



COMMISSION HEARING

TORONTO, ONTARIO – SEPTEMBER 30, 2009

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

**AND IN THE MATTER IN THE APPEAL AND REQUEST FOR HEARING OF
STANDARDNBRED LICENSEE GUS PSEEKOS**

On February 22, 2009, the horse, Allegedly So (tattoo # 4AM35), owned and trained by Gus K. Pseekos ("Pseekos"), finished 1st in race 12 at Flamboro Downs. Following the race, the Judges at Flamboro Downs (the "Judges") selected the horse, Allegedly So, for testing.

On March 11, 2009, the Judges received a Certificate of Positive Analysis for the sample taken from the horse, Allegedly So, for the drug, Ractopamine, a class II drug.

On April 30, 2009, the Judges issued Standardbred Official Ruling SB39068 to Pseekos with a penalty of a \$5000 fine and a one year full suspension (April 30, 2009 to April 29, 2010) for violating Rules 9.90(b), 26.02.01, 6.02.02 and 26.02.03 of the Rules of Standardbred Racing. In addition, the Judges issued Standardbred Official Ruling SB 39069 to Pseekos imposing a penalty of a two (2) year probation (April 30, 2010 to April 29, 2012), along with conditions, in accordance with Policy Directive No. 3-2008.

On September 29, 2009, the Administration and Pseekos arrived at an Agreed Statement of Facts and Joint Submission on Disposition.

On September 30, 2009, a Panel of the Ontario Racing Commission 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. Pseekos was in attendance via telephone to confirm the content of the Agreed Statement of Facts and Joint Submission on Disposition.


In declining to accept the Agreed Statement of Facts and Joint Submission on Disposition, the Panel stated, among other things:

- i) Investigation revealed inadvertent ingestion from contaminated equine food products. Pseekos had no knowledge as the product came directly from his feed supplier. The evidence proved conclusively that the contamination occurred with the feed supplier, as per the company's acknowledgement and settlement of his claim.
- ii) The panel finds no fault against the appellant. As a matter of record the positive test must stand against his record but we ask Standardbred Canada to note on the record that Mr. Pseekos was blameless.
- iii) No penalty can be assessed.

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

DATED at Toronto this 13th day of October, 2009.

BY ORDER OF THE COMMISSION


John L. Blakney
Executive Director

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ONTARIO RACING COMMISSION
STANDARD BRED HEARING
IN THE MATTER OF THE APPEAL AND REQUEST FOR HEARING OF
GUS PSEEKOS

Held Before:

Rod Seiling Chairman

James Donnelly Vice Chairman

Brenda Walker Commissioner

These are an excerpt of the proceedings in the above mentioned matter held before The Ontario Racing Commission, Re: **GUS PSEEKOS**, taken before Toronto Court Reporters, Suite 1410, 65 Queen Street West, Toronto, Ontario, at 10 Carlson Court, Suite 400, Toronto, Ontario, on the 30th day of September, 2009.

Appearances:

Jennifer Friedman,

for the Ontario Racing
Commission Administration

1 Hearing continued ...

2 MR. CHAIRMAN: We will get Mr. Pseekos back
3 on the phone.

4 MS. FRIEDMAN: Mr. Pseekos, the panel is back
5 from its break.

6 MR. PSEEEKOS: Okay.

7 MR. CHAIRMAN: Mr. Pseekos, can you hear me
8 now?

9 MR. PSEEEKOS: Yes, I can.

10 MR. CHAIRMAN: This is our ruling, sir, and I will
11 ask you when I complete, to make sure that you understand the
12 ruling, what it is and what it means. I think it will be pretty straight
13 forward.

14 MR. PSEEEKOS: Okay.

15 MR. CHAIRMAN: The matter came forward as a
16 joint submission together with an agreed statement of facts. By
17 prior agreement the appellant appeared via telephone and gave
18 his consent to both the agreed statement of facts and to the joint
19 submission. In addition, he waived his right to legal counsel. 1)
20 the panel accepts as per the agreed statement of facts that there
21 was a positive test on the horse ALLEGEDLY SO. The horse
22 raced in the first race at Flamboro Downs on February 22, 2009.
23 I'm sorry, the first race or twelfth race is it and finished first. I
24 apologize. Finished first in the twelfth race.

25 MR. PSEEEKOS: Yes.

1 MR. CHAIRMAN: This is an absolute liability
2 offence 2) the presence of the drug bears on the fairness of the
3 race. Under Standardbred Rule 9.13 the purse must be
4 redistributed. 3) when the Commission introduced the absolute
5 liability rule amendment it was on the understanding that a
6 licensee could argue as it relates to penalty a strict liability
7 defence. In other words, due diligence compliance would be
8 considered. 4) investigation revealed inadvertent ingestion from
9 contaminated equine food products. Pseekos had no knowledge
10 as the produce came directly from his feed supplier. The
11 evidence proved conclusively that the contamination occurred with
12 the feed supplier, as per the company's acknowledgement and
13 settlement of his claim. 5) therefore the panel finds no fault
14 against the appellant. As a matter of record the positive test must
15 stand against his record but we ask Standardbred Canada to note
16 on the record that Mr. Pseekos was blameless. Absent blame no
17 penalty can be assessed. The panel therefore rejects, firstly, the
18 proposed three month suspension and the proposed \$1,000.00
19 fine. As well, the proposed probationary condition on his license
20 is rejected. That's the ruling, Mr. Pseekos. Do you understand
21 what we have said in our ruling?

22 MR. PSEEKOS: The last couple I didn't
23 understand. Maybe because I couldn't hear you properly. You
24 guys accepted the \$1,000.00 and I get no more days, is that
25 correct?

1 MR. CHAIRMAN: Actually it is more to your favour.

2 MR. PSEEEKOS: Sorry.

3 MR. CHAIRMAN: What we said is given that, first
4 of all, that there was a positive test and therefore under absolute
5 liability the penalty for redistribution of the purse must stand.

6 THE DEPONENT: Okay.

7 MR. CHAIRMAN: But we had considered because
8 under absolute liability we do consider under penalty
9 consideration a due diligence defence. We have said based on
10 the evidence because of the admission of your feed company that
11 they were responsible that you are held blameless. As a
12 consequence we are rejecting the proposed settlement you made
13 with Ms. Friedman. Therefore there is no penalty against you. So
14 there is no penalty, no suspension, there is no \$1,000.00 fine and
15 there are no conditions on your license.

16 MR. PSEEEKOS: Wow, beautiful. Thank you very
17 much.

18 MR. DONNELLY: I think he understands.

19 MR. CHAIRMAN: I think you have got it now, sir.

20 MR. PSEEEKOS: Yes, I understand now. Thank
21 you very much.

22 MR. CHAIRMAN: You are very welcome and good
23 luck to you.

24 MR. PSEEEKOS: You don't know how happy I am
25 right now.

1 MR. CHAIRMAN: Ms. Friedman has indicated that
2 has got something she wants to say.

3 MS. FRIEDMAN: One question and I apologize for
4 not bringing this up before. There was a settlement. There was
5 no discussion with Mr. Pseekos about any sort of confidentiality
6 provision and before a ruling goes out maybe Mr. Pseekos can
7 speak to whether any sort of publication ban is necessary on the
8 particulars.

9 MR. CHAIRMAN: I think the panel believes there
10 was some discussion with the industry about how a strict liability
11 argument would work. I know she is talking about the money but
12 it is all part and parcel. You are talking about his settlement with
13 the feed company?

14 MS. FRIEDMAN: Yes, and my concern is I
15 wouldn't want him to be breaching any sort of agreement he had
16 with the insurer for confidentiality before a ruling is released from
17 the panel to make sure that the particulars pertaining to that
18 settlement can be disclosed.

19 MR. CHAIRMAN: We are not disclosing what his
20 settlement is. This ruling does not disclose.

21 MS. FRIEDMAN: Well, there is reference to the
22 fact that they have accepted responsibility for the contaminated
23 feed.

24 MR. CHAIRMAN: That has to be there. That's the
25 evidence. Without the evidence we would never make this ruling.

1 MS. FRIEDMAN: Okay. I just wanted to make
2 sure that there was no issue and instead of saying there was a
3 settlement with an insurer or something to that effect.

4 MR. CHAIRMAN: Mr. Pseekos, do you have any
5 objections to us putting the ruling public?

6 MR. PSEEEKOS: Do I have an objection to what,
7 sir?

8 MR. CHAIRMAN: Of the ruling being made public?

9 MR. PSEEEKOS: I have no problem with that but I
10 don't know what the settlement of the insurance, if the feed
11 company is allowed to be mentioned. That's what I don't know but
12 as far as myself with my name I have no problem with it but I don't
13 know if we are allowed to state the feed company's name.

14 MR. CHAIRMAN: In the ruling we haven't
15 mentioned the feed company's name.

16 MR. PSEEEKOS: You won't mention the feed
17 company's name?

18 MR. CHAIRMAN: No.

19 MR. PSEEEKOS: Okay, that's fine with me. I have
20 no problem with that.

21 MR. CHAIRMAN: Then the ruling stands as is.

22 MR. PSEEEKOS: Thank you very much.

23 MR. CHAIRMAN: Thank you and have a good day.

24 MR. PSEEEKOS: You too. Goodbye.

CERTIFIED CORRECT: _____
RAYMOND P. MACDONALD, B.A., CVR

Commissioner of Oaths