



## **NSA Official Notices Friday, December 4, 2020**

**On the appeal of Allison Fulmer  
In Re: The Third Race at the  
Steeplechase at Callaway Gardens  
November 7, 2020**

### **OPINION**

#### **BACKGROUND**

Steeplechase racing under the rules of the National Steeplechase Association (NSA) was conducted at Callaway Gardens in Pine Mountain, Georgia on November 7, 2020. Seven races were held on that day. Five races were at two miles and one quarter over National Fences and two races were held over Timber. The race that is the subject of this appeal was run as the third race for four year olds over National Fences. There were five runners and four finishers in the race. The fifth starter, He'll Do, fell in the race and did not finish.

Salix is a permitted but controlled race day medication given to racehorses to alleviate a condition known as Exercise Induced Pulmonary Hemorrhage (EIPH). Horses whose trainers wish to run their horses on Salix must declare that fact at the time of entry into the race five or six days prior to the race. If a horse has not been declared to run with Salix, it is not permitted to do so. Conversely, if a horse is declared to run on Salix, the horse is required to do so. A horse is required to be on the grounds of the racecourse at least four hours prior to post time for the race in which it is entered. Salix is required to be administered at least three hours prior to post time by an independent veterinarian appointed by NSA for that purpose.

The Stewards at a race meeting are three individuals with vast backgrounds and training in the administration of the rules of racing as promulgated by the NSA. They are appointed by NSA to preside over a race meeting and see to it that NSA rules of racing are followed. The three Stewards at Callaway Gardens on November 7, 2020 were Dwight Hall, Greg Pachman, and Anne Pezzano.

#### **FINDINGS OF FACT**

1. On race day, Presiding Steward Dwight Hall received a call from Bill Gallo at 6:45 AM.
2. Gallo informed Hall that the van carrying Jonathan Sheppard's horses had broken down with a flat tire and that they would be late arriving and miss the deadline for Salix administration for the first four races.
3. Licensee, Keri Brion, assistant trainer for Sheppard, stated that she would like to run the horses that arrived late without Salix.
4. The Stewards held a discussion among themselves and decided that they would let the horses run without Salix.

5. In the Third race Baltimore Bucko and Another Try, both trained by Sheppard, ran first and second without Salix.
6. In the Third race The Happy Giant, trained by Allison Fulmer, ran third.
7. In the Third race Bickley, trained by Fenneka Bentley, ran fourth.
8. These were all of the finishers in the Third race.

## **DISCUSSION**

This case comes before the Hearing and Appeals Committee on the appeal of licensee Allison Fulmer who was the owner and trainer of the horse The Happy Giant which finished third in the third race at the Steeplechase at Callaway Gardens on November 7, 2020. Her appeal stems from a decision made by the Stewards on the morning of the race to allow two horses trained by licensee Jonathan Sheppard to race without Salix in spite of the fact that they had been declared to run on Salix at the time of entry. Those two horses finished ahead of the appellant's horse in that race.

The circumstances surrounding the Stewards' decision, while not material to our decision, bear examination. As early as 6:45 AM on race day it was apparent to Sheppard assistant and licensee Keri Brion that the horses would not be on the grounds of the race meeting prior to four hours before the post time for the third race. The van carrying all of Sheppard's runners had broken down with a flat tire on the way to the meeting. Ms. Brion felt that the horses would arrive in time to run but not to receive the required Salix shots three hours before post time. Ms. Brion telephoned NSA Director of Racing Bill Gallo who was acting as Stewards' Secretary on the day. She told him of her predicament and asked him to convey to the Stewards her desire to run the horses without Salix. In addition, as indicated in the factors taken into consideration by the Stewards, "the circumstances of 2020 including the abbreviated season had placed tremendous financial strain on the owners of all horses in training." We feel compelled to commend the efforts of the Stewards to provide relief to the strain caused by the COVID-19 pandemic. Their decision was clearly an attempt to promote the best interest of racing.

Gallo conveyed Ms. Brion's wishes to Presiding Steward Dwight Hall and at 9:00 AM he convened a meeting with the other two Stewards, Greg Pachman and Anne Pezzano. At that meeting the Stewards took into consideration the following factors:

1. There was no pari-mutual wagering at Callaway Gardens.
2. The van had left Camden, S.C. at 2:30AM in time to make the deadline, but would not do so through no fault of the licensees.
3. The horses would receive no advantage by running without Salix.
4. Richard Hendriks, the SOTA representative for the day, approached the Presiding Steward and informed him that SOTA was supportive of the horses being allowed to run.
5. The circumstances of 2020 including the abbreviated season had placed tremendous financial strain on the owners of all horses in training.

This is not the first time that this situation has arisen at a race meet. In 2019 at the Grand National a horse was permitted to run without Salix due to a van breakdown. However, on several other occasions, horses were scratch by the Stewards under similar circumstances. None of these situations was appealed to this Committee and so this is a case of first impression.

The NSA Rules of Racing, unfortunately, in our opinion, are very clear and unequivocal in this case.

Rule 10.1.B. of the NSA rules states “If, prior to a race, a trainer or the NSA Medication Veterinarian reports that a horse has not received furosemide (Salix) even though its use was declared at time of entry, the Stewards shall order the horse to be scratched from the race, and they may fine the trainer.”

The Stewards, in their deliberations, relied on language in Rule 5.2.B. which gives them wide latitude to make decisions if they feel that such a decision “is in the best interest of racing.”

While we feel that such language is appropriate to be included in the Rules of Racing, unfortunately it is preceded by this limiting language, “5.2.B.16. If any case occurs which is not provided for by these Rules, it shall be decided by the Stewards in such manner as they may think just and compatible with the best interest of racing.” (underlining added).

As a committee, we are loath to overturn decisions made by the Stewards who are present on the day and see all of the facts of a situation unfold before them and, in this case, we fully support the decision making process in which they engaged. However, there are times when, even the best intentioned decisions are in error.

## CONCLUSIONS OF LAW

1. On November 9, 2020, licensee Allison Fulmer, the trainer of the third place finisher, The Happy Giant, filed a timely appeal of the Stewards’ decision to allow the first two finishers to run without Salix and paid the \$500 fee required by the Rules of Racing.

2. Rule 10.1.B. of the NSA rules states “If, prior to a race, a trainer or the NSA Medication Veterinarian reports that a horse has not received furosemide (Salix) even though its use was declared at time of entry, the Stewards shall order the horse to be scratched from the race, and they may fine the trainer.”

3. Rule 5.2.B. of the NSA rules which sets forth the “General Authority” of the Stewards states in salient part, “The Stewards shall exercise immediate supervision, control and regulation at each race meeting. Powers of the Stewards include, but are not limited to, the following:

16. If any case occurs which is not provided for by these Rules, it shall be decided by the Stewards in such manner as they may think just and compatible with the best interest of racing.”

## ORDER

And Now this 4th day of December, 2020 it is hereby ordered that the appeal of licensee Allison Fulmer is sustained and that the horses Baltimore Bucko and Another Try are disqualified from the Third Race at The Steeplechase at Callaway Garden for failure to race on Salix despite the declaration of their trainer Jonathan Sheppard that they would do so in contravention of NSA Rule of Racing 10.1.B. The new official order of finish shall be:

1<sup>st</sup> The Happy Giant, owned and trained by Allison Fulmer, ridden by R. Geraghty.

2<sup>nd</sup> Bickley, Owned by Mrs. S.K. Johnson, Jr. trained by Fenneka Bentley and ridden by M. Mitchell.

It is further ordered that the appeal fee shall not be refunded to the appellant and that the trainer of the disqualified horses shall not be fined.

By the Hearing and Appeals Committee

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Richard D. Abbott, Chairman

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Cuyler H. Walker

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Albert J. A. Young