORC Stewards for any breach of the terms of his licence; and
 - iv. Failure to comply with any of the above conditions while on probation will result in the automatic expiry of the six month stay.

On December 24, 2010, Chair Rod Seiling issued Ruling COM TB 032(a)/ 2010, which stayed Ruling # TB ADMIN 94/2010 on the condition that a hearing on the merits of this matter is dealt with no later than March 4, 2011.

SCHICKEDANZ commenced an application for judicial review.

On March 3, 2011, the Divisional Court granted an interlocutory stay until June 1, 2011.

On May 24, 2011, Ruling # TB ADMIN 94/2010 was stayed until the determination of the judicial review application (bearing Divisional Court file no. 634/10).

On July 7, 2011, the judicial review application (bearing Divisional Court file no. 634/10), was heard by the Divisional Court and quashed as premature.

On July 8, 2011, SCHICKEDANZ requested a further stay of Ruling # TB ADMIN 94/2010 pending a hearing before a Panel of the ORC.

On July 13, 2011, a further stay of Ruling # TB ADMIN 94/2010 was granted with conditions.



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A Hearing of this matter was scheduled to proceed on September 7, 2011, and the stay of Ruling #TB ADMIN 94/2010 was extended until the commencement of the hearing on September 7, 2011, or such other date in the event of rescheduling, at which time any further stays were to be dealt with by the Panel seized of the matter.

On September 7, 2011, a Panel of the ORC consisting of Commissioner David Gorman as Chair, Commissioner Brenda Walker and Commissioner Dan Nixon, was convened to hear the appeal. The Panel issued an Order in relation to procedural matters.

Subsequent to the appearance before the Panel, the Administration of the ORC and SCHICKEDANZ sought to resolve the matter by way of mediation.

On October 27, 2011, at the request of SCHICKEDANZ and the Administration of the ORC, a Panel of the ORC consisting of Commissioner David Gorman as Chair, Commissioner Brenda Walker and Commissioner Dan Nixon, was convened for the purposes of considering an Agreed Statement of Facts and Joint Submission on Disposition.

Peter Simm acted as counsel on behalf of SCHICKEDANZ. Jennifer Friedman appeared as counsel for the Administration of the ORC.

Upon considering the Agreed Statement of Facts, the Panel approved the Joint Submission on Disposition as follows:

1. Schickedanz is suspended for a period of twelve months, with twelve months of the suspension to be stayed; and
2. Schickedanz shall donate \$16,000 to Equine Guelph at the University of Guelph to support an area of research that is mutually agreeable by the parties;
3. Schickedanz shall be responsible to pay the sum of \$34,000 toward the costs incurred by the ORC in the investigation of and the conduct of the proceedings against him; and
4. Schickedanz is placed on probation from the date of the Panel's Order until October 31, 2013, with the following conditions:
 - I. The licensee shall keep the peace and be of good behaviour;
 - II. The licensee shall allow Commission investigators access to his stabling areas in Ontario at any time to conduct unannounced random searches to check on the health and welfare of his horses;
 - III. The licensee may be subject to a Notice of Proposed Order in addition to any penalty imposed by the ORC Stewards for any breach of the terms of his licence; and
 - IV. Failure to comply with any of the above conditions while on probation will result in the automatic expiry of the twelve month stay.



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The transcript with the Panel's Oral Decision and the Agreed Statement of Facts and Joint Submission on Disposition are attached to this Ruling.

DATED at Toronto this 7th day of November 2011.

BY ORDER OF THE COMMISSION _____

A handwritten signature in black ink, appearing to read "Rob McKinney", written over a horizontal line. The signature is stylized and somewhat illegible.

Rob McKinney
Acting Executive Director

ONTARIO RACING COMMISSION
THOROUGHBRED HEARING
IN THE MATTER OF THE APPEAL AND REQUEST FOR HEARING OF
BRUNO SCHICKEDANZ

Held Before:

David Gorman, Commissioner

Brenda Walker, Commissioner

Dan Nixon, Commissioner

These are an excerpt of the proceedings in the above mentioned matter held before The Ontario Racing Commission, Re: BRUNO SCHICKEDANZ, taken before Toronto Court Reporters, Suite 1410, 65 Queen Street West, Toronto, Ontario, at 10 Carlson Court, Suite 400, Toronto, Ontario, on the 27th day of October, 2011.

Appearances:

Jennifer Friedman,

for the Ontario Racing
Commission Administration

Peter A. Simm,

for licensee Schickedanz

1 Hearing continued ...

2 MR. NIXON: All rise.

3 MR. CHAIRMAN: Please be seated. Mr. Centa, are you still with us?

4 MS. FRIEDMAN: I hung up. I just said if you had questions for him that you
5 would contact him.

6 MR. CHAIRMAN: Not a problem. Ms. Friedman, Mr. Simm, Mr. Schickedanz,
7 obviously the panel is going to accept the joint submission and we do so without
8 reservation, without hesitation and we want to thank Mr. Simm, Ms. Friedman, Ms.
9 Holland perhaps before Ms. Friedman took the file, Mr. Centa and you, sir, Mr.
10 Schickedanz for your cooperation in this matter. I think that it is always best if we can
11 resolve it in that manner rather than go off down an unknown road. So the panel
12 hereby orders that this be accepted and we thank all of you once again for your
13 efforts in coming to this resolution. Thank you.

14 MS. FRIEDMAN: Thank you.

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21 CERTIFIED CORRECT _____

22 RAYMOND P. MACDONALD, B.A., CVR

23 Commissioner of Oaths

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

**IN THE MATTER OF THE APPEAL OF THOROUGHBRED
LICENSEE BRUNO SCHICKEDANZ**

AGREED STATEMENT OF FACTS

The Licensee, Bruno Schickedanz ("Schickedanz"), who has been advised by his counsel, and counsel for the Administration of the Ontario Racing Commission ("ORC") agree to the following facts in relation to Ruling # ADMIN TB 94/2010:

1. "Wake at Noon" was a thirteen-year old chestnut horse with a foal date of April 30, 1997. At all material times, "Wake at Noon" was owned by Schickedanz (ORC Licence # 117459).
2. "Wake at Noon" started his racing career on September 8, 1999 at Woodbine. The horse retired for a brief period during 2004. After his brief retirement, "Wake at Noon" returned to racing and made a start at Woodbine on October 3, 2004.
3. "Wake at Noon" won his penultimate race on October 27, 2007, at age 10 years, by more than 5 lengths. The horse's last race was on November 18, 2007 at Woodbine. On or after November 18, 2007, "Wake At Noon" was never on the ORC's Veterinarians' List (for Thoroughbreds), or the Stewards' List.
4. Over his career, the horse made 67 starts winning 21 races, including numerous stake races, with total earnings of \$1,696,156.00.
5. After his last race on November 18, 2007, "Wake at Noon" retired to stud at the Schickedanz farm.
6. In 2010, the horse was galloped by an ORC-licensed exercise rider, Dessislav Luokanov, for several months on the mile-long training track at the Schickedanz farm.
7. As a result of "Wake at Noon's" training, on June 26, 2010, a decision was made by Schickedanz, in consultation with the farm manager and the ORC-licensed

exercise rider, to ship the horse down to Woodbine for an easy breeze.

8. On June 29, 2010, "Wake at Noon", was sent from the Schickedanz farm to Woodbine Racetrack to train.
9. After arriving at Woodbine, "Wake at Noon" was taken to the dirt training track after the morning break to do a ½ mile work. The horse went onto the track in good condition, and normal procedures were followed, including identifying the horse for it to be timed. Woodbine clockers timed "Wake at Noon" as running ¾ of a mile in 37.1 seconds, which is faster than the times of 8 of the 9 horses that breezed ¾ of a mile at Woodbine that day. "Wake at Noon" apparently took a bad step and fell, thereby tragically breaking down short of completing his arranged ½ mile (4F) work. Dr. Candace Allen attended to the horse and made a decision that the horse had to be euthanized.
10. Commission veterinarian Dr. Greg Taylor was notified of the incident and a decision was made by the ORC to send the horse to the University of Guelph for necropsy.
11. Following the death of "Wake at Noon", the ORC commenced an investigation into the circumstances surrounding the horse's death.
12. Following the breakdown and death of "Wake at Noon", some initial media reports erroneously indicated that "Wake at Noon" was ineligible to be on Woodbine premises or to work there.
13. On July 2, 2010, WEG notified Schickedanz in writing that his stabling and racing privileges at WEG were suspended as a consequence of the death of "Wake at Noon".
14. On July 9, 2010, Schickedanz wrote to the ORC and requested a hearing for the purposes of overturning WEG's decision to suspend his racing and stabling privileges at Woodbine Racetrack.
15. On August 17 and 26, 2010, a Panel of the ORC was convened for a Hearing to consider WEG's decision to suspend the racing and stabling privileges of Schickedanz at Woodbine.

16. The final necropsy report was issued on September 2010. It found no relevant pre-existing injury or medical condition, and blood samples taken from the horse's body on June 29, 2010 were found to be negative for all of the drugs for which testing was performed.
17. On October 6, 2010, the Panel denied the appeal of Schickedanz. Among other things, the Panel found: (at para. 80): "As the ultimate admitted decision maker, Mr. Schickedanz is responsible for the breakdown of his horse."
18. On December 20, 2010, the Director issued Ruling TB 94/2010.
19. Schickedanz appealed Ruling TB 94/2010, which Ruling has been continuously stayed from before the time it would have come into force. Stays were granted initially on the condition that a Hearing on the merits of the matter take place no later than March 4, 2011 (COM TB 032(a)/2010), then following an application for judicial review, to allow time for the determination of the application for judicial review (TB ADMIN 2/2011, TB ADMIN 22/2011), then following the application being quashed for prematurity, and finally pending a hearing before a panel of the ORC (COM TB 34/2011, COM TB 11/2011).
20. On September 7, 2011, a Panel of the ORC was convened to hear the Appeal of Ruling TB 94/2010. On September 7, 2011, the Panel issued an Order in relation to procedural matters.
21. Subsequent to the decision of Oct. 6, 2010, Schickedanz furnished the Administration of the ORC with certain published scientific literature purporting to statistically analyze data provided by tracks including Woodbine and Fort Erie. Although this literature suggests that a thoroughbred racehorse's age is not a risk factor for catastrophic injury, the ORC Administration does not accept the validity and applicability of this information.
22. In the period January 1, 2011 through October 20, 2011, none of Schickedanz's horses raced at any racetrack in Ontario.
23. The ORC Administration and Schickedanz agree that, at the Hearing to consider approval of the Joint Submission on Disposition, this Agreed Statement of Facts will constitute the entirety of the evidence submitted to the Panel, unless the parties all agree that certain additional facts should be submitted at that hearing.

24. If for any reason, the Panel does not approve the Joint Submission on Disposition, then it and this Agreed Statement of Facts shall be deemed to be withdrawn, and Schickedanz shall be entitled to proceed with a full hearing *de novo* on the merits of his appeal from Ruling # ADMIN TB 94/2010, along with any pre-hearing motions.

JOINT SUBMISSION ON DISPOSITION

Whereas the Licensee, through his counsel, and the Administration of the ORC have jointly made an Agreed Statement of Facts;

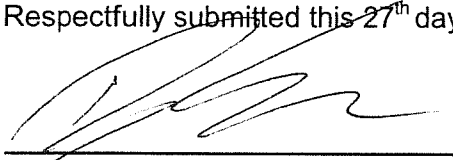
And Whereas the ORC license of Schickedanz has been continuously in good standing in the relevant period (i.e. since June 29, 2010 to date);

The Licensee (who has been advised by counsel), and counsel for the Administration of the ORC, submit that the following disposition is socially responsible, in the public interest, and is appropriate in these circumstances:

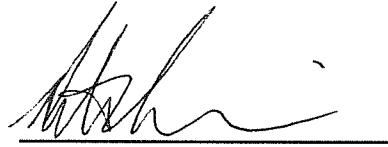
1. Schickedanz is suspended for a period of twelve months, with twelve months of the suspension to be stayed; and
2. Schickedanz shall donate \$16,000 to Equine Guelph at the University of Guelph to support an area of research that is mutually agreeable by the parties;
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- iv. Failure to comply with any of the above conditions while on probation will result in the automatic expiry of the twelve month stay.

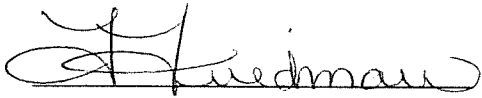
Respectfully submitted this 27th day of October, 2011



Bruno Schickedanz



Peter A. Simm
Counsel for the licensee,
Schickedanz



Jennifer Friedman
Counsel for the Administration
of the ORC