

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
GENERAL DIVISION

JUNIOR PANTON,		CASE NO. 10CVF11-16613
Appellant,		JUDGE SHEERAN
vs.		
OHIO STATE RACING COMM.,		
Appellee.		

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**DECISION AND JUDGMENT ENTRY AFFIRMING ORDER**  
**OF OHIO STATE RACING COMMISSION**  
**AND**  
**NOTICE OF FINAL APPEALABLE ORDER**

**SHEERAN, J.**

This case is a Revised Code 119.12 administrative appeal, by Junior Panton (Appellant), from an Order in which the Ohio State Racing Commission suspended Appellant's license to train thoroughbred horses in Ohio, assessed a fine against Appellant, and ordered Appellant to return his winnings from a race. The record that the Commission has certified to the Court reflects the following facts, which are undisputed.

**Facts**

On January 6, 2010, Appellant was licensed as a thoroughbred trainer by the Ohio State Racing Commission. *Transcript (Tr.) p. 12; State's Exhibit (Ex.) 1.*

On January 23, 2010, Appellant, as the owner and trainer, raced a gelding named "Diamond Roll" in the sixth race at Beulah Park, in Grove City, Ohio. *State's Ex. 3.* Diamond Roll won the race. *Tr. pp. 13, 53-54; State's Exs. 3-4.*

On January 23, 2010, blood and urine samples were collected from Diamond Roll, and the samples were transmitted, in an uninterrupted chain of custody, to the Analytical Toxicology Laboratory at the Ohio Department of Agriculture, for testing. *Tr. pp. 13-14, 29-37, 39-40, 43-44, 47-50, 55; State's Ex. 4.* All standard operating procedures were followed in the testing. *Tr. pp. 92, 108-109.*

A gelding is a castrated male horse. *Tr. pp. 58-59, 120.* If a horse is a gelding, it does not have testicles and therefore does not produce testosterone that can be secreted into the urine. *Tr. pp. 59, 120, 122; State's Exs. 4-5.*

On February 25, 2010, the laboratory reported to the Commission that the urine sample from Diamond Roll, a gelding, contained testosterone in a concentration greater than 1,000 nanograms per milliliter of urine. *Tr. pp. 14, 75-76, 103, 112, 116; State's Exs. 5, 12.* Twenty (20) nanograms of testosterone per milliliter of urine is the threshold level of testosterone that the Commission has established as acceptable in a gelding. *Tr. p. 112; State's Exs. 5-6.*

As a result of the laboratory findings, the stewards at Beulah Park, on March 2, 2010, determined that Appellant had violated the Ohio Rules of Racing, and they suspended Appellant's license for ninety (90) days, assessed a \$250 fine against Appellant, and ordered Appellant to return the winnings from the race. *Tr. p. 14; State's Exs. 2, 6.*

Appellant appealed the ruling of the stewards to the Commission, which scheduled a hearing on the appeal for August 18, 2010, before a Hearing Officer appointed by the Commission. *State's Exs. 7, 8.*

Prior to the hearing, Appellant requested that Diamond Roll be tested to determine if the horse was a ridgling, which is a male horse with an undescended testicle. *Tr. pp. 15, 59-60; State's Ex. 7.* The testing was performed on April 19 and 20, 2010. *Tr. pp. 15-16, 20-21; State's*

*Exs. 9-10.* The testing determined that the horse was a gelding, not a ridgling, and therefore not capable of producing testosterone. *Tr. pp. 21, 115-116, 119-120; State's Exs. 9-10.*

The testosterone in Diamond Roll's urine sample therefore came from a source other than Diamond Roll. *Tr. p. 122.* Appellant testified that neither he nor his veterinarian ever administered testosterone to the horse. *Tr. pp. 134-137; Appellant's Exs. A-C.*

On August 18, 2010, the Hearing Officer conducted the hearing on Appellant's appeal. The State presented the testimony of five witnesses: John Izzo, the Deputy Director of the Ohio State Racing Commission; Juan Guzman, the track employee who collected the urine sample from Diamond Roll; Dr. Jennifer McQuinn, the Commission's licensed veterinarian who collected the blood sample from Diamond Roll and supervised the collection of the urine sample; Lorie Bishop, the Chemical Laboratory Supervisor for the Analytical Toxicology Laboratory for the Ohio Department of Agriculture, where the urine sample was analyzed; and Soobeng Tan, the Director of the Analytical Toxicology Laboratory for the Ohio Department of Agriculture. Appellant also testified, and numerous exhibits were admitted into evidence. The evidence is summarized above in the recitation of the undisputed facts.

On September 30, 2010, the Hearing Officer issued a Report and Recommendation containing an exhaustive review of the evidence and the following findings of fact, none of which Appellant has disputed on appeal:

1. Appellant is and was on January 23, 2010 an Ohio licensed owner/trainer of thoroughbred horses subject to the statutes and rules/regulations of the State of Ohio.
2. On January 23, 2010, Appellant, as the owner/trainer, raced Diamond Roll in the sixth race at Beulah Park. Diamond Roll won the race and was therefore selected for the testing of its blood and urine samples.
3. Diamond Roll was taken to the testing barn by its groom, who was to be the representative/witness for Appellant.

4. Juan Guzman, an assistant to Dr. McQuinn, followed all standard operating procedures in obtaining the urine sample from Diamond Roll on January 23, 2010.
5. The groom for Appellant did not witness the taking of the urine sample because the groom voluntarily left to use the restroom. The groom was given the opportunity to witness the sample.
6. No credible evidence exists in the entire case casting any doubt as to the chain of custody of the urine or blood samples taken by Dr. McQuinn and Juan Guzman from Appellant's horse, Diamond Roll, on January 23, 2010.
7. Dr. McQuinn obtained blood samples from Diamond Roll on January 23, 2010 and personally verified the tattoo number of the horse, Diamond Roll.
8. Dr. McQuinn followed all standard operating procedures in obtaining the samples and establishing the proper chain of custody for the samples taken from Diamond Roll on January 23, 2010. The samples were properly obtained, refrigerated, properly sealed, identified, and shipped to the laboratory.
9. The Analytical Toxicology Laboratory for the Ohio Department of Agriculture received the samples taken from Diamond Roll and found all chain of custody procedures in order. The samples were properly tagged and sealed and were not tampered with by anyone.
10. The laboratory tested the urine and blood samples taken from Diamond Roll on January 23, 2010 using scientifically reliable and valid methods. Both the urine and blood samples tested positive in a screening test for testosterone.
11. Diamond Roll is registered as a gelding and as a gelding should not be producing any testosterone, and as a result, its urine and blood samples should have tested nil for testosterone, or tested below 20 ng. per ml. of urine.
12. The laboratory performed scientifically reliable valid quantitative confirmatory tests upon Diamond Roll's urine sample and detected 1,000 ng. per ml. of testosterone in the urine.
13. Diamond Roll is a gelding. The Ohio State Racing Commission has established a threshold level of testosterone permissible in geldings at 20 ng. per ml. of urine.

14. Diamond Roll tested 1,000 ng. per ml. of urine, more than 50 times the allowable level for testosterone.
15. At Appellant's request, the Commission, through the laboratory, quarantined Diamond Roll and performed additional scientifically valid, reliable tests to confirm that Diamond Roll was in fact a gelding and a non-producer of testosterone.
16. The results of the scientifically valid, reliable tests established beyond doubt that Diamond Roll was a gelding and a non-producer of testosterone.
17. The horse, Diamond Roll, was given testosterone on or about January 23, 2010 by unknown persons through external means.
18. On January 23, 2010, Diamond Roll raced at Beulah Park in the sixth race as a gelding with 1,000 ng. per ml. of testosterone in its urine.
19. The Commission established the above facts by a preponderance of substantial, reliable, and probative evidence.

The Hearing Officer concluded that Appellant violated the Ohio Rules of Racing and recommended that the Commission affirm the ruling of the stewards. Appellant was served with the Hearing Officer's Report and Recommendation on September 30, 2010.

On October 29, 2010, Appellant appeared before the Commission and again testified that neither he nor his veterinarian administered testosterone to Diamond Roll. Deputy Director Izzo presented a summary of the Hearing Officer's Report and Recommendation. The Commission voted unanimously to adopt the Report and Recommendation and to affirm the ruling of the stewards. On November 2, 2010, Appellant was served with the Commission's Order.

This appeal followed.

#### **Standards of Appellate Review**

Revised Code 119.12, which governs this appeal, provides:

The court may affirm the order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and

substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

“Reliable” evidence is dependable; that is, it can be confidently trusted. *Our Place, Inc. v. Ohio Liquor Control Comm.*, 63 Ohio St. 3d 570, 571 (1992). In order to be reliable, there must be a reasonable probability that the evidence is true. *Id.* “Probative” evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. *Id.* “Substantial” evidence is evidence with some weight; it must have importance and value. *Id.*

### Analysis

The issue before the Court is whether the Order of the Ohio State Racing Commission, suspending Appellant’s license to train thoroughbred horses in Ohio, assessing a fine against Appellant, and ordering Appellant to return his winnings from the race, is supported by reliable, probative, and substantial evidence and is in accordance with law. For the following reasons, the Court finds that the Order is so supported and is in accordance with law.

Ohio Adm. Code 3769-8-02 provides:

3769-8-02. Trainer responsible for condition of horses.

(A) The trainer shall be the absolute insurer of, and responsible for, the condition of the horse entered in a race, regardless of the acts of third parties. Should the chemical or other analysis of urine or blood specimens prove positive, showing the presence of any foreign substance not permitted by rule 3769-8-01 of the Administrative Code, the trainer of the horse \*\*\* may, in the discretion of the commission, be subjected to penalties provided in paragraph (B) of this rule. \*\*\*

(B) The stewards may fine any licensee who violates this rule an amount not in excess of one thousand dollars and/or suspend any commission license held by such licensee for a period not to exceed one year and/or refer the matter to the commission for its consideration. The commission may on its own motion, or in addition to any penalty assessed by stewards, revoke or suspend any commission license held by any person who violates this rule and/or rule off and/or refuse to grant a license to any person who violates this rule.

This rule provides that a trainer is the absolute insurer of the condition of his horse and that a trainer is liable without regard to fault if a horse races with a foreign banned substance. The “absolute insurer rule” imposes strict liability on the trainer for the presence of drugs in a horse.

*Thomas v. Ohio State Racing Comm.*, 10th Dist. No. 08AP-804, 2009-Ohio-1559, ¶11, citing *Belcher v. Ohio State Racing Comm.*, 10th Dist. No. 02AP-998, 2003-Ohio-2187, ¶16.

Ohio Adm. Code 3769-8-01(B)(10) provides:

3769-8-01. Medication and testing.

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(B) It shall be the intent of this rule to protect the integrity of horse racing, guard the health of the horse, and safeguard the interest of the public and racing participants through the prohibition or control of drugs, medications and substances foreign to the natural horse. In this context:

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(10) A finding by the chemist that a foreign substance other than furosemide, the a test level of furosemide, or any non-steroidal anti-inflammatory drug authorized for use by order of the commission, as permitted in paragraph (B)(1)(a) of this rule, is present in the urine or blood sample shall be considered a positive test and a violation of this rule. Also, it shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race and that the trainer and his agents responsible for the care and custody of the horse have been negligent in the handling or care of the horse.

This rule prohibits foreign substances in a horse other than those authorized by the rule.

Testosterone in excess of twenty (20) nanograms per milliliter of urine is a prohibited substance.

Ohio Adm. Code 3769-4-24 provides:

3769-4-24. Officials' powers.

(A) For \*\*\* violation of the rules of racing, \*\*\* the stewards of racing meetings shall have the power to fine any licensee an amount not in excess of the amount permitted by section 3769.091 of the Revised Code and/or suspend a license for a period of time permitted by section 3769.091 of the Revised Code and refer the licensee to the commission for further action. \*\*\*

(B) On appeal or on its own motion, the commission shall have the power to reverse, vacate or modify in any manner any order of the stewards.

This rule gives the stewards the authority to impose a fine and/or a suspension, and to order the forfeiture of the purse as consistent with R.C. 3769.091.

Ohio Adm. Code 3769-2-26(A)(10) provides:

3769-2-26. License refused, revoked, suspended.

(A) The commission may refuse to grant, may revoke or may suspend any license, or may otherwise penalize, under the provisions of rule 3769-2-99 of the Administrative Code, a person to whom any of the following apply:

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(10) The applicant or licensee has engaged in conduct which is against the best interest of horse racing[.]

This rule prohibits conduct that is against the best interest of horse racing, and confers the authority on the Commission to revoke or suspend the license of any person who engages in such conduct.

It is undisputed that, on January 23, 2010, Appellant's horse, Diamond Roll, won the sixth race at Beulah Park with an illegal quantity of testosterone in its body. Appellant thereby violated Ohio Adm. Code 3769-8-01(B)(10), the prohibition against non-authorized foreign substances in a horse's body. Pursuant to Ohio Adm. Code 3769-8-02, Appellant, as the trainer of Diamond Roll, was the absolute insurer of the horse's condition and was therefore strictly liable for the presence of the banned substance in the horse's body. Pursuant to Ohio Adm. Code 3769-4-24(A), the stewards at Beulah Park were authorized to fine Appellant and to suspend his license. Pursuant to Ohio Adm. Code 3769-2-26(A)(10), the Commission was authorized to suspend Appellant's license and penalize him for "conduct which is against the best interest of horse racing[.]"



Appellant has argued, in support of this appeal, that neither he nor his veterinarian administered testosterone to Diamond Roll. However, pursuant to Ohio Adm. Code 3769-8-02(A), the “absolute insurer rule,” it is irrelevant that Appellant and his veterinarian did not administer the drug.

Appellant has also argued that a mistake must have been made in the testing at the laboratory. However, there is simply no evidence to support that argument.

Finally, Appellant has argued that the testimony of Mr. Izzo should be disregarded because of certain events in Mr. Izzo’s life that Appellant alludes to in his brief, but which are not reflected in the record. The Court will not consider such an argument, inasmuch as it relies upon matters that are outside the record.

The very nature of horse racing itself presents numerous opportunities for abuse. *Haehn v. Ohio State Racing Comm.*, 83 Ohio App. 3d 208, 213 (1992). Specific and strict rules are necessary in order to preserve the integrity of the sport. *Id.* Persons who wish to receive licenses to participate in the sport must conform to certain standards, rules, and regulations, which are designed to maintain the integrity of horseracing. *Id.* In the instant case, Appellant, even if otherwise through no direct fault of his own, failed to conform to the strict liability standard imposed by those rules, resulting in the sanctions imposed by the Commission.

### **Conclusion**

Upon consideration of the entire record, the Court finds that the November 2, 2010 Order of the Ohio State Racing Commission is supported by reliable, probative, and substantial evidence and is in accordance with law. The Order is therefore **AFFIRMED**.

This is a final, appealable Order. Costs to Appellant. Pursuant to Civ. R. 58, the Franklin County Clerk of Courts shall serve upon all parties notice of this judgment and its date of entry.

It is so **ORDERED**.

Electronically signed by:

JUDGE PATRICK E. SHEERAN

Copies to:

JUNIOR PANTON, Appellant *pro se*, 1042 E. 220th St., Bronx, NY 10469-1203

VIVIAN P. TATE, AAG (0059050), Counsel for Appellee, 150 E. Gay St., Fl. 23, Columbus, OH 43215-3130

Franklin County Court of Common Pleas

**Date:** 06-08-2012  
**Case Title:** JUNIOR N PANTON -VS- OHIO STATE RACING COMMISSION  
**Case Number:** 10CV016613  
**Type:** DECISION/ENTRY

It Is So Ordered.

The image shows a handwritten signature in black ink that reads "Patrick E. Sheeran". The signature is written over a circular blue seal. The seal contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY OHIO" around the middle, and "WHERE ALL THINGS ARE" at the bottom. The seal is partially obscured by the signature.

/s/ Judge Patrick E. Sheeran

Court Disposition

Case Number: 10CV016613

Case Style: JUNIOR N PANTON -VS- OHIO STATE RACING COMMISSION

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes