

BEFORE THE DELAWARE THOROUGHBRED RACING COMMISSION

IN THE MATTER OF :
 :
HUBERT GAFFNEY : 72-2020
 :

DECISION ON APPEAL OF STEWARDS' RULING

NATURE OF THE PROCEEDINGS

This appeal is before the Delaware Thoroughbred Racing Commission (the "DTRC") pursuant to the provisions of DTRC Rule 19. Trainer Hubert Gaffney was found in Stewards' Ruling 72-2020 to have violated DTRC Rules 2.5.1.3, 2.5.1.17, 2.5.1.17.1, 2.5.1.18, 2.5.1.20, 3.3.10, 7.2.1.3, 7.2.1.4, and 7.3.4 for entering and racing horses at Delaware Park that were not under his custody, care and control. The Stewards imposed a \$2,500 fine and suspended Mr. Gaffney's license for 122 days from September 1, 2020 to December 31, 2020. Mr. Gaffney filed a timely appeal of the ruling. Mr. Gaffney participated in a hearing before the DTRC on September 17, 2020 and was represented by legal counsel Alan Pincus of the Pennsylvania bar having been admitted *pro hac vice* by the Delaware Supreme Court for this matter. The DTRC was represented by Deputy Attorney General Andrew G. Kerber and the Stewards were represented by Deputy Attorney General Kemba Lydia-Moore.

FINDINGS OF FACT

- 1) Mr. Gaffney is licensed as a trainer by the DTRC.
- 2) The Commission's investigator found records of 56 transfers of horses from the beginning of 2020 to the time of her investigation between Mr. Gaffney and Wayne Potts, a trainer not permitted by Delaware Park management to race at Delaware Park. All of the 56 transfers did not involve horses at Delaware Park. Mr. Gaffney did bring seven horses to Delaware Park from Mr. Potts and Mary Patershall in 2020.

3) Mr. Gaffney acknowledged that he and Mr. Potts had a relationship since 2003, trained horses for many of the same owners and had transferred many horses between each other in previous years and that because of the COVID-19 emergency had transferred many horses with Mr. Potts.

4) Mr. Gaffney admits that there were technical violations of Commission rules, but states that he did not try to violate the rules of racing and that he is not a paper trainer.

5) Counsel for the Board of Stewards and Mr. Gaffney stipulated to the fact that Mr. Gaffney did testify at the Stewards hearing that Mr. Potts told Mr. Gaffney that Mr. Potts was not allowed to stable at Delaware Park.

CONCLUSIONS OF LAW

1) DTRC Rules 2.5.1.3, 2.5.1.17, 2.5.1.17.1, 2.5.1.18, 2.5.1.20, 3.3.10, 7.2.1.3, 7.2.1.4, and 7.3.4 provide as follows:

2.5 Grounds for Refusal, Suspension, or Revocation of a Permit, etc.:

2.5.1 The Commission in its discretion, may refuse to register or to issue an authorization or permit to an applicant, or may suspend or revoke a registration, permit, or authorization previously issued, or order disciplinary measures, on the following grounds:

2.5.1.3 Falsification, misrepresentation, or omission of required information in the application submitted to the Commission; failure to disclose the complete ownership or beneficial interest in a horse entered to be raced; misrepresentation or attempted misrepresentation in connection with the sale of a horse or other matter pertaining to racing or registration of Thoroughbreds or Arabians;

2.5.1.17 Entering, or aiding or abetting the entering of, a horse ineligible or unqualified for the race entered;

2.5.1.17.1 Drug addiction, public drunkenness, financial irresponsibility or failure to pay debts when due, bad moral character, intemperate habits, bad reputation for honesty, truth and veracity, past instance of lying, cheating, or stealing, or involvement in a subject of public notice as involved in any activity which, would be inconsistent with the best interests of racing by reflection on the honesty and integrity of the sport of racing, or association with persons so characterized;

2.5.1.18 Violation of any rule of the Commission, or aiding or abetting any person in the violation of any such rule;

2.5.1.20 Past or contemplated conduct or utterance which, does or may adversely affect, whether intentionally or unintentionally, and whether in fact or only seemingly, the public's confidence in the reputation Thoroughbred racing heretofore has enjoyed in Delaware for stringent adherence to uncompromising standards of honesty, integrity and propriety;

3.3 General Powers of the Stewards

3.3.1 The Stewards shall exercise immediate supervision, control and regulation of racing at the race meeting for which they are appointed. By way of illustration and without in any way limiting them, the powers of the Stewards shall include:

3.3.10 All other powers enumerated in these Rules, together with such other powers as are necessary to promote and maintain stringent standards for honesty, integrity, and propriety for Thoroughbred Racing in Delaware.

7.2 Requirements for Trainer's Registration:

7.2.1 In addition to satisfying the requirements applicable to Permittees, et al., imposed by Rule 2.0, in order to be eligible for registration as a Trainer, a person:

7.2.1.3 Must have in his charge a horse eligible to race;

7.2.1.4 Must not engage in any activity directly or indirectly involving the racing performance of horses on Licensee's grounds other than those registered as being in his charge.

7.3 Duties and Responsibilities:

7.3.1 A registered Trainer shall bear primary responsibility for the proper care, health, training, condition, safety and protection against administration of prohibited drugs or medication of horses in his charge. A registered trainer:

7.3.4 Shall register with the Racing Secretary all horses in his charge in the manner required by Rule 6.3. No registered Trainer may take or keep in his charge a horse owned wholly or in part, or controlled by, a person who is not registered as an Owner. No registered Trainer shall assume responsibility for horses not under his active care and supervision, except as provided by Rule 7.3.7.

2) Mr. Gaffney's admitted act of entering horses at Delaware Park that were trained by Mr. Potts and Ms. Pattershall violates the Commission rules as stated in Stewards' Ruling 72-2020.

3) The discipline established by the Board of Stewards in Stewards' Ruling 72-2020 is appropriate, provided that the reference to 122 days and paragraph 10 are deleted.

ORDER

Having considered the evidence presented it is the decision of the DTRC (by vote of 4-1 (Decker-no)) that Stewards' Ruling 72-2020 is affirmed with the reference to 122 days and paragraph 10 being deleted. Accordingly, the appeal is denied.

SO ORDERED this 14th day of October, 2020.

BY ORDER OF THE DELAWARE THOROUGHBRED RACING COMMISSION

W. Duncan Patterson

W. Duncan Patterson, Chairman

Henry James Decker

Henry James Decker, Commissioner

Debra M. Killeen

Debra M. Killeen, Commissioner

Richard A. Levine, Esq.

Richard A. Levine, Esq., Commissioner

Edward J. Stegemeier

Edward J. Stegemeier, Secretary/Commissioner