



COMMISSION HEARING

TORONTO, ONTARIO – NOVEMBER 10, 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
STANDBRED LICENSEE GILLES GENDRON**

Gilles Gendron, (Gendron), is licensed by the Ontario Racing Commission, (ORC), as a Standardbred driver/trainer/owner, Licence Number 3800B2.

On July 5, 2009, Gendron was the driver of standardbred racehorse Cam Potter, in the 3rd race at Rideau Carleton Raceway at Ottawa, Ontario.

On July 9, 2009, the track Judges found Gendron in violation of Standardbred Rule 22.23.01 (a), (use of whip in a blatant or exaggerated manner).

The penalty imposed for a 3rd offence within a year of the first offence and within 750 drives of the first offence was as follows:

- (i) a \$500 fine, plus a
- (ii) 3-day driving suspension (July 14, 15, & 16, 2009)

On July 10, 2009, Gendron filed a Notice of Appeal against this decision.

On July 13, 2009, the penalty was stayed pending a hearing.

On November 10, 2009, a Panel of the ORC consisting of Chair Rod Seiling, convened to hear this matter.

Gilles Gendron did not appear at the hearing of his appeal. Gilles Gendron was not represented at the hearing.

Anthony Williams appeared as counsel for the Administration.

Upon hearing the allegations against Gendron and upon reading the exhibits filed, and upon hearing the submissions of counsel for the Administration, the Commission ordered as follows:

- (i) The appeal is denied.
- (ii) The fine of \$500 is upheld.
- (iii) The suspension of 3 days is upheld (Gendron can race any horses he has entered into race or is programmed to drive before his penalty takes effect).
- (iv) A further penalty of \$1,500 is imposed, pursuant to the Racing Commission Act.

Dated this 17th day of November 2009.

BY ORDER OF THE COMMISSION


John L. Blakney
Executive Director



REASONS FOR DECISION

Overview

1. Licensee Gilles Gendron appealed a ruling of the Judges wherein he was fined \$500 and suspended for 3 days for violating SB Rule No. 22.23.01 (a). Mr. Gendron was granted a stay on July 13, 2009.

Background

2. A de novo hearing was held on November 10, 2009 with an interpreter present to accommodate Mr. Gendron's possible handicap with the English language. Anthony Williams, legal counsel for the Administration for the Ontario Racing Commission (ORC), informed the Panel that Mr. Gendron was not present and that based on earlier communications with Maureen Harquail, Senior Legal Counsel for the Commission, he did not expect Mr. Gendron to attend the hearing. The Panel took a five-minute recess to allow Standardbred Judge, Craig Walker, to conduct a search of the premises including a check with the front desk for any communications from the appellant. That search proved negative on both counts. The hearing proceeded in the appellant's absence.

3. Mr. Williams submitted documents (Ex. 4) that included a signed note from Ms. Harquail related to a telephone conversation on November 4, 2009 she had with the appellant. That note indicated Ms Harquail acknowledged receipt of Mr. Gendron's November 2, 2009 fax (Ex. 5) in which he stated he could not attend his scheduled November 5, 2009 hearing. She informed him that she had spoken to his son, Olivier, on October 20, 2009 (Ex. 6) communicating to him that the hearing had been moved to November 10, 2009. Mr. Williams submitted that Mr. Gendron had been properly served notice of the date change.

4. Mr. Gendron told Ms. Harquail, on being informed of the correct hearing date, that he could not attend the hearing on the 10th as well as "he had horses in and has no employees". The Panel requested that Judge Walker access the Commission's computer system to check on whether Mr. Gendron had horses racing. Mr. Walker provided the Panel a copy of the Commission's "In To Go" Driver or Trainer Report (Ex 3). That report indicated Mr. Gendron did not have any horses racing on November 10 or 11 in Ontario. He would not have been racing in the Province of Quebec as all horse racing in the Province has been shuttered.

5. Mr. Gendron was the driver of the horse, Cam Potter, in the third race at Rideau Carleton Raceway on July 5, 2009 (Ex. 2, tab 1). The Judges alleged that he used his whip in a blatant and exaggerated manner while driving Cam Potter in that race, thus violating SB Rule No. 22.23.01 (a).

6. On July 9, 2009, the Judges held a hearing at Rideau Carleton Raceway with Mr. Gendron present. At that hearing, Mr. Gendron admitted (Ex. 2, tab 3) that he used his whip in a blatant and exaggerated manner in violation of SB Rule No. 22.23.01 (a) and asked for a break as it related to the penalty.

7. Mr. Williams referenced Mr. Gendron's licensing record (Ex. 2, tab 13). That document confirmed that the offence was the appellant's third offence within one year. Rule 22.23.01 is specific. The Judges have no discretion as it relates to penalty. The Rule reads that for a third offence within one year the penalty is a \$500 fine and a suspension of 3 days.

8. Mr. Williams submitted that it would be appropriate to levy a frivolous appeal provision against Mr. Gendron. It was the first time in his nearly two years representing the Commission that he believed the circumstances warranted such a ruling. The Board of Appeal, under SB Rule No. 24.08, can assess costs, if it determines an appeal brought before it is frivolous. Under the regulations, a Panel can assess costs up to \$1,500. He submitted that a mid-range assessment would be appropriate.



Issue

9. Is there merit to Mr. Gendron's appeal? Should the Panel assess Mr. Gendron a fine under SB Rule 24.08 for a frivolous appeal?

Decision

10. After carefully considering the testimony, the evidence and the documents, the Panel denies Mr. Gendron's appeal and assesses him an additional fine of \$1,500 for a frivolous appeal. Mr. Gendron can race any horses he has entered into race or is programmed to drive before his penalty takes effect.

Reasons for Decision

11. There was no basis for the appeal. Mr. Gendron admitted at his hearing with the Judges that he used his whip in a blatant and exaggerated manner and thus was in violation of SB Rule No. 22.23.01. Furthermore, there was not and nor should there be, for a driver with Mr. Gendron's professional experience, any discretion as it relates to penalty unless there were mitigating circumstances. The Commission has a responsibility, one it takes very seriously, to protect the health and welfare of the horse. Licensees need to recognize and be aware that they also share this responsibility as a licensee.

12. The Commission guards very carefully the right for all licensees access to due process. Mr. Gendron was provided those rights through his hearing before the Judges and the granting of his stay to allow his appeal before a Panel of the Commission at a de novo hearing. The Commission also has a duty to the industry to use the financial resources it receives from it judiciously. By extension, it is incumbent for licensees in exercising their rights not to abuse the system. This means that to bring an appeal before the Commission a licensee is expected to offer new materiality in support of his/her position or conclusively demonstrate an error in judgement by the Commission's officials.

13. Allowing licensees to abuse the rights of due process is an affront to the industry. Mr. Gendron filed an appeal for which he had already admitted to the Judges that he had violated the rule. He did not offer any mitigating circumstances to the Judges or to the Panel. Furthermore, Mr. Gendron obviously was not truthful to Ms. Harquail in his reasons for not attending the hearing. The facts clearly indicated he had no horses in to go that day or the next. He was available to attend or, at the very least, he could have submitted some documentation to support his appeal. He opted to ignore the process that he had asked for and had been granted without even having the wherewithal or common courtesy to notify the Commission.

14. The additional \$1,500 fine does not come close to recouping the Commission's costs for holding the hearing. It is not intended as such. Its intent is to act as a deterrent to licensees and to serve as a warning to others that they have a responsibility to the industry that provides the funding for the regulation of their sport and business.

DATED this 17th day of November 2009.

Rod Seiling
Chair