

# SPIER HARBEN

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December 5, 2014  
Our File: 14059 TJB

**Via Email: [reception@thehorses.com](mailto:reception@thehorses.com)**

**HORSE RACING ALBERTA**  
Suite 720, 9707 – 110 Street NW  
Edmonton, AB T5K 2L9

**AND THE BOARD OF  
DIRECTORS OF HORSE  
RACING ALBERTA AS PER  
ATTACHED SCHEDULE**

Dear Sirs/Mesdames:

**Re: Alberta Downs Inc. and Robert Allen**

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We act for Alberta Downs Inc. (“Alberta Downs”) and its principal, Robert Allen.

As you are aware, our client owns a horse racing track at Lacombe, Alberta which, for the past five years, has been the primary course in the Province for the racing of Standardbred pacers. Alberta Downs, after operating under temporary licences for its first three years of operation, was granted a 10 year licence as a Class ‘B’ track facility on the 4<sup>th</sup> of April 2012 by way of a Racetrack Licence Agreement (“the RLA”) with a further 10 year renewal clause.

Among other provisions, the RLA obligated Horse Racing Alberta (“HRA”) to provide an operating grant to Alberta Downs on an annual basis to assist in funding racetrack operations. This obligation follows from HRA’s overriding obligations to the Government of Alberta (under the HRA/GOA agreement) to preserve and promote horse racing in Alberta. Alberta Downs was further entitled to the proceeds from the off track betting receipts in its exclusive area being a fifty kilometer radius of its facility.

What is unique in this arrangement is that the licensing arrangement consists of an agreement with mutual covenants by both parties rather than a simple patent of authority issued by HRA under their governing legislation. Consequently, HRA has not only breached and abused its authoritative powers by the actions taken against our client but additionally is in breach of its contractual obligations to him which give rise to a claim for compensatory damages.

Our client attained this status with HRA as a result of huge capital investment of some \$8 million and a lengthy approval process with HRA which culminated with the long term licence agreement mentioned above. Throughout the process our client was encouraged by HRA which was keenly interested in keeping horse racing alive in central Alberta, particularly harness racing, which as a result of racetrack closures and restrictions was in jeopardy of being lost completely in Alberta.

Despite these arrangements and our client's substantial investment, he was advised by short letter on the 27<sup>th</sup> of November 2014 that Alberta Downs would not be awarded any race days for the 2015 racing season. This despite the fact that just two weeks earlier he attended a meeting when the draft schedule had been agreed to which granted him 22 race days for the 2015 season. He was then further advised by a slightly longer short letter of December 1<sup>st</sup>, 2014 that his off track betting sites would no longer be run by Alberta Downs but presumably another unidentified party. No mention was made as to how the theatres owned by Alberta Downs would be transferred to the new entity or otherwise dealt with nor any indication as to how Alberta Downs would be compensated for its property. Nor was any mention made as to why HRA had decided without any warning or prior notice that it intended to repudiate its obligations under the Licensing Agreement in such a crass and cruel fashion.

Owing to the absence of any explanation to our client as to why this precipitous action was taken by HRA Mr. Allen initiated a telephone conversation with HRA's CEO, Shirley McClellan ("CEO McClellan") last week. The explanation provided by Ms. McClellan was that Alberta Downs had become "a burden" on HRA and that it did not want to further fund its racing operations. So what was once the savior of harness racing in Alberta had become a burden, a burden so great that it necessitated a capricious and unilateral decision that would render Alberta Down's new facility little more than a white elephant? No explanation was provided by Ms. McClellan as to how HRA might seek to justify its egregious acts before a court of law.

In the last few days it has come to Mr. Allen's attention that Ms. McClellan is calling his various suppliers and contractors in an apparent attempt to dig up dirt against him. By this letter we would warn Ms. McClellan to cease and desist from making any further attempts not only because her actions will be futile – in finding dirt - but will also add to the growing list of injuries being inflicted upon our client by HRA for which our client will seek redress.

While CEO McClellan appears to have been the driving force behind these actions, it was made clear to our client that it was the HRA Board that sanctioned the decision by way of formal Board motion and vote.

It is unknown to our client at this point whether the motion was legally passed at a duly constituted meeting with a proper quorum, but it is clear enough that the majority of Board Members would have been conflicted for various reasons as a result of the

financial advantages or other benefits such decision would bring to them personally or to other individuals or entities with which they are affiliated.

Worsening matters is the fact that Bill 4, which has just passed second reading, will have the effect of dissolving the current board and replacing it with a new board sometime in the New Year. The stated reason for this legislative action is to improve the objectivity of the Board and to better avoid conflicts by replacing a number of industry appointed members with community members appointed by the Minister. In short, it is an attempt to better avoid the very conflicts of interest that have given rise to the decision to shut our client down.

One can only imagine that the Board would not have taken this decision to breach the various agreements and undertakings that HRA had with Alberta Downs without contemplating that Alberta Downs might seek legal redress. Accordingly, the warning that we are about to convey to you at this point may well fall on deaf ears, such is the apparent hubris of HRA, but it must be stated in any event.

Our client has instructed us to commence immediate legal proceedings that will seek a variety of equitable, prerogative and monetary remedies including compensatory, aggravated and punitive damages along with full legal costs on a solicitor and client basis. Ultimately, his damages will likely exceed his investment to date (\$8 million) in the event he cannot be made whole by HRA returning him to the status he enjoyed on the 15<sup>th</sup> of November of this year.

This letter is being conveyed to all Members of the Board because it is our client's intention to join you personally in the law suit. This decision is not taken lightly and is being made with full awareness that the governing legislation prohibits suits against individual Board Members for all decisions taken in good faith. As stated, however, it is our considered view that the decisions made by most if not all of the voting Members were conflicted and, in any event, were not taken in good faith thereby voiding the protective provisions under the Act.

Our client is prepared to meet with the Board at any time should it be prepared to reverse its decision and reinstate our client's race days and confirm his continued entitlement to off track betting receipts within his exclusive area. If we have not received your positive response by the **19<sup>th</sup> of December, 2014** we will proceed with filing suit without further notification.

It is only fair to advise that our client in addition to seeking legal redress intends to respond to an already inquiring Press that appears eager to follow up on this story. It is Mr. Allen's intention not just to bring this story to the attention of the two big city newspapers in the province but any media organization interested in following up on these most egregious acts by HRA including national newspapers and media outlets.

December 5, 2014

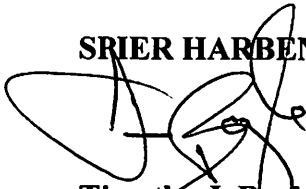
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Mr. Allen has also rallied support from the council of City of Lacombe, from Rod Fox area MLA, Blain Calkins area MP, and has approached the representative of the country of Lacombe.

Mr. Allen has also been invited by the Premier's constituency office to put together a package for the Premier's review which we are presently attending to. The package will include the documented history of HRA's relationship with Mr. Allen including HRA's letters encouraging and urging his investment in Alberta Downs. Accordingly, if there is to be any reconsideration of your decision it needs to be done now.

Yours truly,

**SRIER HARBEN**

A handwritten signature in black ink, appearing to read 'Timothy J. Boyle', written over the printed name.

**Timothy J. Boyle**  
**TJB/pjm**

**c.c. – Client (Via Email)**

SCHEDULE OF AHR BOARD MEMBERS

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