



COMMISSION HEARING

TORONTO, ONTARIO – MARCH 10, 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
STANDARDBRED LICENSEE ISAAC S. WAXMAN**

Standardbred Licensee Isaac S. Waxman ("WAXMAN") has appealed the following:

- i. Ruling Number SB 43221, wherein WAXMAN was fined \$5,000 and fully suspended for one year (February 28, 2011 to February 27, 2012 inclusive) for violation of 6.17 (c) (d), and 6.20 (b) and (c) of the Rules of Standardbred Racing ("the Rules"), following the 6th race at Kawartha Downs Raceway on February 3, 2011;
- ii. Ruling Number SB 43222, wherein in accordance with 6.13.02 and 6.13.03 of the Rules, the following horses were suspended:

Awesome Armbro N	ZW215
Flem N Enm	Oct46
All Tiger N	2BX84
Strand Hanover	8DL39
Cajon Thunder	7EM46
Dali	2C307
Dr Dew	8FN63
McLaren	3D916; and

- iii. Ruling Number SB 43223, wherein in accordance with 5.11 and 1.09 of the Rules all horses owned wholly or in part by WAXMAN on February 4, 2011 and onward, shall continue to have all purse monies held pending the full and complete disposition of the Ontario Superior Court of Justice granted injunction (number 11-25384).

WAXMAN requested a stay of Rulings SB 43221, SB 43222 and SB 43223.

The Deputy Director issued Ruling SB 41/2011, dated March 1, 2011, which denied WAXMAN'S request for a stay of Rulings SB 43221, SB 43222 and SB 43223.

WAXMAN requested an appeal with respect to Ruling SB 41/2011.

On March 10, 2011, a Panel of the ORC consisting of Commissioner John Macdonald as Chair, was convened to deal with the appeal of Ruling SB 41/2011 and the denial of the stay request.

Angela Holland appeared as counsel for the Administration. Helen Pelton appeared as counsel for WAXMAN and WAXMAN attended in person.

Upon hearing the testimony of Rob McKinney, upon reviewing the exhibits filed, and upon hearing the submissions of counsel for the Administration and counsel for WAXMAN, the Panel dismissed the appeal and denied the stay.

The transcript with the Panel's Oral Decision is attached to this Ruling.

DATED at Toronto, Ontario this 11th day of March 2011.

BY ORDER OF THE COMMISSION


John L. Blakney
Executive Director

ONTARIO RACING COMMISSION
STANDARD BRED HEARING
IN THE MATTER OF AN APPEAL AND REQUEST FOR HEARING OF
ISAAC WAXMAN

Held Before:

John Macdonald, Commissioner

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

Appearances:

Angela Holland,

counsel for the Ontario
Racing Commission
Administration

Helen Pelton,

counsel for Isaac Waxman

1 Hearing continued ...

2 MR. CHAIRMAN: All rise. Please be seated. I
3 have read the material, listened to the evidence of Rob McKinney
4 this morning and looked at the cases and other exhibits that were
5 submitted today and the argument of counsel for which I thank
6 you. The Superior Court matter to decide the injunction, timing
7 and the affect of the suspension and whether or not it has any
8 relevance to the purse monies that were earned during the period
9 we talked about, February 4th to February 28th is going to be
10 heard, I gather, the week of March the 21st or at least that is when
11 it is scheduled for.

12 I indicated my concern earlier about the other
13 owners which are listed in tab 12 of Exhibit number 1 and I am
14 feeling a little bit better about the fact that there will be a decision
15 come out in just a little over two weeks over what happens there.
16 That also reflects on the industry if a trainer is suspended and an
17 owner and it can be a substantial amount who might not have the
18 opportunity to get purse monies earned. This is not a case where
19 there is a drug offence or there is a problem when the horse has a
20 positive test and the owners have to wait. They would lose
21 because of the trainer responsibility. This is a case where the
22 suspension relates to matters that are serious. It's not the same
23 as a positive test where the trainer and horse are suspended and
24 the owner loses.

1 I'm concerned that the applicant hasn't seemed to
2 have paid any attention to the ruling of the chair on December
3 22nd where he was placed on probation for two years, was to
4 keep the peace and be of good behaviour and complete an anger
5 management course by June the 11th and have a report by that
6 date.

7 I'm mindful of the comments made to the Trespass
8 Act provisions at Kawartha Downs but as counsel pointed out that
9 only applies to that one specific facility and not others in the
10 province so it is not expansive in that sense. If there is a hearing
11 before a panel here and the suspension is granted then that is
12 effective everywhere in the province and right now the request is
13 for a stay.

14 Now I think Mr. McKinney properly considered the
15 items that were relevant, not just to him but they are a public
16 record and he references through his decision to a stay that was
17 covered through his examining the rulings of the Judges and
18 reviewing their decision, the probation ruling and the policy on
19 transfer and spent some time on the past conduct situation. He
20 has the discretion and there is also the public perception. The
21 public must be wondering what is going on in the industry when
22 something happens and is seen by a number of people and
23 commented on and it is further aggravated by comments, that
24 there is no indication of any remorse or regret; although, it is

1 acknowledged through his counsel that the behaviour was not
2 acceptable, stated in those exact words.

3 The test relating to interim injunctions, was the
4 matter serious; yes, it is. Irreparable; in that case I would disagree
5 with counsel. I don't think it is irreparable in the sense that the
6 court case is going to be heard in two weeks and there is no
7 hearing yet by any panel of the ORC as to the suspension or fine
8 or any other decision that is still open to appeal I understand and
9 a date has yet to be set to hear that appeal. The balance of
10 convenience; again, through the public perception it is very poor
11 but we have comments about that from the public but the concern
12 would have been larger if it had of been one of the other facilities
13 and that's I think the concern that the Commission has and Mr.
14 McKinney had as far as wanting to deny the stay because of the
15 possibility that something like those actions occurring at one of our
16 major facilities, understanding the fact that is well known in the
17 industry it is not all throughout the public or at least we hope it is
18 not. We don't need any bad publicity.

19 I am going to deny the stay obviously from what I
20 have just said and I'm very mindful that the court hearing in two
21 weeks will be making a decision and with respect to the court
22 proceeding we have to defer and show proper deference to them
23 as far as what decision they make and decide what this
24 Commission does after that. That's a decision for the
25 Administration. Any questions?

1 MS. HOLLAND: No, sir.

2 MR. CHAIRMAN: Thank you. The hearing is

3 terminated.

CERTIFIED CORRECT

RAYMOND P. MACDONALD, B.A., CVR
Commissioner of Oaths