



The American SADDLEBRED

Registry, Inc.

By Certified Mail Return Receipt

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Re: The Matter of Ricky D. Cook, Ricky D. Cook, LLC, Frank Cook and Darell Cruse concerning the purported horse More Money (121576) and the horse Roselane's So Photogenic (121494).

APPELLATE RULING OF THE BOARD OF DIRECTORS OF THE AMERICAN SADDLEBRED REGISTRY, INC.

* * * * *

Pursuant to Section XV of the rules of the American Saddlebred Registry, Inc. (hereinafter the "Registry"), this comprises the Findings and Decision of the Board of Directors of the Registry following a hearing of the above-referenced matter held at the United States Equestrian Federation's Lexington, Kentucky office on May 18, 2010.

Board members presiding: Mr. Brian Curran; Ms. Lisa Duncan; Ms. Louise Gilliland; Mr. Larry Hartsock; Mr. Chuck Herbert; Dr. Margaret McNeese; Mr. Jimmy Robertson; Mr. Don Schilling, Mr. Art Zubrod (collectively the “Appeal Panel”).

Parties and Witnesses in attendance: Ricky D. Cook, Movant; Frank Cook, Movant; William C. Rambicure, Esq., Counsel for Movants; Madge Bass, attending with Movants; Fred Sarver, Respondent; Jefferson K. Streepey, Counsel for Respondent.

Also in attendance: Daniel E. Danford, Esq., Counsel to the Appeal Panel; Katriona Adams, Secretary to the Appeal Panel; and a court reporter.

The Appeal Panel heard evidence presented in the Movants’ appeal of the February 19, 2010 Findings and Conclusions of the Registry Committee of the American Saddlebred Registry, Inc. (the “Original Ruling”). Pursuant to subsection 11 of Section XV of Registry rules, the record in the appeal was limited to the record of the hearing before the Registry Committee, including the evidence admitted below, the verbatim transcript of the hearing, and the Original Ruling. The Appeal Panel did not receive any new evidence of the charge.

The Appeal Panel exercised its discretion to review the Original Ruling *de novo*. The Appeal Panel allowed legal counsel for each party 30 minutes for oral argument at the hearing, with such argument limited to factual and legal arguments concerning the matters appealed. Each party was also allowed, but not required, to submit a legal memorandum for the Appeal Panel’s consideration that addressed the factual and legal issues raised in the appeal. For the record, the Respondent timely filed a brief for the Appeal Panel’s consideration, but the Movants chose not to submit a brief.

DELIBERATION

The Original Ruling of the Registry Committee found the following violations of Registry rules:

1. Section XV.A.c was violated by the Movants’ preparing, executing, or participating in making and presenting to the Registry false or fraudulent statements with regard to the age, sex and markings of a horse, by submitting the application for registration and an unregistered foal transfer to the Registry for the horse called MORE MONEY, which horse did not exist;

2. That Movants should have known through the exercise of due care that MORE MONEY did not exist;
3. Section XV.A.e was violated by Ricky Cook's refusing the Registry's request to assist in properly identifying MORE MONEY; and
4. Section XV.A.k was violated by Movants in that their actions were not in the best interests of the Registry.

In their March 5, 2010 Notice of Appeal, Movants only challenged the third point above, along with the factual portions of the Original Ruling that related to that finding.

For the above-stated violations, the Original Ruling set forth the following penalties:

1. The provision of certain specified documentation or samples by Movants or their veterinarian with respect to foals born after the date of the Original Ruling;
2. A joint or individual \$50,000 fine; and
3. Suspension for Movants until the fine is paid, with the exception of transactions with the Registry office that were pending as of the date of the Original Ruling.

In their Notice of Appeal, Movants only challenged the fine and suspension set forth above.

In short, Movants claim that their actions with regard to producing relevant veterinary information to the Registry did not violate Registry rules, and constituted a sufficient response from a layperson who did not hire an attorney to assist with the process. With regard to the penalties, Movants claim that they made an "innocent mistake," so only a finding of negligence is appropriate. Movants also claim that the fine was excessive given the negligence involved, and was excessive when compared to other rulings of the Registry Committee.

Since Movants did not challenge most of the essential underlying facts of the case, the Appeal Panel will not set them forth here, but instead will rely on the general factual statement set forth in the Original Ruling. Factual findings with regard to the matters actually appealed by Movants will be set forth herein.

Dealing first with the fine issue, the Appeal Panel noted that the arguments of counsel largely turned on whether the Movants' acts were mere negligence, as Movants claimed, or gross

negligence, as Respondent claimed. Having reviewed the evidence *de novo*, the Appeal Panel unanimously found that Movants' acts could not be simply characterized as an "innocent mistake." Instead, the Appeal Panel found that the Movants' operational controls and actions were either missing or so extremely lackadaisical in nature that the only proper conclusion was at least a finding of gross negligence and reckless behavior. For example, Ricky Cook testified as follows during the original hearing:

- New foals stayed at Frank Cook's farm in Tennessee but were never registered until taken to Ricky Cook's training barn in Kentucky. (Transcript ("Tx.") at 26-27). As Mr. Cook explained, "[t]hat's the way we've always done it, one reason because I'm bad on my paperwork." (*Id.* at 27).
- Mr. Cook acknowledged that his operation is understaffed such that paperwork errors occur, such as the failure to put markings on the registration. (Tr. at 33) (claiming the error was not intentional "but you know, probably just assumed I already had that done. Or, I don't know, maybe I was in the middle of filling it out and the phone rings or you know, go look at another horse. You know, I don't know. I don't remember that day or what was going on. I have a – you know, not a whole lot of help. I need more help than I have and a lot to do. So, you know, mistakes are made.")
- Nor was there adequate oversight or supervision over the staff in Tennessee. (Tr. at 48) (when asked if he had anybody in Tennessee who was supervising the operation, Mr. Cook responded "[w]ell, my dad is supposed to be, but it's really not that important to him.")
- Staffing and tracking issues also meant that paperwork required by the Registry was often late, as well as being imprecise. (Tr. at 34) ("Well, I know that. That's why I'm often times late in doing my paperwork on many things.")
- Lacking any accurate birth information, Movants made no effort to cross-check their records with flush dates or other confirmatory information from the farm veterinarian. (Tr. at 37).

- Rather than keeping proper records as to the age of new colts or fillies, the staff person in Tennessee would place the yearlings and two-year olds into separate fields based on their size. (Tx. at 28) (“He would have been too small to go with, what would have been his correct age group. But if you are not there every day, you know, and you don’t look at these horses every day, you know, and a couple years go by, it’s easy to not know sometimes exactly who is who.”)
- Lacking any proper records, Mr. Cook apparently did not know that the horse in question was improperly sent to him as part of a group of yearlings. (Id.)
- At the time of the transfer to Kentucky, Mr. Cook did not adequately communicate with the staff person in Tennessee or the farm veterinarian concerning the foaling date of the horse in question or the reproductive history of the mare. (Notice of Appeal at 3) (admitting that Kim Lenio and Dr. Foss were not asked about these issues until after the 2009 World Championship Horse Show).
- Prior to the horse’s transfer to Kentucky, the staff person in Tennessee – who had no experience with registering horses – registered the subject horse as ROSELANE’S SO PHOTOGENIC without telling Mr. Cook. (Tx. at 29) (“It wasn’t until after Louisville that I found out this colt was registered as Roselane’s So Photogenic, which the gal that was working for me in Tennessee did the registry on this colt, and I had no idea that she did. I had no papers on it. They were mailed to Tennessee, which is – I tried to get that not done because things get lost too easily. She had never registered any colts in her life, and I sure didn’t expect she’d start registering them now.”)
- Movants had no system of tracking foals born to particular mares, including basic communications in that regard with the farm veterinarian. (Tr. at 50) (when asked if he was unaware that TAKE MY PICTURE had no two-year-olds, Mr. Cook replied “[e]xactly, that’s what I’m tell [sic] you, Fred. I didn’t know that she didn’t. She was at Dr. Foss’ and I knew that they had gotten positive flushes out of her. And we had gotten a lot out of her, and he always did well with that mare.”)

- Lacking any reasonable communication with the Tennessee staff or veterinarian, Mr. Cook re-registered ROSELANE'S SO PHOTOGENIC as MORE MONEY based solely on his incorrect assumption that the foal was out of the mare TAKE MY PICTURE. (Tr. at 29-30) (“And there wasn’t a baby out of Take My Picture. There was some positive flushes, but there was no foal. And I was under – I was assuming there was.”)
- Despite having “probably 60 or so” horses on the farm, Movants had absolutely no system in place to accurately track or identify new foals. (Tr. at 31) (admitting that “[a]t that time, we didn’t have a process of any kind” to keep track of his horses). (See also Notice of Appeal at 2) (acknowledging that during the relevant timeframe, Frank Cook “maintained no written records with respect to any of these horses evidencing or relating to their breeding dates, foaling dates, sires or dams.”)
- Mr. Cook filled out the registration papers on MORE MONEY but utterly failed to record any of the markings on the horse, markings that would have clearly distinguished between ROSELANE'S SO PHOTOGENIC and MORE MONEY. (Tr. at 32-33) (admitting, “[w]ell, I didn’t put no markings on there.”)
- Mr. Cook also admittedly made up the foaling date for MORE MONEY on the registration papers since he had no system of recording actual birthdates. (Tr. at 33-34) (“Well, Judy, I’ll be honest with you. I don’t always remember exactly the day they were born. . . . And there’s been a lot of times that I’ve probably registered some colts that was probably a month older or a month younger, but I’d tried to get as close as I could.”). See also (Tr. at 47) (When asked whether there was any foal on the April 28, 2007 date falsely reported for MORE MONEY, Mr. Cook responded, “Oh, I don’t know if there was one on that date or not, you know.”)
- Nor did Movants express any concern with providing accurate and truthful information in their registration papers to the Registry. (Tr. at 52-53) (when asked whether he made any inquiry before listing the wrong foaling date for MORE MONEY, Mr. Cook responded, “[W]ell, no. To me I didn’t know that would really be that important.”)

As the foregoing testimony indicates, Movants' operations in Kentucky and Tennessee were in the popular vernacular, "an accident waiting to happen." Movants had insufficient and ineffective staff and no supervision in Tennessee. There was an utter lack of effective communication between the breeding and training operations, including communications with staff and the farm veterinarian. No system was in place to keep accurate track of new foals, and yearlings and two-year olds were not properly identifiable by age. The recordkeeping was haphazard and admittedly false for many if not all new foals. Prior to registration, Movants made no discernible effort to ensure that the information represented to the Registry was truthful and accurate. In fact, registration papers were submitted with admittedly falsified foaling date information. In short, the proof in this case amply demonstrates why the Registry Committee found this case to be "perhaps the most serious ever brought before the Committee."

Based upon the foregoing testimony and the documentary proof in this case, the Appeal Panel determined unanimously that Movants' actions were grossly negligent and reckless.

The Appeal Panel recognized that there was some evidence from which the Registry Committee could have concluded that Movants' actions were intentionally fraudulent. Besides admittedly guessing at foaling dates placed on registration papers to the Registry, the transcript below also showed that Mr. Cook placed a fabricated Spring foaling date on MORE MONEY's registration papers when he believed that the foal was born in the Fall. (Tr. at 35-37, 50-51). However, the Original Ruling did not contain a finding of intentional behavior, and the Appeal Panel did not believe that the available evidence clearly supported a finding beyond gross negligence and reckless behavior.

In weighing the fine imposed in the Original Ruling, the Appeal Panel noted that Movants' practices evidenced a complete and utter disregard for the Registry, its rules, and the need to provide accurate and truthful information on registration applications. As was the case here, Movants' disregard for Registry rules led to a situation where multiple parties were involved in the purchase and showing of a horse that was falsely registered. Given the Registry's concern and focus on maintaining the integrity of the official registry of purebred American Saddlebred horses, and the related concern of the American Saddlebred Horse Association of ensuring

fairness and equal competitions involving American Saddlebred horses, Movants' reckless disregard of Registry rules is of great concern and clearly supports the fine levied below.

Another factor supporting the fine is the impact on the Saddlebred community when individuals like Movants behave in this manner with falsified and incorrect entries to age-based championship classes. Having older horses falsely compete in such prominent age-based championships has a deleterious effect on the level of trust placed in the equine sport, and is clearly not in the best interests of the Registry, the American Saddlebred Horse Association, or the Saddlebred community.

Finally, Movants' actions robbed the rightful winner of that championship class of the joy and adulation that comes with winning. Receiving a trophy, ribbon and title months after the event pales in comparison to rightfully being declared the winner in front of the assembled Saddlebred community. Neither knowing or caring whether their actions could rob another competitor of that satisfaction and related opportunity, Movants' actions strongly support the fine levied below.

While arguing that the fine was excessive compared with other Registry cases, Movants mentioned several other cases (Notice of Appeal at 6-7), but did not provide any details about those cases that would allow a fair comparison. By way of comparison, however, the United States Equestrian Federation decided a fairly recent similar case involving intentional falsification of Morgan horse information in which the Respondent was expelled for 20 years and fined \$10,000. Clearly the economic impact of that penalty was far greater than the fine and limited suspension in this case.

Based on the foregoing, the Appeal Panel unanimously upheld the penalties set forth in the Original Ruling in full.

The Appeal Panel also upheld the finding that Ricky Cook violated Section XV.A.e of Registry rules by refusing the Registry's request to assist in properly identifying MORE MONEY. While Mr. Cook claimed that his cooperation could have been better if he had hired a lawyer, but was sufficient for a layperson's response, the Appeal Panel disagreed. The record shows that Mr. Cook was clearly notified on September 10, 2009 of the need to provide a full written response, and that he had a follow-up conversation with Alan Balch at the Registry in which veterinary

records were requested. (See e.g., Tr. at 53; Notice of Appeal at 3-4). But basic veterinary records were not provided to the Registry Committee until several months later, after the filing of the Charge. Moreover, the Appeal Panel simply did not credit the claim that Mr. Cook promptly authorized his veterinarian to produce these records to the Registry only to find out later that his veterinarian required a written authorization. If Mr. Cook had truly attempted to fully cooperate as requested, the Appeal Panel is certain that he would have been able to procure such records from his farm veterinarian in short order. Moreover, the proof shows that on September 22, 2009, the Registry faxed Mr. Cook a written authorization for the release of veterinary records with regard to all foals of TAKE MY PICTURE. In that regard, Mr. Cook stated that he in fact did have that veterinary information before it was produced.

Mr. Sarver: Dr. Foss provided this information on November 12 this year, and the letter that went out to you and to your dad and Darell Cruse was dated September 10th. That's two months before that documentation was provided to the registry. Any reason for that?

Mr. Cook: You know what? I think I had that documentation before then.

(Tr. at 53).

Although the Appeal Panel fully supported the finding in the Original Ruling with regard to this violation of Section XV.A.e of Registry rules, the Appeal Panel recognized that in the scheme of things the failure to cooperate for several months was far less significant than the underlying grossly negligent and reckless behavior of Movants. Accordingly, the Appeal Panel found the fine and related suspension would be fully justified even without this established violation.

CONCLUSION

Having unanimously upheld the Original Ruling with regard to the appealed points, the Appeal Panel directed that the penalties assessed in the Original Ruling shall be upheld with the following modification:

1. Ricky D. Cook, Ricky D. Cook, LLC and Frank Cook will furnish to the Registry a veterinarian certification of the birth date of every foal born after the date of these findings and conclusions, which is owned by any of them. They will submit samples for DNA testing and

photographs of each such foal to the Registry within 30 days of the birth of such foal. They and each of them will cause their veterinarian to send to the Registry a certification of embryo flush dates for flushes occurring after the date of the Original Ruling for mares owned by any of them.

2. Ricky D. Cook, Ricky D. Cook, LLC and Frank Cook shall pay to the Registry a fine of \$50,000, jointly or individually, by July 30, 2010.

3. Ricky D. Cook, Ricky D. Cook, LLC and Frank Cook shall remain on suspension until the \$50,000 fine is paid in full, with the exception that Movants are not suspended with respect to transactions pending in the Registry office as of the date of the Original Ruling, which transactions will be processed according to the rules of the Registry.

The ruling of the Appeal Panel is final and effective upon the date set forth below.

Respectfully submitted,

A handwritten signature in cursive script that reads "Katriona Adams".

Katriona Adams
Secretary to the Appeal Panel

Submitted: June 7, 2010

CC: Daniel E. Danford, Esq., Counsel to the Appeal Panel