



**NOTICE OF DECISION**

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

**AND IN THE MATTER OF THE ERIC LOCK APPEAL**

Eric Lock appealed against Ruling Numbers SB 45642 and 45643/2013.

Date of Hearing: March 26, 2013

ORC Panel Members: Chair Rod Seiling  
Vice-Chair Anthony Williams  
Commissioner Dan Nixon

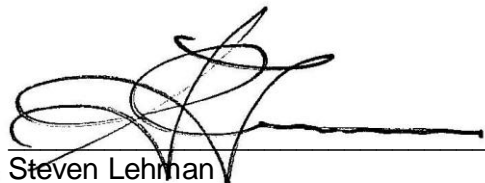
Representative for Appellant: Katherine Lock

Counsel for the Administration: Jennifer Friedman

The Panel denied the appeal but varied the penalty.

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

DATED at Toronto this 28<sup>th</sup> day of March 2013.



Steven Lehman  
Executive Director

## REASONS FOR DECISION

### Overview

1. On January 31, 2013, standardbred licensee, Eric Lock ("Lock"), appealed SB Ruling No. 45632 wherein he was issued a 270-day full suspension and fined \$3,000 for violating SB Rules Numbers 26.02.01, 26.02.02 and 26.02.03 (c). Lock's request for a stay was denied (SB No. 15/2013). In lieu of appealing that decision he requested an expedited hearing of the positive test result for Aminorex in the horse, Life on the Links.
2. An oral decision was rendered denying the appeal but varying the penalty. Lock has served 55 days of his original suspension. The variances are as follows:
  - i. the remnant of the suspension (215 days) is stayed;
  - ii. the fine of \$3,000 is stayed in its entirety;
  - iii. The probation order imposed by the track Judges on January 31, 2013, for a period of 2 years continues in effect upon the original conditions;
  - iv. If, during that time frame should he have a positive test for a Class I, II or III drug, the stays will be automatically repealed.
3. Written reasons were to follow. These are those reasons.

### Background

4. A de novo hearing was held On March 26, 2013. Representing the Ontario Racing Commission (ORC) as legal counsel was Jennifer Friedman. The appellant waived his right to legal counsel and had his wife, Katherine Lock assist him.
5. The appellant confirmed at the opening of the hearing that he was not contesting the positive test result for Aminorex. Therefore, the hearing was to deal with penalty, only.
6. Mr. Lock was the trainer of record for the horse, Life on the Links, when it raced and won on June 16, 2012, at Flamboro Downs in the 12<sup>th</sup> race. The ORC Judges at Flamboro selected Life on the Links for a post race urine sample for testing purposes.
7. On June 29, 2012, a Certificate of Positive Analysis for the horse was issued as a result of the urine sample testing result showing a positive for the Class II drug, Aminorex. The Judges issued SB Ruling No. 44971 making Life on the Links ineligible to race for a period of 90 days as per ORC Rules.
8. ORC Investigator, Desmond Waithe, interviewed Lock On July 5, 2012, with Brian Tropea, General Manager of the Ontario Harness Horse Association in attendance. The appellant was co-operative and wanted to learn of the cause for the positive test result. At that meeting, Lock provided the following information to Waithe:
  - a. Licensed by the ORC as a trainer for about 26 years;
  - b. Had Life on the Links since she was a baby;
  - c. Has been the only trainer for Life on the Links;
  - d. Owners are Katherine Lock, Debbie Berkeley and Linden Clark;

- e. Trains other horses;
- f. Took Life on the Links to the test barn on June 16, 2012;
- g. Horse's diet is Phase 111 Sweet Feed, 1 scoop of Airways 101 daily, 1 scoop of Bee Pollen daily, DSMO Jug (56 hours before race time), shot of ATCH (at 11:00 a.m.);
- h. Other medications used are Aquoilyte-Thirst Quenching Hydration for Equine and Exodus Apple flavoured Horse De-wormer;
- i. Had one positive test in 1993.

9. On that same day, Waithe performed a Directive 5 search of the appellant's barn at the Wellwood Training Centre. Medications and feed that were seized were forwarded to Dr. Adam Chambers, the ORC's Managing Veterinarian for testing at the appellant's request. No Aminorex was detected in the seized samples or in the blood or urine of the horses tested with the seized products.

10. Mr. Lock submitted that he is an honest trainer that he would never cheat to win and is not sloppy when it comes to medications and his horses. In fact, according to him he is over cautious and if there would ever be a concern regarding the use of a legal medication he would scratch the horse rather than risk a positive test. His record, upon review, supported his testimony in that regard.

11. It was his position that he should receive the same consideration as Ken Duncan (Ruling Number COM SB 023/2008) wherein no penalty was levied. In that case, Mr. Duncan submitted he did not use the worming medication that other trainers had used on their respective horses that resulted in the Aminorex positive test results.

12. According to Dr. Chambers, Aminorex does affect performance. He did not accept the appellant's assertion of environmental contamination or from contact with cocaine in some manner. There was no dispute as to the widespread distribution of cocaine but according to Dr. Chambers, each issue must be addressed on a case by case basis and that he had not seen any reason to believe environment was the cause of this positive test.

### **Issue**

13. With the onus on the appellant, Mr. Lock, in a strict liability defence related to penalty, did he undertake reasonable precautions on a balance of probabilities as it relates to his due diligence as the trainer of the horse, Life on the Links?

### **Reasons for Decision**

14. Mr. Lock, as the trainer of record, bears the ultimate responsibility for the positive test result. He has a deficiency in this regard as there was a positive test notwithstanding the result may not relate to any nefarious wrongdoing on his part. In the public interest and for the good of racing, therefore, some level of penalty is warranted.

15. Trainer responsibility is the foundation of the integrity of racing. In its simplest of terms, no integrity, no future for racing. Therefore, any decision related to trainer responsibility must not be a precedent that would open "Pandora's Box" thereby threatening the Rule. There must be clear, cogent and compelling reasons. This becomes ever more important in cases where the "phantom" positive test is in play.

16. In arriving at its decision to vary the penalty, the Panel was cognizant of Vice Chair Donnelly's words in the Moffatt case (Ruling Number COM SB 005/2008). In those reasons, Justice Donnelly set a list of due diligence requirements for an appellant arguing a variance in penalty based upon a strict

liability defence. The standard remains in the due diligence aspect, reasonable care on a balance of probabilities.

17. Mr. Lock met that standard. He had security measures in place including security lights, access to his horses was restricted to his immediate family of his wife and father-in-law; he stabled at a respected training facility, he utilized a licensed ORC veterinarian, all medications were kept under lock and key and feed was secured although not locked.

18. Additional mitigating factors included his co-operation, honesty and sincere desire to find out what was the cause of the positive test. On his own initiative, he had urine samples collected from all his horses with the purpose of having them tested. Unfortunately, his veterinarian could not find a laboratory to do the testing. His feed and medications were tested for Aminorex at his request.

19. Aggravating factors included the appellant's failure to have the split sample test as was his right. He submitted that he did not have the money and that Barbara Morrissey of the CPMA informed him she has never seen a split sample test differ in results from the original test. The significance of this test would have provided a quantifiable level which may have been of assistance in determining the source of the Aminorex.

20. Dr. Chambers' evidence is reasonable in that there was no strong case put forward that the positive test was environmentally based. However, Dr. Chambers did reveal that there exists a little known "third path" that might explain the cause of the positive test.

21. In terms of precedents, the Panel is of the opinion that they are none as it relates to this case. The Duncan case is irrelevant as it predates the Commission's absolute liability rule. Both the Kerr (SB 39488) and Beback (Ruling Number COM SB 051/2011) cases involve a de-worming medication as the source of the positive test.

DATED this 28<sup>th</sup> day of March 2013.



Rod Seiling  
Chair