



COMMISSION HEARING

TORONTO, ONTARIO – AUGUST 23, 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 BY
STANDARD BRED LICENSEE AARON WAXMAN**

Aaron Waxman ("WAXMAN"), is licensed with the Ontario Racing Commission ("ORC") as an owner, licence number #W35490.

WAXMAN, appealed a decision of the ORC Judges at Kawartha Downs to freeze purse winnings of \$12,500 that accrued to his horse, Jinglejanglejingle, in races that the horse participated in on February 10, 2011, February 17, 2011 and February 24, 2011 at Kawartha Downs.

On August 23, 2011, a Panel of the ORC consisting of Chair Rod Seiling, Vice Chair James Donnelly and Commissioner Pam Frostad, was convened to hear the appeal.

Angela Holland appeared as counsel for the Administration, Andrew Finkelstein appeared as counsel for WAXMAN and WAXMAN attended in person

Upon hearing the testimony of Rick Rier, Brent Stone and WAXMAN, upon reviewing the exhibits filed and upon hearing the submissions of counsel for the Administration and of counsel for WAXMAN the Panel allowed the appeal.

DATED at Toronto this 25th day of August, 2011.

BY ORDER OF THE COMMISSION

John L. Blakney
Executive Director



REASONS FOR DECISION

Overview

1. Standardbred licensee, Aaron Waxman, appealed a decision of the Ontario Racing Commission (ORC) Judges at Kawartha Downs to freeze purse winnings of \$12,500 that accrued to his horse, Jinglejanglejingle, in races that the horse participated in on February 10, 2011, February 17, 2011 and February 24, 2011 at Kawartha Downs.

Background

2. Isaac Waxman, brother of Aaron Waxman was issued an indefinite full suspension on February 3, 2011 by the Judges at Kawartha Downs. The suspension was made via SB Ruling No. 43216 wherein the ruling states that trainer transfers resulting from the suspension required Judges approval at Kawartha Downs via Policy Directive 2-2008. That ruling referenced the need for approval of trainer transfers but not owner transfers albeit the authority existed under the ORC Rules of Racing.

3. The horse, Jinglejanglejingle, was co-owned (50% each) by the Waxman brothers. The next day, the appellant testified that he made a financial arrangement with his brother to become the sole owner of the horse. On March 2, 2011 the Judges requested and received from Aaron Waxman documentation related to him acquiring 100% ownership of the horse from his brother. Judge Rier, who was the Senior ORC official at Kawartha during this time period, confirmed that it was a legitimate transaction and met the threshold of the ORC rules. On March 2, 2011 the Judges decreed that the appellant was entitled to retain any purse winnings for the horse on a go forward basis.

4. The appropriate transfer procedure was undertaken with Standardbred Canada, the official body for registering standardbred horses in Canada, on February 4, 2011. The initial transfer form incorrectly included Taryn Beaupre, Isaac Waxman's girlfriend, and upon learning that his brother had inappropriately included her on the registration change, he made arrangements for Standardbred Canada to remove her name (Ex. 1, tab 17, p 48).

5. Angela Holland, legal counsel for the ORC and Judge Rick Rier did not dispute the fact that the horse raced at Kawartha Downs under the ownership of the appellant on February 10, 2011, February 17, 2011 and February 24, 2011 nor that at least Judge Rier was aware of the change of ownership registration filed with Standardbred Canada (Ex. 1, tab 17, p 49 & 50. Further confirmation of this fact is found at Ex. 1, tab 4, the Kawartha Downs Senior Judges Report for February 10, 2011 wherein it states that "Jinglejanglejingle was transferred to Aaron Waxman as sole owner."

6. Judge Rier testified that the Judges did not intervene in any of these races (scratch/rule ineligible) as per their agreed authority (SB 6.03.01, 6.13.02, 6.13.03) because they were concerned about inadvertently interfering with the court ordered stay Isaac Waxman obtained immediately after his ORC suspension.

7. On February 7, 2011, ORC Manager of Racing, Brent Stone, testified that he met with Isaac Waxman and notified him that all future transfers would have to be approved by the Kawartha



Downs Judges. Mr. Stone also advised Isaac Waxman that the Flamboro Downs Judges would be issuing a ruling pertaining to the holding of purses from February 4, 2011 onward for any horses owned by him. In fact, that ruling emanated from the ORC's Woodbine Judges, Ex. 1, tab 1) dated February 7, 2011.

8. The Panel notes that in its February 24, 2011 Ruling re Isaac Waxman, it specifically referenced that all trainer transfers for his horses would require prior ORC Judges approvals; that Ruling did not require owner transfer approvals from the judges. Under ORC rules the Judges had that authority as SB Rule No. 6.13.02 references the word "may" in this regard.

9. Andrew Finklestein, legal counsel for the appellant, submitted that the appellant was entitled to the purse monies. He was the sole owner of the horse during the three races, that his brother had no interest and that in addition to bearing the expenses during the period in question, that it then carried with it an expectation of a return, Aaron Waxman had not contested held purse monies for other horses in which he shared ownership with his brother.

Issue

10. Was there a bona fide ownership transfer of the horse Jinglejanglejingle on February 4, 2011 from Isaac Waxman to Aaron Waxman? Is Aaron Waxman entitled to the purse winnings of Jinglejanglejingle from the races at Kawartha Downs on February 10, 2011, February 17, 2011 and February 24, 2011?

Decision

11. After carefully listening to the testimony and reviewing the evidence and documents the Panel upholds the appeal of the appellant. Aaron Waxman, as the rightful owner of Jinglejanglejingle as of February 4, 2011 is entitled to the purse winnings of \$12,500 that accrued to the horse from the three races in question.

Reasons for Decision

12. The transfer of the horse, Jinglejanglejingle was a bona fide transfer under the terms and conditions as established by the ORC as per the testimony of Judge Rier. As per his testimony, it was under that basis that they approved the transfer of the horse upon being furnished, at their request, the appropriate documentation on March 2, 2011.

13. The Judges in the February 24, 2011 Ruling (SB 43222) did not include Jinglejanglejingle in the list of horses that were to have their purses held as a result of being owned whole or in part by Isaac Waxman.

14. The transfer of the horse was made on February 4, 2011. The transfer superseded Mr. Stone's declaration to Isaac Waxman that all transfers of his horses would require ORC approval. There was no requirement as of February 4, 2011 for ORC prior approval for the transfer of ownership of the horse Jinglejanglejingle notwithstanding ORC officials had that authority under the Rules of Racing.



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15. The Judges were aware before the February 10, 2011 race at Kawartha Downs that Aaron Waxman was the sole owner of Jinglejanglejingle. Under the Rules of Racing they had the authority to intervene and opted not to act thereby setting up an expectation upon the owner of the horse that any winnings would accrue to the owner.

16. If, as contended by Judge Rier that the Judges did not exercise their authority regarding allowing the horse to race because of the court ordered stay obtained by Isaac Waxman, it is reasonable to expect that same concern would still hold when they approved the ownership transfer on March 2, 2011, weeks before the legal issues were resolved in that court hearing.

17. As the rightful owner of Jinglejanglejingle, the appellant is therefore entitled to the purse winnings for the three races the horse won, February 10, 2011, February 17, 2011 and February 24, 2011.

DATED this 25th day of August 2011.

Rod Seiling
Chair