

COURT FILE NO.: 239/07

DATE: 20071116

ONTARIO
SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

LANE, CARNWATH AND SWINTON JJ.

BETWEEN:

STRONACH STABLES, BRIAN LYNCH
and TODD KABEL

Applicants

- and -

ONTARIO RACING COMMISSION,
DAVID JAMES, the owner of SHILLELAGH
SLEW and ATTORNEY GENERAL OF
ONTARIO

Respondents

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)
) *Andrew M. Robinson*, for the Applicants
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)
) *Aaron Dantowitz*, for the Respondent,
) Ontario Racing Commission
)

) *Gerald Sternberg*, for the Respondent,
) David James
)
)

)
) **HEARD at Toronto: November 16, 2007**
)

SWINTON J.: (Orally)

[1] This application for judicial review is brought by Stronach Stables, Brian Lynch and Todd Kabel for an order quashing the order of the Ontario Racing Commission (the "Commission") delivered April 19, 2007, whereby the appeal of the applicants from the Stewards' Ruling dated July 17, 2006 was dismissed.

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[2] The applicants submit that the Commission breached the rules of natural justice. They argue that the Commission's reasons were inadequate by failing to address their principal argument and the evidence advanced in support of it. The applicants submit that the jockey on Shillelagh Slew caught his whip in the tail of their horse Malakoff and caused Malakoff to alter his course and so to interfere with Shillelagh Slew.

[3] The Commission was clearly aware of the importance of the whip issue. In paragraphs 64 and 65 of the reasons, they address this issue. They found that the whip became entangled in Malakoff's tail because of the manner in which his jockey rode him - specifically, because Malakoff interfered with Shillelagh Slew. They identified the evidence of the witnesses on whom they relied in coming to this conclusion.

[4] The Commission understood its function, which was to conduct a hearing *de novo*. In our view, the reasons were adequate, having regard to the fact that the standard of review of a decision of the Commission is patent unreasonableness. The reasons permit this Court to conduct a meaningful judicial review on that standard.

[5] The Commission set out its findings of fact and the principal evidence on which those findings were based. There was no failure to consider critical evidence as in *Megens v. The Ontario Racing Commission* (2003), 64 O.R. (3d) 142 (Div. Ct.).

[6] The applicants put much emphasis on the alleged failure of the Commission to deal with the evidence of Mr. Hettel. That evidence was not ignored. It was summarized by the Commission in its reasons.

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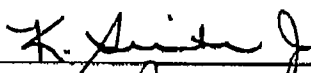
[7] We agree with paragraph 46 of the Respondent's Factum, which characterizes the applicants' submissions in the following way:


The Applicants' fallback position, which is that the Panel failed to consider and evaluate the relevant evidence before it on this issue, is, respectfully, an attempt to have this court assess the factual findings of the Panel against the evidence that was before it. In this regard, this argument is not a complaint about natural justice, but about the merit of the Panel's decision on the record, and must, as set out above, be assessed on the standard of patent unreasonableness.


[8] We also agree that the Commission's consideration and evaluation of the evidence before it was not patently unreasonable. Therefore, the application for judicial review is dismissed.

LANE J.

[9] On behalf of the panel, I have endorsed the Applicants' Record as follows: "The application is dismissed for reasons delivered by Swinton J. orally. Costs payable by the applicants to the respondent Commission fixed at \$6,000 and \$159.76 for disbursements, and to the respondent James fixed at \$3,000."



SWINTON J.


LANE J.


CARNWATH J.

Date of Reasons for Judgment: November 16, 2007

Date of Release:

DEC 3 2007

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ORAL REASONS FOR JUDGMENT

SWINTON J.

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Stronach Stables et al
Applicants and Ontario Racing Commission
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DIVISIONAL COURT

BEFORE LANE J., CARNWATH J., SWINTON J.

DATE NOVEMBER 16, 2007

DISPOSITION - THIS APPEAL

APPLICATION IS DISMISSED IN ENTIRETY. Costs paid by Swinburn J. Shetty. Costs paid by applicants to respondents \$159,76 for disbursements, and at \$6000 and \$159,76 for disbursements, and to respondents for cost at \$3000.

[Handwritten signature]
LANE
for the Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

Proceeding commenced at Toronto

APPLICANTS' RECORD

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