

MAINE STATE HARNESS RACING COMMISSION

In re: Gary Mosher)
)
2023-MSHRC-01) **DECISION AND ORDER**

On July 18, 2023, the Maine State Harness Racing Commission (“the Commission”) held an adjudicatory hearing on the appeal filed by Gary Mosher (“Mr. Mosher”) who is a licensed Owner/Trainer/Driver and Judge, license number 11893. Mr. Mosher’s appeal relates to Presiding Judge Charles Malia’s April 21, 2023, decision imposing a ten (10) day suspension of Mr. Mosher’s licenses for an alleged refusal to submit to urine testing in violation of Chapter 1, sections 22(3) and (4) of the Commission’s rules. Commission staff was represented by AAG John Belisle. Mr. Mosher was present and represented by Attorney Tom Farris.

The following exhibits were admitted into the record by agreement of the parties:

- Exhibit #1 – Notice of Hearing, dated May 30, 2023
- Exhibit #1a – Amended Notice of Hearing, dated June 20, 2023
- Exhibit #2 – Mr. Mosher’s approved 2023 Owner/Driver/Trainer Renewal Application
- Exhibit #3 – Mr. Mosher’s approved 2023 Racing Official (Judge) Renewal Application
- Exhibit #4 – Cumberland First Tracks April 14, 2023, Race Program
- Exhibit #5 – Harness Racing Commission Medication Form dated April 14, 2023
- Exhibit #6 – Harness Racing Incident Report dated April 14, 2023
- Exhibit #7 – Notice of Suspension dated April 21, 2023
- Exhibit #8 – Mr. Mosher Appeal Form dated April 21, 2023
- Exhibit #9 – Commission Rules Chapter 1 – Administration
- Exhibit #10 – Commission Rules Chapter 19 – Protests, Appeals, and Race Date Assignment Hearings
- Exhibit #11 – 8 M.R.S. § 279-A
- Exhibit #12 – 8 M.R.S. § 279-B

The following witnesses testified under oath:

Gary Mosher
Brenda Brown, Paddock Judge
Ralph Canney, State Steward

FINDINGS OF FACT

Based on the evidence in the record, the Commission makes the following Findings of

Fact:

1. Mr. Mosher is licensed as an Owner/Driver/Trainer and Judge, license number 11893.
2. On April 14, 2023, Mr. Mosher was present at First Tracks Cumberland in his capacity as a licensed driver.
3. Immediately before the races that day, Mr. Mosher was selected at random by Ralph Canney, the State Steward, to provide a human urine sample for drug testing pursuant to Commission Rule Chapter 1, § 22(3).
4. Before the races began, Paddock Judge Brenda Brown, pursuant to Mr. Canney's direction, instructed Mr. Mosher to provide Mr. Canney with a human urine sample for drug testing. Mr. Mosher informed Ms. Brown that he was physically unable to produce a urine sample at the time but indicated he would provide a sample when he was able.
5. Mr. Canney saw Mr. Mosher in the paddock office later that day and reminded him that he was obligated to provide a urine sample for the drug test by the end of the day.
6. Mr. Mosher left the track after the 7th race without having provided a urine sample.
7. While driving home Mr. Mosher realized he hadn't provided a urine sample and made several unsuccessful attempts to contact Mr. Canney via Mr. Canney's state issued cell phone. His last attempt was at 6:40 pm and Mr. Mosher did not return to the track at that time thinking it was too late in the day and that no one would be there.
8. Mr. Mosher returned to the track the next day and offered to provide a urine sample at the time. He was informed by Mr. Canney, however, that it was too late.
9. Mr. Mosher has been selected for urine testing in the past and has not refused to provide the required sample.

CONCLUSIONS OF LAW

Based on the findings of fact above, the Commission concludes as a matter of law that, although he failed to provide a urine sample at First Tracks Cumberland on April 14, 2023, Mr. Mosher did not refuse to submit to testing under Chapter 1, § 22 (4)(B). The Commission's conclusions were unanimous.

Accordingly, the appeal is granted, and the license suspensions are vacated.

This Decision and Order was stated in the record pursuant to 5 M.R.S. § 9061.

SO ORDERED,

Dated:

8/22/2003



Harry B. Center II, Chair
Maine State Harness Racing Commission

NOTICE OF APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. §§ 11001-11003, any party that appeals this Decision and Order must file a Petition for Review in the Maine Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon each of:

- 1. the MAINE STATE HARNESS RACING COMMISSION,**
- 2. all parties to the agency proceedings and**
- 3. the Attorney General.**