



HORSE RACING APPEAL PANEL

TORONTO, ONTARIO
JUNE 4, 2021

SB HRAP 05028 2021

NOTICE OF DECISION

IN THE MATTER OF THE HORSE RACING LICENCE ACT, S.O. 2015 C. 38 Sched.9;
AND IN THE MATTER OF AN APPEAL BY DUNCAN BREWER OF RULING
NUMBER 1175718

Date of Hearing:	June 4, 2021
Horse Racing Appeal Panel:	Brian Newton, Member
Appellant:	Duncan Brewer
Representative for the Appellant:	Self-represented
Representative for the Registrar:	Nicolle Page
Decision:	The Panel dismisses the appeal but varies the penalty as set out below.

WHEREAS Duncan Brewer ("BREWER") is licensed by the Alcohol and Gaming Commission of Ontario ("Commission") as a Trainer, Licence Number H24755;

AND WHEREAS on March 22, 2021, the Deputy Registrar issued Ruling Number 1175718 wherein BREWER was suspended for a period of thirty (30) days commencing on April 7, 2021 until May 6, 2021 and issued a monetary penalty of \$4,000 in accordance with Rules 9.09(b), 26.02.01, 26.02.02, and 26.02.03(c) of the Rules of Standardbred Racing;

AND WHEREAS on March 24, 2021, BREWER filed a Notice of Appeal and a Notice of Motion requesting a stay with the Panel;

AND WHEREAS on March 26, 2021, the Panel issued Decision Number SB HRAP 05023 2021, granting the stay on consent;

AND WHEREAS on June 4, 2021, the Panel convened to hear BREWER's appeal;

TAKE NOTICE that the Panel dismisses the appeal, varying the penalty as follows:

1. BREWER's 30-day suspension, of which 7 days is stayed, shall begin when racing resumes at Mohawk Park Raceway in June 2021;
2. Of the \$4,000 penalty, \$1,000 will be stayed;
3. BREWER's probationary period shall be from July 7, 2021 until July 6, 2023;

4. The seven (7) day stay granted and \$1,000 of relief of penalty shall be restored should BREWER test positive for a Class 1, Class 2, Class 3, or TC02 violation within his probationary period.

A transcript of the Panel's oral Reasons for Decision is attached to this Notice.

DATED at Toronto this 15th day of June, 2021.

A handwritten signature in cursive script that reads "B Newton". The signature is written in black ink and is positioned above a solid horizontal line.

Brian Newton, Member
Horse Racing Appeal Panel

HORSE RACING APPEAL PANEL (HRAP)

STANDARD BRED HEARING

IN THE MATTER OF THE *HORSE RACING LICENCE ACT*,

S.O. 2015 c. 38 Sched. 9 and the

RULES OF STANDARD BRED RACING

AND IN THE MATTER OF THE APPEAL OF STANDARD BRED RULING NUMBER: 1175718

BY APPELLANT: DUNCAN BREWER

H E L D B E F O R E

Mr. Brian Newton

Member

This is an excerpt of the proceedings in the above-mentioned matter held before the HORSE RACING APPEAL PANEL, Re: **DUNCAN BREWER**, taken before NEESONS (A VERITEXT COMPANY), 77 King Street West, Suite 2020, Toronto, Ontario, via Zoom Video Conferencing, on the 4th day of June, 2021.

A P P E A R A N C E S

Ms. Nicolle Pace

- for the Alcohol and Gaming Commission of Ontario Registrar

Mr. Brian Tropea

- for the Appellant

Now, in reviewing the evidence, I was concerned with a few statements made by Mr. Brewer, the first one being that he may have had a recall or memory issue. This, to me, is all the reason for the need to have detailed notes to ensure that this does not happen again. Although, I understand [inaudible] and that the industry as a whole, this is not ultimately why we are here today, nor is the industry a reason or an excuse.

It is definitely an aggravating factor in this case that you did not have notes for the day, or provide any proof of those notes that exist, to understand what detail you are including in those notes. You did obviously admit, Mr. Brewer, that you do have notes, you do take notes, they are on your phone or computer, but did not detail, and I am still unsure to what extent those notes are. I do believe they could be greater.

A lesson should be learned that these notes are important, especially after suffering from a previous positive. We like to encourage people, especially after they suffer a positive test, to improve on their processes. And obviously record keeping, note keeping, that kind of detail, is important always, but it should be reiterated after a positive test to step up and improve those practices.

As stated by Dr. Rubenstein, the care and welfare of the horses Mr. Brewer does look after are his priority, which is important. On this day in question, the evidence that was provided, based on the balance of probabilities, it appears that a mistaken second dose of Flunixin was provided.

It is unfortunate that Mr. Brewer received the advice from his vet, Dr. Rubenstein, on a few flawed reasons, that he was not sure that, one, the second dose was provided, and that he had never seen a positive for a reason like this. Those are very flawed reasons those, to come to that decision to race a horse.

Mr. Brewer should have went with his original gut feelings, and I am sure I do not have to tell Mr. Brewer this because I am sure he knows that, and at least erred on the side of caution instead of taking the calculated risk in this case, especially due to the fact that the responsibility for the positive test does not go back to his veterinarian, it falls on the trainer responsibility role. And in this case, Mr. Brewer was the trainer in question.

I do feel that the penalty issues by the Director was fair, but may have been issued without the full story of the professional advice provided by Mr. Brewer's vet. I do not see any malice on behalf of Mr. Brewer. It is evident based on his information that his practice is to provide this medication 50 to 56 hours out, which is well over the guidelines of 48 hours.

Due to the unfortunate advice provided by Mr. Brewer's vet, I am going to adjust the penalty. Mr. Brewer will be issued a penalty of the following:

1. He will receive a 30-day suspension, which 7 days will be stayed. So those days will start when racing resumes at Mohawk Raceway. I believe racing will resume June 14th, so I have he will be fully suspended June 14th to July 6th inclusive;

2. Mr. Brewer will also receive a \$4,000 monetary penalty, 1,000 of that stayed; and,
3. Will also receive a two-year standard probation which will commence July 7, 2021, and will run to July 6, 2023.
4. The 7 days and \$1,000 that have been stayed as part of this decision will be in effect if Mr. Brewer does have any positive tests violations of a Class 1, Class 2, Class 3, or TC02 positive.

Mr. Brewer, I would like to say that I know you mentioned you are a retired officer. And I know, as being part of a police service myself, that notetaking is very important. And I am sure you are very well trained in notetaking, and this industry is no different. It is important that you keep meticulous notes of your daily activities, what the horses receive in terms of feed, medication. And please be a little more diligent on that notetaking going forward. Hopefully we do not see you in front of us in front of us for the same reason ever again.
