

IN MATTER OF AN APPEAL UNDER ENABLING LEGISLATION OF THE
LEGISLATURES OF THE PROVINCES OF PRINCE EDWARD ISLAND, NOVA
SCOTIA, NEWFOUNDLAND AND LABRADOR, AND NEW BRUNSWICK
ESTABLISHING AN ATLANTIC PROVINCES HARNESS RACING
COMMISSION AND UNDER THE RULES AND REGULATIONS OF THE
ATLANTIC PROVINCES HARNESS RACING COMMISSION.

Appeal Heard at Kensington, PE, May 2nd 2019, 10:00A.M.

BETWEEN: Jason Hughes
(276B79)
APHRC Licensee

AND: APPELLANT

Roger Desroches, Senior Judge
December 31st, 2018, Race #5
RESPONDENT(S)

PRESENT:

A panel consisting of Chair Frank Balcom (NS), Commissioners, Blair Hansen (PEI), Cheryl Geldart Greer (NB) convened to hear the appeal. Debbie Walsh and Brett Revington appeared at the hearing for the Administration. Counsel Matthew Bradley appeared on behalf of the respondent, Senior Judge Roger Desroches. Appellant Jason Hughes appeared in person and was represented by Mr. Chris Montigny. Appellant, witness Dr. Thomas Tobin (who testified by telephone), was affirmed by Commissioner Blair Hansen.

The Appeal Hearing was conducted under the provisions of Section 7.3 of the Atlantic Provinces Harness Racing Rules and Regulations and the procedure for the conduct of the Appeal Hearing was guided by that Section.

The Appeal Hearing was an appeal of a Judge's decision dated January 19, 2019, rendered by Senior Judge Roger DesRoches, which issued a fine and suspension to Jason Hughes, trainer of record for the race horse Sir Native, and a suspension to the horse Sir Native, which had raced at Charlottetown Driving Park, Prince Edward Island, on December 31, 2018, because of a positive test in the horse Sir Native for the drug o-desmethyltramadol, a metabolite of Tramadol, in contravention of Rules 122, 368, and 369.

The Chair introduced all those present and then asked both parties if they accepted the jurisdiction of the APHR Commission Appeal Panel of three (3) Commissioners; to

conduct the Appeal and to render a written Decision in due time. All parties accepted the jurisdiction of the Atlantic Provinces Harness Racing Commission Appeal Panel of three (3) Commissioners.

PRELIMINARY MATTERS:

The Chair asked if there were any Preliminary Matters to be dealt with. Both parties agreed to the statement of facts. The Appellant was not disputing the presence of the drug and not disputing it was in the horse's system at the time of the race. They are simply attempting to establish "mitigating circumstances" that would allow for a reduction in the penalty. The Appellant filed an expert report prepared by Dr. Tobin.

POSITION OF THE RESPONDENT JUDGES PANEL:

The facts are as set out in the agreed statement of facts, which make out the offence.

END OF RESPONDENT'S SUBMISSION

POSITION OF THE APPELLANT JASON HUGHES:

The first witness who Mr. Montigny called was Jason Hughes who described his involvement in the industry and where his full-time job was. Mr. Hughes replied, "I've been involved since 1993 and work for the Town of Stratford". "I also train horses."

Mr. Montigny asked Mr. Hughes where he keeps his horses and who owns the stalls. "Red Shores owns the stalls but I rent stalls off them"

Hughes was then asked who had access to the grounds. "Anyone, no restrictions or check points, Red Shores encourages exposing people to the industry"

Mr. Montigny then introduced his first piece of evidence which was an aerial shot of the grounds of Red Shores. Mr. Hughes located the stalls, the paddock, relief stalls and ship-in barn on the photograph. For each location Mr. Hughes stated, "there were no barriers to entry except the paddock."

The second piece of evidence introduced was an email exchange between a fire Marshall and Robi Hughes, Sir Native's owner. The email stated that it is against fire code to have stalls locked up that cannot be easily unlocked in case of an emergency. Chair Balcom for the record stated, "that the APHRC has never indicated that trainers should have their stables locked to ensure that horses are not tampered with."

Mr. Montigny then introduced documentation labelled 003-A, barn rules that Mr. Hughes has implemented since this violation. This was done in order to protect himself from environmental contamination concerns.

Mr. Hughes was then asked by counsel if he had heard of the drug Tramadol before. Mr. Hughes replied, "Never heard of before".. He testified that he never administered Tramadol and that after receiving notice of the positive test, he made inquiries and learned that Tramadol was a painkiller. At this point Mr. Montigny introduced a letter from Dr. James Boswell (004-A) stating that Mr. Hughes is a client of his and that he has never administered or dispensed the medication to the horse Sir Native or any other horses trained by Mr. Hughes.

Then Mr. Montigny proceeded to ask if Mr. Hughes noticed anything different on how Sir Native raced on the December 31st, 2018 race card. Mr. Hughes replied he did not notice anything different and that she raced as she normally does.

Mr. Montigny then cited Rule 122 which is the Trainer Responsibility rule. The trainer shall be responsible at all times for the condition of all horses trained by him/her. The trainer shall safeguard, from tampering, each horse trained by him/her and must exercise all reasonable precautions, in guarding or causing any horse trained by him/her to be guarded, from the time of entry of that horse until the conclusion of the race.

Mr. Hughes acknowledged that he accepts that responsibility but doesn't know how Tramadol got into the horse's system. Mr. Hughes then felt that the low concentration found does not warrant a stiff penalty that the judge ruled on from the prescribed penalty chart.

Mr. Bradley then proceeded to cross examine Mr. Hughes, resulting in the following facts and admissions:

1. Mr. Hughes' horses are all located in the same barn.
2. Mr. Hughes cleans out the horses' stall daily.
3. Mr. Hughes did not test his other horses in the barn for the presence of Tramadol.
4. To the best of his knowledge, no one associated with Mr. Hughes' barn was using Tramadol.
5. The original penalty was varied so that Mr. Hughes could remain onsite of a licensed facility from January 24th to April 5th and train down his seven 2 year olds.
6. As of the appeal hearing, Mr. Hughes had only missed one race day, which was January 26th, 2019.

At this time the witness, Jason Hughes was dismissed.

Mr. Montigny then called his second witness, Dr. Tobin.

Dr. Tobin is a licensed veterinarian, a board-certified toxicologist, and a doctoral level pharmacologist.

Dr. Tobin stated that the drug, Tramadol, is an opiate but that it is far less potent than morphine. In his opinion it would not have a performance enhancing effect.

In his opinion, the most logical explanation for the lab finding would be environmental exposure. Contamination could possibly happen through human urine. Inadvertent exposure was Dr. Tobin's opinion concerning this matter which he repeated throughout his testimony.

Mr. Bradley then proceeded to cross examine Dr. Tobin, resulting in the following facts and admissions:

1. Mr. Bradley asked Dr. Tobin if he commonly testified for horsemen in cases where low levels were found. Dr. Tobin admitted he did.
2. Dr. Tobin acknowledged the 6.6 nanograms per millimeter was found but can't say for certain how the drug got into the horse's system. Again, he feels it was likely environmental exposure.
3. Mr. Bradley then asked, could the drug, Tramadol, have been administered in a much higher dosage days prior. Dr. Tobin admitted that could have been a possibility but unlikely. There is no evidence that the horse, Sir Native, was exposed to environmental contamination but Dr. Tobin maintained that was the most likely cause of the positive test in his opinion.
4. Mr. Bradley then referred to Dr. Tobin's report and again confirmed that a large dose days prior can't be ruled out based on the report. Dr. Tobin agreed but reiterated that it is very unlikely in his opinion and that the results of the test are consistent with environmental exposure.
5. Mr. Bradley then asked if any reading at 6.6 nanograms per millimeter could only be caused by environmental contamination? Dr. Tobin stated, "No I did not say that. I said an overwhelming possibility."
6. Mr. Bradley proceeded to ask, "If a large dose was given, trace elements could be found up to 5 days later?" Tobin answered, "that is correct."
7. Counsel then asked, "Would a large dose have any effect on the horse in his opinion? Dr. Tobin replied, "Minimal"

At this time the witness, Dr. Tobin, was dismissed.

SUMMARY AND CLOSING SUBMISSIONS OF THE APPELLANT:

1. The amount found didn't change the outcome of the race.
2. The penalty recommended by the Association of Racing Commissioners International for a positive test for the drug Tramadol was recently reduced significantly to a minimum fine of \$500 and suspension of 15 days.
3. The Senior Judge who issued the penalty did not have the benefit of knowing the mitigating circumstances.
4. Given the mitigating factors, the recently reduced penalty recommended by the Association of Racing Commissioners International is appropriate.
5. The Appellant requests that the fine be reduced to \$500 and the suspension reduced to time served.

SUMMARY AND CLOSING SUBMISSIONS OF THE RESPONDENT:

1. If the panel finds mitigating factors, it can deviate from the penalty chart on page 256 of the current APHRC rulebook.
2. The science presented through Dr. Tobin's report and testimony support the possibility of a large exposure in the days prior to the race resulting in a low presence being found days later.

END OF SUBMISSIONS BY THE APPELLANT AND RESPONDENT

UNANIMOUS DECISION 3-0 OF THE ATLANTIC PROVINCES HARNESS
RACING APPEAL PANEL OF THREE (3) COMMISSIONERS.

After a thorough Appeal Hearing, a review of evidence and post hearing deliberations, your APHR Commission by a unanimous decision of 3-0 finds as follows:

The Appeal of JASON HUGHES is ALLOWED:

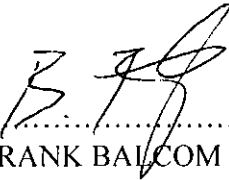
Mr. Hughes' suspension is reduced to time served and his fine reduced to \$500.

Sir Native's suspension remains unchanged.

Reasons for Decision:

1. Sir Native, a horse trained by Mr. Hughes on December 31st, 2018, tested positive for O-Desmethyltramadol a metabolite of Tramadol.
2. Mr. Hughes did not prove, on a balance of probabilities, that the positive test was a result of tampering or contamination and that he took all reasonable precautions and made every diligent effort to protect Sir Native against tampering or unauthorized administration of drugs or foreign substances, as required by Rules 122 and 368.
3. The expert evidence established that Tramadol is a relatively common medication for human use which can inadvertently be transferred to horses resulting in trace amounts being present in the horse's urine.
4. The expert evidence further established that the sample is consistent with inadvertent environmental exposure and is too low to have had any pharmacological or performance effect at the time of the race.
5. The expert evidence regarding this particular drug is supported by the fact that the penalty recommended by the Association of Racing Commissioners International has recently been downgraded significantly, prior to Mr. Hughes' violation.
6. Mr. Hughes has more than 25 years of involvement in the industry with a positive history. After the positive finding, Mr. Hughes put more stringent measures in place to protect against inadvertent exposure to foreign substances in the form of barn rules that he posted in his stable ring of his horses.

For


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FRANK BALCOM

Chair

APH Racing Commission Appeal Panel of THREE (3)

DATED AT KENSINGTON, PRINCE EDWARD ISLAND THIS 16th DAY OF MAY,
A.D., 2019.

PH/Kensington. PEI, 16/05/19.