

MAINE STATE HARNESS RACING COMMISSION

In re:)
Michael Cushing) **Decision and Order**
Case No. 2023-06)

Introduction

Michael Cushing, a licensed Owner/Driver/Trainer, license no. 10737, submitted his first appeal regarding events that occurred at Bangor Raceway on July 26, 2023, during Race #1 (the Race). Mr. Cushing was the Trainer for the horse “hesalilnaughty” which participated in the Race. On July 26, 2023, Mr. Cushing appealed the fact that the Starter did not sound a recall when Mr. Cushing’s horse was unable to start the race in its proper post position due to another horse, driven by William Childs, being in his post position and failing to move further down the starting line despite being directed to do so. Mr. Cushing’s horse started the race in a less favorable position than his assigned post position. Mr. Cushing’s horse finished in 6th place and Mr. Child’s finished last, in 7th place. Mr. Childs was issued a Notice of Violation for failure to obey the Starter’s instructions to move down to the proper post position and was fined.

Mr. Cushing submitted his second appeal regarding the Race on August 3, 2023.¹ Mr. Cushing appealed the Judge’s charting of the race, which indicated that two other horses had been interfered with during the race, but not Mr. Cushing’s horse. This issue was brought to the Judge’s attention after Mr. Cushing’s appeal was submitted. The Judge directed that the chart be updated to reflect that only Mr. Cushing’s horse had been interfered with. The chart was corrected on or around August 8, 2023. The reason for noting interference on the chart is so that the betting public can place fair bets on horses based on their prior races. It has no impact or

¹ This appeal was late pursuant to Maine State Harness Racing Commission Rule Chapter 19, § 3(1), which sets a three-day time limit for appealing decisions of judges and other racing officials. However, the Commission understands that Mr. Cushing was directed by Staff to submit this appeal and is therefore addressing it in this Decision and Order.

benefit regarding where the horse that was interfered with starts in a subsequent race.

DISCUSSION

Maine State Harness Racing Commission Rule Chapter 19 addresses the process for appealing decisions and rulings of judges and other racing officials. Section 3 specifically addresses appeals to the Commission and provides the following:

All decisions and rulings of the Judges or the officers of tracks may be appealed to the Commission in writing within 3 days after notice of the decision or ruling. The appeal may be taken upon any question in the conduct of a race, interpretation of the rules, decisions relative to the outcome of a race, application of penalties or other action affecting owners, drivers, or horses, **but it must be based on a specific charge which, if true, would warrant modification or reversal of the decision.**

01-17 C.M.R. Ch. 19, § 3(1) (emphasis added). For the purposes of this Decision and Order, the Commission assumes that all the information provided in Mr. Cushing's appeals is true.

Regarding Mr. Cushing's first appeal that the Starter failed to sound a recall to allow his horse to start the race in the proper post position, there is no remedy for Mr. Cushing. The Race has already occurred, and there is no way to "redo" the Race. The Commission is sympathetic that this is a situation that likely warranted a recall and that it did not happen. However, assuming that a recall was the appropriate outcome instead of going forward with the Race, there is no way to retroactively modify or reverse the Starter's decision not to sound a recall.² Additionally, because the horse Mr. Childs drove placed last, there is no way to place Mr. Cushing's horse ahead of Mr. Childs', which could be a remedy if Mr. Child's horse had placed ahead of Mr. Cushing's.³

² The Commission notes that the Starter has the discretion whether to sound a recall. A horse coming to the starting gate out of position is one reason for a recall to be sounded but a recall is not mandatory. 01-17 C.M.R. Ch. 7, § 37(1)(G).

³ See 01-17 C.M.R. Ch. 7, § 58, which requires offending horses to be set back for interference if the outcome of the race is affected by that interference.

Regarding Mr. Cushing's second appeal, that the Judge initially charted interference on two other horses in the race, but not on Mr. Cushing's horse, the Judge has already modified his decision. Recognizing the mistake that was made by not indicating that Mr. Cushing's horse was interfered with, the Judge directed that the chart be corrected on or about August 8, 2023 to reflect the same. Permitting Mr. Cushing's appeal to go forward in this matter would not warrant a modification or reversal of the Judge's initial decision, as that has already occurred. The Commission expects that official reports such as the charts, be double checked in the future to ensure their accuracy and to avoid similar situations to what occurred in this matter.

CONCLUSION

Although Mr. Cushing's appeals are based on specific charges that the Commission assumes to be true, they do not warrant modification or reversal of the Starter's decision to not sound a recall because there is no way to redo the Race after it has occurred. Additionally, the Race chart has already been updated to accurately reflect that Mr. Cushing's horse was interfered with during the July 26, 2023 Race. Thus, the Presiding Judge has already modified his decision. Mr. Cushing's appeals are DENIED. This decision is final agency action pursuant to 5 M.R.S. § 11001(1).

Dated: September 20, 2023



Harry B. Center, II, Chair

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.**