

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
KENTUCKY HORSE RACING COMMISSION  
ADMINISTRATIVE ACTION NO. KHRC-13-SB-001



JOSEPH E. CARROLL

COMPLAINANT

v.

KENTUCKY HORSE RACING COMMISSION

RESPONDENT

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**FINAL ORDER**

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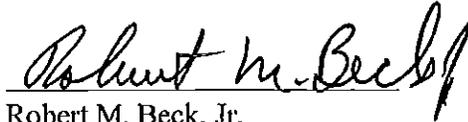
The Hearing Officer in the above-styled case issued his Recommended Findings of Fact, Conclusions of Law and Recommended Order ("Recommendation") on April 17, 2013, wherein he recommended the issuance of a final order affirming Judges' Rulings J2013-001 and J2013-002. Complainant filed Exceptions to the Recommendation on May 2, 2013. Respondent did not file Exceptions.

The Kentucky Horse Racing Commission considered the record, the Recommendation and Exceptions, as required by KRS 13B.120, at its July 17, 2013 meeting and hereby issues its Final Order fully adopting all findings of fact and conclusions of law set forth in the Recommendation, which is attached hereto and incorporated herein by reference.

Judges' Ruling J2013-001 and J2013-002 are AFFIRMED, and Joseph E. Carroll is hereby suspended for a period of 365-days for J2013-001 from January 9, 2013 through and including January 8, 2014. In addition, the horse is hereby disqualified and the purse redistributed. Joseph E. Carroll is hereby suspended for a period of 1095 days for J2013-002 from January 9, 2014 through and including January 7, 2017. In addition, the horse is hereby disqualified and the purse redistributed. During the suspension period, Joseph E. Carroll is

denied all privileges of a licensee in connection with all facilities under the jurisdiction of the Kentucky Horse Racing Commission.

SO ORDERED this 17<sup>th</sup> day of July, 2013.



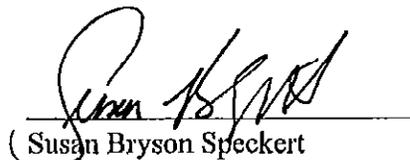
Robert M. Beck, Jr.  
Chairman  
Kentucky Horse Racing Commission

**NOTICE**

A final order of the Kentucky Horse Racing Commission may be appealed pursuant to KRS 13B.140(1), which states:

All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Respectfully submitted,



Susan Bryson Speckert  
General Counsel  
Kentucky Horse Racing Commission  
4063 Iron Works Parkway, Building B  
Lexington, Kentucky 40511  
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*Counsel for Respondent*

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing Final Order was served via U.S. Mail and electronic mail on this the 18<sup>th</sup> day of July, 2013, upon the following:

David A. Franklin, Esq.  
Franklin & Rapp  
1001 Monarch Street  
Suite 120  
Lexington, Kentucky 40513

*Counsel for Complainant*

Michael Wilson, Esq.  
P.O. Box 4275  
Lexington, Kentucky 40544-4275

*Hearing Officer*

  
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Susan B. Speckert

COMMONWEALTH OF KENTUCKY  
PUBLIC PROTECTION CABINET  
KENTUCKY HORSE RACING COMMISSION  
ADMINISTRATIVE ACTION NO. KHRC-13-SF-001



JOSEPH E. CARROLL

COMPLAINANT

**RECOMMENDED FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND RECOMMENDED ORDER**

KENTUCKY HORSE RACING COMMISSION

RESPONDENT

**BACKGROUND**

Complainant is the trainer of the horse Jude Hall, which ran the thirteenth race at The Red Mile on August 19, 2012, and the horse Dana Boko, which ran the second race at The Red Mile on August 30, 2012.

Shortly after each of these races, KHRC collected biological specimens from the horses and tested them for prohibited substances, 811 KAR 1:090, Section 2 (2) provides that

[e]xcept as otherwise provided in Sections 4, 5, 6, and 8 of this administrative regulation, while participating in a race, a horse shall not carry in its body any drug, medication, substance, or metabolic derivative, that:

- (a) Is a narcotic;
- (b) Could serve as an anesthetic or tranquilizer;
- (c) Could stimulate, depress, or affect the circulatory, respiratory, cardiovascular, musculoskeletal, or central nervous system of a horse; or
- (d) Might mask or screen the presence of a prohibited drug, or prevent or delay testing procedures.

811 KAR 1:090, Section 2 (6) provides that "[t]he commission shall utilize the Kentucky Horse Racing Commission Uniform Drug, Medication, and Substance Classification Schedule as

provided in 810 KAR 1:040, for classification of drugs, medications, and substances violating this administrative regulation." Methamphetamine is a drug listed in that schedule.

By Judges' Ruling J2013-001, pertaining to Jude Hall, the Judges found that the horse carried methamphetamine, a Class A drug, and imposed a suspension of 365 days and forfeiture of the purse money won. By Judges' Ruling J2013-002, pertaining to Dana Boko, the Judges found that the horse carried methamphetamine, a Class A drug, and imposed an additional suspension of 1095 days as well as forfeiture of the purse money won. Complainant appealed both of those rulings in this case.

This matter was heard on March 19, 2013, at 1:00 p.m. at the offices of the Kentucky Horse Racing Commission. The parties stipulated prior to the hearing, as reflected in orders entered herein, that the laboratory test results are correct and that the only issues at the hearing would be the severity of the penalty and mitigating factors.

At the hearing, Complainant called one witness, Joseph Carroll, the Complainant. Respondent called one witness, Richard Williams, the KRHC presiding Judge. Exhibits admitted into evidence were the Judges' rulings and a redacted copy of the 2012 KHRC license application of Jody Maupin.

By order dated March 20, 2013, the record remained open until March 29, 2013, for the Complainant to submit evidence of the criminal record of Complainant's groom, whom Complainant argues is likely the source of any drug present in the horses. No evidence of the criminal record of the groom was submitted.

The parties were permitted to file proposed findings of fact and conclusions of law, which they have done. Being sufficiently advised, the hearing officer makes the following recommended findings of fact, conclusions of law, and recommended order.

## RECOMMENDED FINDINGS OF FACT

1. At all relevant times Complainant was licensed as a trainer by KHRC, and was the trainer of the horse Jude Hall, which ran the thirteenth race at The Red Mile on August 19, 2012, and the horse Dana Boko, which ran the second race at The Red Mile on August 30, 2012.

This is undisputed.

2. Shortly after each of these races, KHRC collected biological specimens from the horses and tested them for prohibited substances; the testing resulted in a positive finding for methamphetamine for the samples from both horses.

This is undisputed and also stipulated.

3. By Judges' Ruling J2013-001, pertaining to Jude Hall, the Judges found that the horse carried methamphetamine, a Class A drug, and imposed a suspension of 365 days and forfeiture of the purse money won. By Judges' Ruling J2013-002, pertaining to Dana Boko, the Judges found that the horse carried methamphetamine, a Class A drug, and imposed an additional suspension of 1095 days as well as forfeiture of the purse money won. Complainant appealed both of those rulings in this case. The rulings in both cases were unanimous.

The rulings speak for themselves. The unanimity of the decisions was proven by the testimony of Richard Williams, TR. 8.

4. Complainant had no prior violations for drug offenses in Kentucky.

This is conceded by Respondent in its proposed findings of fact and conclusions of law.

Also, see TR 9.

5. **Judges' Ruling J2013-001 was Complainant's first offense for a Class A drug in Kentucky; Judges' Ruling J2013-002 was Complainant's second offense for a Class A drug in Kentucky.**

This is undisputed.

6. **The penalty imposed by the judges was the minimum required by regulations, absent mitigating factors.**

Pursuant to 811 KAR 1:095, Section 5(1):

A horse that tests positive for a Class A drug shall be disqualified and listed as unplaced and all purse money shall be forfeited. In addition, a licensee who administers, or is a party to or responsible for administering a Class A drug to a horse, shall be subject to the following penalties as deemed appropriate by the commission in keeping with the seriousness of the violation and the facts of the case:

(a) For a first offense:

1. A minimum one (1) year suspension, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a three (3) year suspension or revocation. Section 9 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and

2. Payment of a fine of \$5,000 to \$10,000.

(b) For a second offense:

1. A minimum three (3) year suspension or revocation, absent mitigating circumstances. The presence of aggravating factors may be used to impose a maximum of a five (5) year suspension or revocation. Section 9 of this administrative regulation shall apply to any person whose licensing privileges have been suspended or revoked; and

2. Payment of a fine of \$10,000 to \$20,000.

7. **Complainant has a reputation of being an upstanding and truthful person.**

See testimony of Richard Williams, TR 21.

8. **No evidence was presented by Complainant that the amount of methamphetamine**

**the horse carried was too small to have affected the performance of the horse.**

Complainant has the burden of proof on mitigating factors and presented no proof regarding this potentially mitigating factor.

**9. No evidence was presented by Complainant that methamphetamine has a therapeutic use in horses.**

Complainant has the burden of proof on mitigating factors and presented no proof regarding this potentially mitigating factor.

**10. There was no evidence from betting patterns that someone with knowledge of administration of the drug placed bets in a way to profit from administration of the drug.**

See testimony of Richard Williams, TR 20.

**11. Complainant's groom had at least two prior convictions for a drug-related offense and had completed a drug-related program ordered pursuant to his conviction.**

This is not contested. Also, see TR 48-50.

**12. Complainant knew, at the time he hired the groom, that the groom had prior drug-related convictions.**

See TR 35-36.

**13. Complainant did not rely upon KHRC to verify his groom's fitness for employment.**

The testimony of Complainant, to the extent it was given to support a finding that Complainant relied upon KHRC to verify the groom's fitness for employment, simply was not credible. Complainant hired the groom because Complainant thought the person would be a good groom. Licensing by KHRC was simply a legal requirement to Complainant, not a vetting of the qualifications of the groom.

**14. Complainant speculated that the horses carried methamphetamine because the**

**groom had handled the drug prior to arriving at the track and that the horses absorbed the drug from the groom's hands when the groom applied tongue ties before the races; if true, this would be a seriously mitigating factor in the view of the Judges.**

See the testimony of Richard Williams, TR 23.

**15. Complainant did not observe behaviors or demeanor in the groom, during the time of the groom's employment, that led Complainant to believe the groom was using drugs.**

See TR 35-36; 53.

**16. There was insufficient evidence to establish how the drug came to be carried by the horses.**

Complainant testified that he did not administer the drug. Complainant speculated that the horses carried methamphetamine (hereinafter "meth") because the groom had handled the drug prior to arriving at the track and that the horses absorbed the drug from the groom's hands when the groom applied tongue ties before the races.

If one assumes that the groom was a meth user at the time of the incidents, Complainant's theory may be plausible. However, Complainant testified that he saw no evidence of drug use by the groom or evidence that the groom was under the influence of drugs at any time during his employ with Complainant. There was no scientific evidence that the amount of meth found in the horse was consistent with inadvertent ingestion by the horses from licking meth residue on the hands of a meth user applying tongue ties. In addition, Complainant hired the groom knowing of his past involvement with drugs, which weakens his argument that Complainant should not be penalized for the actions of his groom.

The burden of proof is on Complainant to establish mitigating factors. There is insufficient evidence to establish that it is more likely than not that the meth came to be carried

by the horses due to inadvertent exposure from a groom who had meth on his hands. And even if Complainant's theory were proven, the mitigating effect of such a scenario would be lessened by the fact that Complainant knew of the groom's prior involvement with drugs but hired him anyway and took no steps to prevent such exposure.

### **RECOMMENDED CONCLUSIONS OF LAW**

**1. Respondent established a prima facie case, through the test results, that Complainant's horse was administered and carried, while running in a race, a drug, medication, substance, or metabolic derivative thereof prohibited by applicable regulations.**

811 KAR 1:090, Section 2 (5) provides

[i]t shall be prima facie evidence that a horse was administered and carried, while running in a race (betting or non-betting), qualifying race, time trial, or official workout, a drug, medication, substance, or metabolic derivative thereof prohibited by this section if:

(a) [a] biologic specimen from the horse was taken under the supervision of the commission veterinarian promptly after a horse ran in a race (betting or non-betting), qualifying race, time trial, or official workout ; and

(b) [t]he commission laboratory presents to the commission a report of a positive finding.

The requirements to establish a prima facie case were satisfied.

**2. A trainer is responsible for the presence of a prohibited drug in a horse.**

811 KAR 1:090, Section 15 states as follows:

(1) A trainer shall be responsible for the condition of a horse in his or her care.

.....

(3) A trainer shall prevent the administration of a drug, medication, substance, or metabolic derivative that may constitute a violation of this administrative regulation.

**3. KHRC has no duty to investigate license applicants for the benefit of future employers of the applicants.**

Complainant argued that KHRC had a duty to Complainant to conduct a criminal background check or other investigation of persons applying to be a groom for the benefit of Complainant. No law was cited in support of this argument and, based upon this hearing officer's research, none exists.

In addition, absent a regulation requiring a criminal background check, decisions to investigate or not investigate and licensing decisions are discretionary rather than ministerial. Were Complainant to sue KHRC for negligence in the Board of Claims, the case would be dismissed on grounds of sovereign immunity. See KRS 44.070 et seq. Complainant has no legal basis for his argument that KHRC had a duty to him to investigate the groom for Complainant's benefit.

**4. No mitigating factors were established; the Judges and KHRC do not have the discretion to impose a lesser penalty.**

Complainant's lack of prior offenses is not a mitigating factor. The applicable regulations directly address the minimum penalty required in terms of prior offenses. The regulations provide for deviation from those minimums if there are mitigating factors, but mitigating factors necessarily do not include lack of prior offenses as the minimums are defined with reference to prior offenses.

Per the fact-findings hereinabove, no other mitigating factors were proven. Therefore, if a violation has occurred, the Judges and KHRC have no discretion to impose a lesser penalty than is required by the regulations.

### **RECOMMENDED ORDER**

Wherefore, this hearing officer recommends that a final order be entered adopting the foregoing findings of fact and conclusions of law and affirming the ruling of the Judges.

### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the mailing of the Recommended Order within which to file exceptions with the agency head, the Executive Director of the Kentucky Horse Racing Commission.

The final order of the Kentucky Horse Racing Commission may be appealed pursuant to KRS 13B.140 which states:

(1) All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

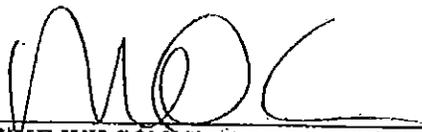
(2) A party may file a petition for judicial review only after the party has exhausted all administrative remedies available within the agency whose action is being challenged, and within any other agency authorized to exercise administrative review.

Dated April 17, 2013,

  
MIKE WILSON, HEARING OFFICER

**CERTIFICATION:**

The original of this document was mailed to Attn: Margi Wintz, Docket Clerk, Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington KY 40511; and a copy of the foregoing was mailed to David Franklin, Franklin & Rapp, 1001 Monarch Street, Suite 120, Lexington KY 40513 and to Hon. Michael T. Davis, Kentucky Horse Racing Commission, 4063 Ironworks Parkway, Building B, Lexington KY 40511, on April 18, 2013.

  
MIKE WILSON, HEARING OFFICER