

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY
MAINE STATE HARNESS RACING COMMISSION

In re:)
)
Benson Merrill) CONSENT AGREEMENT
15 Chelsea Road)
Randolph, ME 04345)
)
Complaint Number 2021)
MSHRC 02)

PARTIES

This document is a Consent Agreement regarding the Trainer License of Benson Merrill ("Trainer Licensee"). It is entered into between the Trainer Licensee, the Maine State Harness Racing Commission ("the Commission") and the Office of the Maine Attorney General ("Attorney General"). It is entered into pursuant to 8 M.R.S. Chapter 11 and CMR 01-017, Chapter 17.

STATEMENT OF FACTS

1. Trainer Licensee is so licensed by the Commission pursuant to CMR 01-017, Chapter 1, Section 10.
2. Trainer Licensees licensed by the Commission are responsible for the condition of the horses they train pursuant to CMR 01-017, Chapter 11, Section 1.3.
3. Trainer Licensee was on record with the Commission as the trainer of the horse "Shady Secret A" on May 15, 2021.
4. Shady Secret A finished First in the First Race at the Cumberland First Tracks LLC on May 15, 2021.
5. A blood sample taken from Shady Secret A prior to the First Race on May 15, 2021 disclosed an elevated level of Total Carbon Dioxide at 40.2 mmol/L of blood serum.

DISCIPLINARY COVENANTS

In order to fully resolve this matter without a formal adjudicatory hearing, it is hereby agreed that:

6. Trainer Licensee admits to the facts as stated above.
7. Trainer Licensee admits that the elevated level of Total Carbon Dioxide at 40.2 mmol/L of blood serum exceeds the regulatory threshold of 39.0 mmol/L of blood serum.
8. Trainer Licensee admits that the elevated level of Total Carbon Dioxide in Shady Secret A while racing during a licensed meet constitutes a violation of CMR 01-017, Chapter 11, Section 2. Elevated Total Carbon Dioxide is considered a Class 3 drug corresponding to a Class B penalty pursuant to CMR 01-017, Chapter 17, Section 5.

9. Trainer Licensee admits that the violation admitted herein constitutes a First violation carrying a Class B penalty within a 365-day period.
10. As discipline for the conduct admitted to in paragraph 8 above, Trainer Licensee agrees to accept the following DISCIPLINARY ACTION:
 - A. A fine in the amount of \$500 which is the recommended minimum penalty for a Trainer Licensee for a first violation of CMR 01-017, Chapter 17, Section 5, Class B Penalty over a 365-day period. Payment shall be made 30 days from the last dated signature on this Consent Agreement and made payable to Treasurer, State of Maine.
 - B. A 15-day suspension to start five days from the effective date of this Consent Agreement.
 - C. The return of the purse winnings for the violation which was, in this case, \$1,900, such return of purse monies to be made no later than 30 days from the last dated signature on this Consent Agreement.

FURTHER CONVENANTS

11. Trainer Licensee agrees that the Commission has regulatory authority over the activities described herein.
12. Entering into this Consent Agreement is fully voluntary. Trainer Licensee understands that instead of entering into this consent agreement, he can exercise his right to an adjudicatory hearing before any violations are found and penalties imposed.
13. Trainer Licensee expressly waives:
 - a. Notice of or opportunity for hearing
 - b. Any and all further procedural steps before the Commission;
 - c. The making of any further findings of fact before the Commission; and
 - d. The right to appeal this Agreement.
14. Violation of any of the terms or conditions of this Consent Agreement by Trainer Licensee shall constitute grounds for discipline, including but not limited to modification, suspension, or revocation of licensure, the denial of licensure or re-licensure, and the imposition of civil penalties.
15. The Commission and the Attorney General may communicate and cooperate regarding any matter related to this Consent Agreement.
16. The Commission and Trainer Licensee agree that no further Commission action will be initiated against Trainer Licensee's license by the Commission based upon the specific violations admitted to herein, except or unless he fails to comply with the terms and conditions of this Consent Agreement. The Commission may however consider the conduct described above as evidence of a pattern of misconduct in the event that other allegations are brought against Trainer


Licensee and this Consent Agreement will be admitted into evidence in any future hearing involving Trainer Licensee. The Commission may also consider the fact that discipline was imposed by this Consent Agreement in determining appropriate discipline in any further complaints against Trainer Licensee.

17. The parties agree that this Consent Agreement may be signed in counterparts, and all counterparts together constitute one original instrument. Signatures below may be applied and/or saved electronically, with such electronic signatures and this entire document being saved electronically and given the same effect as a paper document signed in ink.
18. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408-A.
19. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.
20. This Consent Agreement is not appealable and is effective until modified in writing or terminated by the parties hereto.
21. The effective date of this Consent Agreement shall be the date of the last necessary signature date of the fully executed Consent Agreement from the Commission.
22. Trainer Licensee acknowledges by his signature hereto that it has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executes this Consent Agreement voluntarily, and that he agrees to abide by all terms and conditions set forth herein.

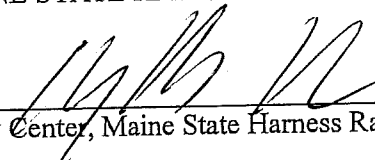
SIGNATURE PAGE FOLLOWS

I, BENSON MERRILL, HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THE EFFECT IT WILL HAVE ON ME. I UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I SIGN IT VOLUNTARILY AND KNOWINGLY AND AGREE THAT I WILL BE BOUND BY THIS AGREEMENT. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND.


BENSON MERRILL

By:  Date: 7-28-22

MAINE STATE HARNESS RACING COMMISSION

By:  Date: 8-25-2022
Harry Center, Maine State Harness Racing Commission, Chair

OFFICE OF THE MAINE ATTORNEY GENERAL:

By:  Date: 8-25-22
Elizabeth W. Stivers, Assistant Attorney General