

MAINE STATE HARNESS RACING COMMISSION

In re:)
Gary Hall)
Case No. 2023-08)

DECISION AND ORDER

INTRODUCTION

On October 18, 2023, the Maine State Harness Racing Commission (“the Commission”) held an adjudicatory hearing on the appeal filed by Gary Hall (“Mr. Hall”) who is a licensed owner/trainer/driver, license number 12150. Mr. Hall’s appeal¹ relates to Presiding Judge Wayne Dunphy’s decision finding that Mr. Hall violated Commission Rule Chapter 7, by leaving the course and gaining unfair advantage at the second race at the Farmington Fair on September 17, 2023 (“the race”). For the violation, Presiding Judge Wayne Dunphy imposed the penalty of placing Mr. Hall’s horse, Justcallmebuck, fifth (5th) and last in the race.

During the hearing, Mr. Hall represented himself. Executive Director Shane Bacon (“Commission Staff”) presented the Presiding Judge’s evidence pursuant to 8 M.R.S. § 263-C(4)(A)(6). Assistant Attorney General Elizabeth Stivers advised the Commission during the hearing.² The following Commissioners were present and participated in the hearing: Chair Harry B. Center, II, Diane Dunn, Patricia Varnum, Barry Norris, and Don Marean. Chair Center was the Presiding Officer during the hearing.

The hearing was bifurcated into a violation phase and a penalty phase. Commission Staff Exhibits A and 1 – 8, which included two different views of the race on video, were admitted into evidence without objections. Mr. Hall did not present any documentary evidence. Mr. Hall presented video evidence during the penalty phase of the hearing of another hearing where a horse

¹ Mr. Hall appealed pursuant to Commission Rule Chapter 19, § 3(1).

² AAG Stivers had not previously advised the Commission on this matter and did not act in advocacy capacity during the hearing.

went significantly inside the pylons and was placed third in the race by Presiding Judge Wayne Dunphy. Presiding Judge Dunphy and Shane Bacon testified in the Commission Staff case in chief and Mr. Hall testified on his own behalf throughout the hearing.

FINDINGS OF FACT

Based on the evidence heard by the Commission at the adjudicatory hearing held on October 18, 2023, the Commission adopts the following Findings of Fact:

1. Mr. Hall is licensed as an Owner/Driver/Trainer, license number 12150.
2. On September 17, 2023, at the Farmington Fair, Mr. Hall participated in the second race, a non-betting race, in his capacity as a licensed driver. Mr. Hall drove the horse named Justcallmebuck during this race.
3. On that same date at the Farmington Fair, Presiding Judge Wayne Dunphe and Associate Judges Greg Kirby and Thomas Smith Jr. judged the races. All judges were accredited through the Race Officials Accreditation Program and, through that program, have received training on pylon violations.
4. On the same date and during the same race, Walter Case, Jr. drove the horse named Wes's Challenge.
5. During the race, Mr. Hall's Justcallmebuck was in fourth place after the 3/4 pole and approaching the 7/8 turn of the race, behind Mr. Case's Wes's Challenge and two other horses. The video admitted into evidence shows that Mr. Hall made a move to the inside but, at the turn, there was not sufficient room for Mr. Hall and Mr. Hall went off the course and inside the pylons. Mr. Hall testified that he went inside the first pylon by about a foot.
6. Mr. Hall and Justcallmebuck won the race.

7. After the race, the judges hung an inquiry and further received an objection from Mr. Case for Mr. Hall driving Justcallmebuck inside the course and gaining unfair advantage by leaving the course around the last turn.
8. The United States Trotting Association rules do not apply in this case. Under Maine law, the judge has discretion in identifying a fair penalty for horses that leave the course and secure an advantage by doing so.
9. On September 17, 2023, Presiding Judge Dunphy determined, and the other two judges concurred, that Mr. Hall violated Chapter 7, § 54(1)(O) by leaving the course and gaining an unfair advantage over other horses or helping his horse improve his position in the race.
10. Presiding Judge Dunphy penalized Mr. Hall by placing Justcallmebuck fifth and last in the race as allowed by Commission Rule chapter 7, § 54(1)(O). Commission Staff Exhibits 2, 3, and 4.
11. On June 7, 2023, Mr. Hall timely appealed Judge Dunphy's decision. Commission Staff Exhibit 1.
12. At hearing, Presiding Judge Dunphy testified, and the Commission accepts that it is likely that Mr. Hall could not have gotten around Mr. Case at that point in the race without going inside the pylons.
13. The Commission viewed videos of both views multiple times, in full speed and in slow motion.
14. Mr. Hall testified that he was holding his ground and his lane when Mr. Case closed in on him and that he had the choice of hitting Mr. Case or going inside the pylons.
15. 01-017 C.M.R. Ch. 7, section 54(1) lists the racing violations. Section 54(1)(O) provides that "In the event a horse or part of the horse's sulky leaves the course and, in the opinion

of the Judges, the action gave the horse an unfair advantage over other horses in the race or the action helped the horse improve its position in the race, the horse may be disqualified or placed. Further, the Judges may impose a penalty on the driver for such action even if the horse was not disqualified or placed.”

16. The Commission finds as a matter of fact that that it is more likely than not that Justcallmebuck and Mr. Hall left the course and went inside pylons.
17. The Commission finds as a matter of fact that that it is more likely than not that Justcallmebuck and Mr. Hall received an unfair advantage and that the action improved their position in the race.
18. During the penalty phase of the hearing, a video of a race from the Topsham Fair was viewed when a horse went significantly inside the pylons and won the race. In that race, the horse was found to have violated Section 54(1)(O) and was placed third by the Presiding Judge.
19. The Commission finds that Mr. Hall’s actions created an advantage for his horse that made a difference for some but not all horses in the race.

CONCLUSIONS OF LAW

20. Based on the findings of fact above, the Commission concludes as a matter of law that it is more likely than not that Mr. Hall violated Chapter 7, §54(1)(O) by leaving the course and improving his position by driving inside the pylons.
21. Mr. Hall’ appeal on the issue of the violation is denied.
22. After hearing argument from Mr. Hall and Commission Staff regarding the penalty imposed by the Presiding Judge. Considering the evidence as a whole, including the Topsham Fair video played during the penalty phase of the hearing, the Commissions

finds that Mr. Hall and Justcallmebuck should be placed third instead of fifth in the race, given the positions of all other horses in the race.

23. The Commission's conclusions regarding the violation and penalties were unanimous.
24. This Commission's decisions, reflected by its vote during each phase of the hearing, were stated in the record pursuant to 5 M.R.S. § 9061.
25. This decision is final agency action pursuant to 5 M.R.S. § 11001(1).

SO ORDERED,

Dated: October 25, 2023



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

APPEAL RIGHTS

Pursuant to 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 thirty (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:

- 1. the Maine State Harness Racing Commission,**
- 2. all parties to the agency proceeding, and**
- 3. the Attorney General.**