



COMMISSION HEARING

TORONTO, ONTARIO – JANUARY 25, 2012

**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
STANDBRED LICENSEE, CARLA SELIG**

Carla Selig ("SELIG") appealed against Standardbred Official Ruling Number SB 43060 wherein the Judges at Kawartha Downs precluded SELIG "to race horse she owns (in) whole or in part against any horses that John Thomson owns or trains as in the best interest of racing". The Ruling was issued pursuant to Rule 1.09 of the Rules of Standardbred Racing (the "Rules").

On July 23, 2011, SELIG advised of her intent to appeal Standardbred Official Ruling Number SB 43060.

On August 4, 2011, a Notice of Appeal was submitted on behalf of SELIG.

On November 21, 2011, a Notice of Hearing was issued to notify the parties that the appeal will be heard on January 25, 2012 at 9:00 a.m.

On January 4, 2012, an Amended Notice of Hearing was issued to notify the parties that the appeal will be heard on January 25, 2012 at 8:00 a.m.

On January 25, 2012, a Panel of the Ontario Racing Commission consisting of Chair Rod Seiling, Commissioner Pam Frostad and Commissioner Brenda Walker was convened to hear the appeal.

Larry Todd attended as counsel on behalf of SELIG. Jennifer Friedman appeared as counsel for the Administration of the ORC.

Upon hearing the testimony of ORC Judge Larry Hughes, Race Secretary Jim Huck, and SELIG, reviewing the exhibits filed, and upon considering the submissions of counsel, the Panel denied the appeal as follows:

It is in the public interest not to have SELIG race any horse she owns, whole or in part, in the same race against a horse owned, whole or in part or trained by Mr. Thomson.

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

DATED at Toronto this 27th day of January, 2012.

BY ORDER OF THE COMMISSION


John L. Blakney
Executive Director



REASONS FOR DECISION

Overview

1. Standardbred licensee, Carla Selig, appealed SB Ruling No. 43060 wherein she was prohibited from racing any horse she owns, whole or in part, against any horse that Standardbred licensee, John Thomson owns or trains in the best interests of racing. A de novo hearing was held on January 25, 2012.

Background

2. Larry Todd, legal counsel for the appellant, submitted there was no Ontario Racing Commission (ORC) rule preventing parties in a relationship from racing against each other. Jennifer Friedman, legal counsel for the ORC contended that there was no business independence between the two.

3. There was no dispute that Ms. Selig and Mr. Thomson had an ongoing personal relationship for approximately 15 years. Furthermore, it was agreed that neither person had breached any ORC rule.

4. The basis for the Ruling was SB Rule No. 1.09 which reads, "If any case occurs which is not or which is alleged not to be provided for by the rules, it shall be determined by the Judges or by the Commission as the case may be, in such manner as they think is in the best interests of racing. Provided however, the Commission in its absolute discretion may waive the breach of any of the rules, which waiver or breach the Commission does not consider prejudicial to the best interests of racing."

5. Ms. Selig transferred her horse from Mr. Thomson as trainer to her stepfather, Murray Samons, about a week and a half to two weeks prior to the race in question. Up until that time, Mr. Thomson had been the official trainer and would be listed in the race program as such.

6. According to Jim Huck, race secretary at Kawartha Downs (KD), the track had a policy not to allow individuals in a close relationship to race against one another in the same race. The policy was in place before he worked at the track and was implemented to deal with public perception. He had gone to the Commission Judges to ask them to rule on close relationships in the past but this one was the first related to a "spousal" relationship. Mr. Huck was aware of the relationship as he had had his own relationship with Mr. Thomson prior to his becoming employed at the track.

7. In his mind, the main concern was the public and how they would react knowing two individuals in a close relationship were racing against each other in the same race. KD does allow Mr. Thomson to drive horses in a race where Ms. Selig has a horse entered.

8. On being notified by Mr. Huck, ORC Senior Judge Larry Hughes, contacted Ms. Selig concerning her racing her horse in the same race as her boyfriend, Mr. Thomson. On Saturday, July 2, 2011, (Ex. 1, tab 1) he met with her and she agreed to come back on Thursday with paperwork that would demonstrate the independence from Mr. Thomson. Following the meeting on Thursday, July 7, 2011, (Ex. 1, tab 2) with Mr. Hughes, she agreed to come back with more evidence. Ms. Selig met with Mr. Hughes again on July 14, 2011, after which she was told the Judges would reserve making any decision as according to him, he wanted time to weigh things out. He was looking for proof that the appellant had a separate, independent business operation.

9. Ms. Selig did not provide Mr. Hughes with a copy of her training contract with Mr. Thomson, notwithstanding Commission Rules (SB Rule No. 3.09.01 (c)) requires such to be in place. Undisputed testimony was led that she did not believe she needed such an agreement with



Mr. Thomson. Ms. Selig did execute such an agreement dated July 20, 2011 which called for zero dollars for the training of the horse. The actual contract is irrelevant to the case (i.e. retrofitted content). Its importance relates to Ms. Selig's and Judge Hughes' evidence. She testified that Mr. Hughes told her she did not need to submit. This runs counter to his testimony. Mr. Hughes viewed the contract as deficient regarding compliance as it did not stipulate a dollar amount for training. Mr. Todd countered that the 0 dollar amount did comply with Ms. Selig paying in lieu with work at Mr. Thomson's stable. No formal barter agreement was in place to recognize the arrangement.

10. Unsupported evidence was led that Ms. Selig was allowed to race a horse on 2 previous occasions at KD in the same race as Mr. Thomson had a horse. It was alleged that ORC Judge Caughey allowed this to take place. No explanation was brought forward as to why but one race was a "maiden series" wherein ORC Rules would allow it to take place and there was a possibility suggested the other could be a short field where again the Rules would not prohibit it.

11. Judge Hughes agreed that the ruling was based on the perception. The two individuals had a 15-year relationship; there was no payment of any money for training and while she brought in proof of payment there was no identification as to the location of where the services were performed and/or where goods were delivered. Furthermore, the veterinarian bill listed all her horses on one invoice, again no delineation of location of the horses. At the time of entry, Mr. Thomson was still training two of Ms. Selig's horses.

12. There are no specific ORC Rules that deal with the matter under appeal. It was accepted that the Judges, under the Rules, do have discretion. The Judges have resorted to using pieces from other directives regarding trainer transfers that are the result of rule violations which result in the need to transfer horses to another trainer as guidelines. Specifically, Policy Directive No-2 2008 and para 1, "the degree of closeness of any relationship, whether it be fiduciary, employee/employer, and/or family in nature" and Rule 6.13.03 as it relates to independence.

13. Mr. Todd questioned why Mr. Hughes acted in this case but allowed Casie Coleman and Blake Macintosh to race against each other in as much as they have the same type of relationship as the appellant with Mr. Thomson. Mr. Hughes responded that the Judges can only act in cases like these when somebody comes forward.

14. Casie Coleman and Blake Macintosh are both licensed ORC trainers. There was no dispute that the two individuals have an ongoing relationship (Ex. 5) that is well known within the horse racing industry. Ex. 3, tabs 1, 3, 5, 7, 9, 11, 13, 15, 17 and 19 are program pages from selected races in Ontario wherein Ms. Coleman and Mr. Macintosh had horses trained and or owned by them race against each other. Both of these individuals have operated their own respective public stables before the commencement of their personal relationship.

15. Mr. Thomson and Mr. Samons train at different locations. Ms. Selig has had horses with both individuals at different times over the 10 years she has owned horses. She is aware of the public perception issue.

Issue

16. Is it in the best interests of racing to allow horses owned, all or in part, by Ms. Selig, to race against horses owned, all or in part or trained by John Thomson with whom there exists a lengthy personal relationship?

**Decision**

17. Following an analysis of the evidence as set out in the following reasons, on a balance of probabilities, it is in the public interest not to have Ms. Selig race any horse she owns, whole or in part, in the same race against a horse owned whole or in part or trained by Mr. Thomson. On that basis, the appeal is denied.

Reasons for Decision

18. The standard of proof is on a balance of probabilities with the onus of proof on the ORC Administration.

19. The evidence must be clear, convincing and cogent so as to satisfy the balance of probabilities test as per F.H. McDougall [2008] S.C.R. 41.

20. An analysis of the matter clearly points one to the public perception of racing. ORC Chair, Frank Drea, wrote in the Henri Filion hearing of July 18, 1990, "No sport or entertainment relies as heavily on the public perception of its honesty and integrity as racing." The Panel concurs. Independent racing operations are a prerequisite for that perception of honesty. Ms. Selig's business was not independent from that of her boyfriend, Mr. Thomson. In the best interest of racing the appellant should not be allowed to race any horse that she owns, whole or in part, in the same race as Mr. Thomson that he either owns the horse, whole or in part or trains it.

21. Ms. Selig and Mr. Thomson were, in effect, running an undisclosed entry every time they raced a horse against each other in the same race. The public may or may not be aware of the relationship and therefore could not take into account what that relationship may have on the outcome of a race as opposed to a declared entry wherein a bettor can make an informed decision.

22. The onus was on Ms. Selig to prove to Mr. Hughes that she had an independent business operation. She could not provide supporting proof notwithstanding he tried to accommodate her with 3 separate meetings. With no written contract in place as required by ORC Rules, no exchange of money for training, no documentation to recognize bartering as a means of payment and the movement of the horse a week and a half to two weeks before the race and her other horses left with Mr. Thomson, it is reasonable to conclude that the operation of Ms. Selig could not be substantiated as independent of Mr. Thomson.

23. Ms. Selig's situation with Mr. Thomson does not compare to that of Casie Coleman and Blake Macintosh. Ms. Selig is not an ORC licensed trainer. Furthermore, both individuals operate their own public stables with their own respective set of books, etc. Their respective operations are totally separate and distinct, and both were operational before their relationship commenced. Coleman/Macintosh does not resemble or compare to Selig/Thomson.

24. With respect to spousal rights, this Panel recognizes the rights of individuals involved in a personal relationship to have horses owned, whole or in part or trained by them to race against one another in the same race. This matter, can be in the public interest, and therefore should not suffer interference from the ORC. Some of the conditions that should be present would include separate businesses with their own set of books, a clear distinction regarding care, custody and control and contracts between the owner and trainer as per ORC Rules.

25. Cited precedent cases, Henry (SB 86/87), Samure [2007] O.R.C.D No. 14 and the July 8, 2003 Memorandum regarding the transfer of horses are irrelevant as they deal with matters where there was a breach of a Commission Rule.



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26. In as much as this is a first regarding spousal rights coming before Commission officials, the Panel suggests that it is time to bring forward guidelines. One can understand how Ms. Selig believed she was in compliance with Commission Rules based on Judge Caughey allowing her to race previously. It is reasonable to conclude a possible misunderstanding on the rationale. Licensees are entitled to such edification.

DATED this 27th day of January 2012.

A handwritten signature in cursive script that reads "Rod Seiling".

Rod Seiling
Chair