



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

**AND IN THE MATTER IN THE APPEAL OF
STANDARD BRED LICENSEE COLM McNULTY**

On April 22, 2009, a Notice of Proposed Order to Revoke the Licence of Colm James McNulty ("McNULTY") was issued and delivered to McNULTY. The Director's proposed order was issued for the following reasons:

- a) there are reasonable grounds to believe that, while McNULTY carries out the activities for which a licence is required, he will not act in accordance with the law, or with integrity, honesty, or in the public interest, having regard to his past conduct;
- b) McNULTY is carrying on activities that are, or will be in contravention of the Act, the Rules or the terms of the licence;
- c) McNULTY's conduct has placed the integrity of the horse racing industry in Ontario in question;
- d) the public interest requires that McNULTY's licence be revoked.

On April 30, 2009, the ORC received a Notice of Appeal on behalf of McNULTY.

On July 22 and August 5, 2009, a Panel of the ORC, comprised of Chair Rod Seiling, Vice Chair Hon. James M. Donnelly and Commissioner Brenda Walker, was convened to hear the appeal.

Jennifer Friedman appeared as counsel for the Administration. McNULTY attended and was unrepresented by legal counsel.

Upon considering the Agreed Statement of Facts, hearing the sworn testimony of Detective Constable Lorra Deasy, reviewing the exhibits filed, and upon hearing the submissions of the Administration and McNULTY, the Panel denied the appeal.

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

DATED at Toronto this 10th day of August 2009.

BY ORDER OF THE COMMISSION


Rob McKinney
(Acting) Executive Director



REASONS FOR DECISION

Overview

1. Standardbred licensee, Colm McNulty (McNulty), appealed the decision of the Ontario Racing Commission (ORC) to revoke his license by way of a Notice of Proposed Order (Ex 1, tab 6) issued on April 22, 2009.

Background

2. An agreed statement of facts was presented to the Panel by Jennifer Friedman, legal counsel for the administration of the ORC and Colm McNulty who represented himself at the hearing.

3. The agreed facts were as follows:

- Colm McNulty ("McNulty") was licensed by the Ontario Racing Commission ("ORC") as an Owner (License Number Y39183) until his license expired on April 30, 2009.
- On November 12, 2008, the ORC received information that McNulty had an outstanding warrant and outstanding civil judgments in Ireland. This information prompted an ORC investigation.
- On February 17, 2009, the ORC received information from the Canadian Border Service Agency (CSBA) that McNulty attempted to return to Canada on or about February 10, 2009 via Toronto. McNulty had been flagged on the CSBA system and was stopped and sent to Immigration.
- On February 20, 2009, Detective Lorra Deasy received confirmation from the RCMP, Interpol that there is an outstanding warrant against McNulty. The outstanding warrant is for McNulty's failure to appear in Court on September 24, 2008. However, McNulty cannot be arrested in Canada in accordance with this warrant.
- On April 22, 2009 a Notice of Proposed Order to Revoke the License of McNulty was issued and delivered to McNulty's last known address for service that was on file with the ORC.
- On April 30, 2009, the ORC received a Notice of Appeal from Ms. Juliette Parise, on behalf of McNulty.
- On June 4, 2009, a Notice of Hearing was issued to advise that a Panel of the ORC would be convening on July 22, 2009, at 9:00 a.m. for the purposes of hearing McNulty's appeal.
- On June 25, 2009, McNulty attended Mohawk Racetrack and sought to renew his license. The licensing clerk at Mohawk refused to issue the license.
- On June 26, 2009, counsel for the Administration left a message for Ms. Parise.
- On June 30, 2009, Ms. Parise contacted counsel for the Administration. Ms. Parise indicated that she would be representing McNulty at the hearing and, further, that she would be acting in the capacity of family member.
-

4. At the opening of the hearing McNulty confirmed that he had received both the Factum and Joint Book of Documents as forwarded to Ms. Parise in accordance with the ORC Rules of Procedure.



5. Ontario Provincial Police (OPP) Detective Constable Lorra Deasy, who is a seconded member of the ORC's Investigative Unit, confirmed that she was asked to conduct a background check on McNulty as a result of media reports suggesting that there were outstanding warrants and judgments against the appellant in Ireland.
6. On November 19, 2009, Richard Pellarin, an ORC investigator interviewed McNulty. The appellant admitted to the investigator (Ex. 1, tab 3) that there was an outstanding warrant for him and civil judgments against him back in Ireland. He claimed that the judgments were corporate only, not personal. Ms. Deasy referenced a November 17, 2008 letter from Kilroys Solicitors (Ex. 1, tab 3), which clearly indicated that the judgments were also personal against McNulty and his wife, Martina.
7. The Irish Pension Board were successful in obtaining a court judgment on March 31, 2008 ordering Limestone Construction, McNulty and his wife were Directors, to pay E186, 825. On September 24, 2008 an Irish Court issued a bench warrant for McNulty for failing to comply with the order following a hearing at which the appellant did not appear and his legal counsel resigned from the case claiming it could not receive instructions from their client. A second law firm in the matter had the same experience. (Ex. 1, tab 3). At issue was that Limestone had been deducting monies from its employees for their pensions and along with the company portion and had failed to remit the funds. Limestone, according to McNulty became insolvent and was unable to repay the funds.
8. McNulty was also subject to an outstanding judgment secured by Doka Ireland Formwork Technologies Limited. McNulty and his wife signed personal guarantees for a loan from Doka to Limestone. As of December 21, 2007 the loan amount was E1,798,768.92. McNulty claimed that he and his wife had put up two properties in Ireland as security for the loan and with his company now insolvent he told Doka to take the properties and in his view, settled the score. Doka has pursued the matter and is trying to recover funds from the McNulty's via their Canadian assets.
9. McNulty has some 15 prior convictions in Ireland, some minor in nature with the most serious two separate assault charges, one against the police and the other for "personating at election".
10. On September 4, 2008 when the appellant reapplied for his ORC license, he failed to reveal his previous record, outstanding warrant and judgments. The application contains two specific questions. They read as follows: (i) "Have you ever been found guilty or convicted of an offence in any jurisdiction (This includes offences where a conditional or absolute discharge has been granted)? (ii) Do you have any charges pending in any jurisdiction?"
11. The Panel, after hearing McNulty's submissions as to what his current situation is versus the reports and evidence tabled by the Administration adjourned the hearing two weeks until 8:00 a.m. on August 5, 2009. The purpose was to allow McNulty to file with the Administration by July 27, 2009, documents that could support his case. He would lead this new evidence as a witness.
12. The hearing reconvened on August 5, 2009 at 9:00 a.m. Ms Friedman reported that McNulty had not forwarded any documentation to support his Doka Ireland argument that he had satisfied the claim. Furthermore, he was not present and, based on reports, was in detention via the Canadian Border Service who arrested him immediately following the hearing at the Commission offices on July 22, 2009 on the basis he was in Canada illegally despite his assurance to the Panel he was in Canada legally.



13. The Panel proceeded with the hearing on the basis that McNulty had already tabled his evidence and the adjournment provided to him was done so as a courtesy of which he chose not to take advantage. Notwithstanding McNulty's incarceration, he could have had the documentation provided via his wife or Ms. Parise.

Issue

14. Did the Administration of the ORC demonstrate sufficient rationale in a clear and convincing manner that would give the Panel confidence that McNulty should not have his privileges restored as a licensee?

Decision

15. After reviewing the testimony and the evidence submitted and reading the documents, the Panel denies McNulty's appeal.

Reasons For Decision

16. As was stated in the Flamboro Downs and Belmont Hotel, SB 129/1995, July 14, 1995. "Horse racing must be conducted and be seen to be conducted with the utmost integrity. The future of the industry depends on maintaining the public's confidence that it is being operated totally "above board". This Panel agrees with Chair, Stanley Sadinsky when he wrote in the Nick Martino case, [2000] O.R.C.D. No. 20 Series No. SB 178/2000 at p 28 "In our view, this also means that those participants involved in horse racing must be people of honesty and integrity in whom the public has confidence."

17. Mr. McNulty, is guilty of serious wrong doings in Ireland to the extent there is a warrant out for him in that country. A bench warrant was issued on September 24, 2008 as it relates to his non-payment of \$291,000 in employee pension withholdings that he did not remit as required under Irish law. Notwithstanding his comments to ORC investigators, what happens in Ireland does count in Ontario. Defrauding his own employees and his company speaks to his lack of honesty and integrity and therefore makes him unsuitable for the privilege of having his Ontario Racing Commission license renewed.

18. Furthermore, McNulty failed to disclose on his ORC license application his record in Ireland, assault and election fraud are not trivial matters. He is required to comply. This lack of compliance, in of itself, is a serious violation and speaks to character and suitability of a prospective licensee.

19. While there is every reason to believe he has similar issues re the Doka Ireland judgment, the Panel need not make any findings on this matter, as there is ample evidence to deny his appeal from his personal dealings from his own company, Limestone, and his failure to disclose.

20. The Panel proceeded with the hearing on the following basis:

- The Administration had completed its evidence.
- McNulty had the opportunity to call witnesses and give evidence himself and he declined both.
- McNulty made his closing submissions.
- At the conclusion he accepted the Panel's offer of a 2-week adjournment to produce documentation supporting his claim that his Doka judgment had been satisfied.



- He opted not to take advantage of this opportunity even though his wife or Ms. Parise could have done so.
- No new evidence was called; the decision was based on the evidence heard.

DATED this 10th day of August 2009.

Rod Seiling
Chair