



HORSE RACING APPEAL PANEL

**TORONTO, ONTARIO – JULY 7, 2020
SB HRAP 05031 2020**

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 JAMES WATT
OF STANDARDBRED RULING NUMBER 1016607**

Date of Hearing: July 7, 2020

Horse Racing Appeal Panel (Panel): Stanley Sadinsky, Q.C., Chair

Appellant: James Watt

Representative for the Registrar: Nicolle Pace

Decision: The Panel dismisses the appeal.

WHEREAS James Watt (“WATT”) is licensed with the Alcohol and Gaming Commission of Ontario (“Commission”) as a Trainer/Owner;

AND WHEREAS WATT was the trainer of record of the horse “WATT MACHS ME WIN”, freeze brand number 3LM07;

AND WHEREAS on June 15, 2020, the Commission Deputy Chief Operating Officer issued Standardbred Ruling Number 1016607, wherein WATT was fully suspended for one (1) year (July 15, 2020 to July 14, 2021, inclusive) and issued a monetary penalty of five thousand dollars (\$5,000) as a result of a positive test for cobalt above the quantitative limit from “Watt Machs Me Win”, tested following the 3rd race at Western Fair Raceway on January 3, 2020, in accordance with Rules 9.09(b), 26.02.01, 26.02.02, 26.02.03(c), 6.04, 9.08.02 of the Rules of Standardbred Racing (“Rules”) and Policy Directive No. 1-2018;

AND WHEREAS Standardbred Ruling Number 1016607 further directed that “Watt Machs Me Win” was disqualified from the aforementioned race (with the exception of pari-mutuel wagering) in accordance with Rule 18.08.03 of the Rules;

AND WHEREAS Standardbred Ruling Number 1016607 also states the WATT had a previous ruling issued for an elevated TCO₂ reading in December 2016, and a previous ruling issued for a Clenbuterol positive in February 2020;

AND WHEREAS Standardbred Ruling Number 1016607 also directed that WATT’s suspension is effective for horses racing in Ontario and that: (i) WATT is denied access to Association grounds with the exception of grandstand privileges; (ii) horses owned in whole or in part by WATT are ineligible to race and shall not be transferred or sold without the approval of Racing

Officials; and (iii) horses trained by WATT will be transferred to another trainer in good standing and in accordance with Policy Directive No. 2-2008;

AND WHEREAS Standardbred Ruling Number 1016607 also directed that the following terms be added to WATT's licence for two (2) years (July 15, 2020 to July 14, 2022, inclusive), and that three (3) additional months of probation are added (July 15, 2022 to October 14, 2022, inclusive), pursuant to Rule 6.04 of the Rules and Policy Directive 3-2008:

1. The licensee shall keep the peace and be of good behaviour,
2. The licensee shall allow Compliance Officials access to his stabling area at any time to conduct unannounced random searches for illegal or non-therapeutic medications or drugs,
3. The licensee shall allow Compliance Officials to seize any illegal or non-therapeutic medications or drugs found at his stabling area,
4. The licensee shall be subjected to the Commission's Out Of Competition Program,
5. The licensee may be subject to a Notice of Proposed Order in addition to any penalty imposed by the Commission Racing Officials for any breach of the terms of their licence, and
6. Completion of the Commission's equine drug training module prior to re-instatement.

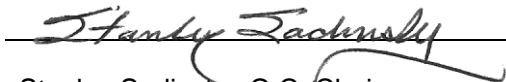
AND WHEREAS on June 24, 2020, WATT filed a Notice of Appeal with the Panel;

AND WHEREAS on July 7, 2020, the Panel convened to hear WATT's appeal and reserved their decision;

TAKE NOTICE that the Panel dismisses the appeal.

The Panel's Reasons for Decision are attached to this Notice.

DATED on this 15th day of July, 2020.



Stanley Sadinsky, Q.C., Chair
Horse Racing Appeal Panel

JAMES WATT

REASONS FOR DECISION

The horse WATTS MACHS ME WIN ("the horse"), trained by James Watt (Watt), raced in the 3rd race at Western Fair Raceway on January 3, 2020 and finished second. A post-race urine sample was taken from the horse and the result came back positive for the Class III drug Cobalt. As a result, by Standardbred Official Ruling No. 1016607 dated June 15, 2020, Watt was found to be in violation of Standardbred Rules 9.09(b), 26.02.01, 26.02.02 and 26.02.03(c). He was fully suspended for 1 year (July 15, 2020 to July 14, 2021, inclusive) and levied a monetary penalty of \$5,000.

In addition, Watt was denied access to Association grounds except for the grandstands, and during the period of suspension any horses owned in whole or in part by him were declared ineligible to race. Any sales or transfers of such horses must be approved by the Standardbred Judges. Any horses trained by Watt may be transferred to another trainer, again, with the approval of the Judges.

The horse was disqualified and the purse money and driver's/trainer's fees were ordered to be redistributed. Conditions were placed on Watt's license for July 15, 2020 to October 14, 2022.

Watt appealed only the penalty and the matter came on for an electronic hearing before me on the Zoom platform on July 8, 2020. Nicolle Pace appeared for the Registrar of the Alcohol and Gaming Commission of Ontario (AGCO) and Brian Tropea appeared along with Watt in order to assist him. Ms. Pace called one witness, Tyler Durand (Durand), the Manager of Standardbred Racing for the AGCO, and Mr. Tropea called 2 witnesses, Dr. Chris Robson and Watt.

Following the hearing of the evidence and the submissions of Ms. Pace, Mr. Tropea and Watt, I reserved my decision until today.

The Evidence and Submissions

Durand testified as to the reasons that supported the penalty that was given. The following were the factors that were taken into account and were emphasized in the final submissions made by Ms. Pace:

1. That this was the third positive test result received by Watt in the past 3 years. In December, 2016, Watt had a positive test result for TCO₂ and received a 45 day suspension (January 1, 2017 to February 14, 2017) and a monetary penalty of \$2,500. In February, 2020, Watt had a positive test for the Class III drug, Clenbuterol. He received a 180 day suspension (January 17, 2020 to July 14, 2020) and a monetary penalty of \$5,000. In both of the above cases conditions were placed on Watt's licence following the termination of the suspensions for a period of 2 years. Because the violation with respect to Cobalt took place while Watt was on probation arising from the Clenbuterol positive, an additional 3 months were added to the period of probation bringing it to October 14, 2022.
2. That within 30-36 hours prior to the race in question on January 3, the horse was given Vitamin B-12 that contained a Cobalt compound and a supplement, Iron Power, that also contains Cobalt. Furthermore, this horse raced on January 1 and, following that race, it was given a supplement also containing Cobalt. Watt did not consult with a veterinarian prior to the administration of these substances.
3. Watt was aware of the warnings issued by the Ontario Racing Commission in August, 2009 and the Canadian Pari-Mutuel Agency in February, 2016 and May, 2018, outlining the dangers of administering Cobalt to a horse within 48 hours of racing. In January, 2020, Watt did not adhere to those warnings.

4. That in following the Penalty Guidelines issued by the AGCO in Policy Directive 1 – 2018, the Cobalt positive was treated as a second Class III offence and not a third offence. This was because the TCO₂ positive occurred more than 3 years prior. The suggested penalty for a second Class III offence is a suspension of between 6 months and 1 year and a monetary penalty of \$5,000. The penalty administered in this case was at the high end of the range, taking into account the more serious TCO₂ positive albeit occurring more than 3 years prior.

Dr. Robson gave evidence on behalf of Watt and testified as to his good character. Watt was a client of his for approximately 40 years. Watt was an exemplary trainer who did not “push the envelope” when it came to giving medications to his horses. His horses were always fit to race and well cared for. Dr. Robson did not believe that the amount of Cobalt given to this horse would produce a positive test result, but he did not know the details of what had been given to the horse prior to its race on January 3. Prior to the 3 positive test results received by Watt in the past 3 years, he had no positive test results for over 40 years.

Watt gave evidence on his own behalf. He did not dispute the evidence given by Durand. However, he testified that with respect to Cobalt and its compounds, he had followed the same regime as he had done in the past with no adverse results. While he was not totally aware of the contents of each supplement, he relied on the fact that, as he had followed this regime without problems for many years, he did not feel that it was necessary to consult his veterinarian.

Watt explained the circumstances that he felt lead to the two prior positive test results in order to establish that there were extenuating circumstances that indicated that he did not seek to actively administer prohibited substances and affect the outcome of any race. Nonetheless, he recognized the ‘trainer responsibility’ rule and felt bound by it.

In her submissions, Ms. Pace emphasized the factors outlined by Durand as reasons why the penalty that was administered was the correct one in the circumstances. She argued that there were no mitigating circumstances that justified a reduction of the penalty. She also argued that deterrence of Watt and others in the industry from engaging in careless or even reckless conduct was an important consideration and went to the overall integrity of the industry.

Mr. Tropea, in his submissions, emphasized that Watt accepted responsibility for the 3 positive test results under the ‘trainer responsibility’ rule although Watt did not actively seek to affect the outcome of any of the races. He relied on the long period of time (40 years) when Watt had no positive test results as an indication of his adherence to the Rules of Racing and his good character. While he accepted the importance of deterrence, the integrity of racing, and the maintenance of a level playing field between the competitors in a race, Mr. Tropea also emphasized Watt’s co-operation during the investigation of this matter, his clean longstanding record and his overall honesty.

Conclusion

Watt had an unblemished record for approximately 40 years and then something went wrong. He had 3 positive test results within a 3 year period.

It is not possible to pinpoint the reasons for this change: it may have been due to some lack of supervision of employees; it may have been due to associating with certain owners; it may have been due to paying insufficient attention to the warnings that were issued regarding the administration of Cobalt to horses; it may have been due to a degree of carelessness or recklessness in not paying enough attention to the ingredients of the supplements that were being used. However, no matter the reason or combination of reasons, Watt as trainer of record is responsible for the care and protection of his horses; a responsibility that he readily accepts.

The periods of suspension that Watt received for the 3 infractions were progressively longer as they should be. This is meant to deter Watt and indeed all trainers from the kind of carelessness that could result in positive tests for their horses. The integrity of horse racing and the confidence of the wagering public depend on it.

In the result, I see no sound reason to depart from the penalty imposed by the Deputy Chief Operating Officer and this appeal is therefore dismissed.