



COMMISSION HEARING

TORONTO, ONTARIO – NOVEMBER 17, 2010

**IN THE MATTER OF THE RACING COMMISSION ACT S.O. 2000, c.20;  
AND IN THE MATTER OF THE APPEAL AND REQUEST FOR HEARING BY  
STANDBRED LICENSEE MARTIN GOLDMAN**

On August 15, 2010, the Confederation Cup Final was held as the 12<sup>th</sup> race at Flamboro Downs Raceway. The order of finish was:

1. Aracache Hanover;
2. BGS Folly;
3. Four Starz Trace;
4. Stonebridge Tonic; and
5. Malicious.

Martin Goldman ("GOLDMAN"), owner of BGS Folly, submitted a Notice of Appeal of Judges Ruling SB 42435, dated August 27, 2010, wherein after reviewing the 12<sup>th</sup> race at Flamboro Downs on August 15, 2010, and posting the inquiry sign, the Judges found no violation that would result in a placing.

In his Notice of Appeal, GOLDMAN raised the following issues:

- a. The break of "Aracache Hanover" after the start; and
- b. The driver of "Aracache Hanover", Doug McNair's, alleged violation of the whipping rules.

On November 17, 2010, a Panel of the Ontario Racing Commission ("ORC") consisting of Chair Rod Seiling, Commissioner Dan Nixon and Commissioner Pam Frostad, was convened to hear the appeal.

Angela Holland appeared as counsel for the Administration, Jean Marc Mackenzie appeared as counsel for GOLDMAN, GOLDMAN attended the hearing in person and Robert Burgess appeared as counsel for Gregg McNair (trainer of Aracache Hanover), Douglas McNair (driver of Aracache Hanover) and the owners of Aracache Hanover.

Upon hearing the testimony of Senior Judge William Maertens, Doug McNair, and Paul MacDonell, upon reviewing the exhibits filed and upon hearing the submissions of Ms. Holland, Mr. Mackenzie and Mr. Burgess, the Panel denied the appeal.

BY ORDER OF THE COMMISSION

  
John L. Blakney  
Executive Director



## REASONS FOR DECISION

### Overview

1. Standardbred licensee, Martin Goldman, appealed a decision of the Judges of the Ontario Racing Commission (ORC), wherein the ORC officials upon review of the 12<sup>th</sup> race at Flamboro Downs on August 15, 2010, after posting the inquiry sign, ruled that there were no violations of the Rules of Standardbred Racing. Mr. Goldman's appeal alleged that the Judges did not properly apply the rules of racing as they related to the break of the winning horse, Aracache Hanover, at the start of the race, and a "whipping" violation during the stretch run of the race.

### Background

2. A de novo hearing convened to hear the appeal on November 17, 2010. Legal counsel for the parties were as follows: for the ORC was Angela Holland, Jean Marc Mackenzie acted on behalf of the appellant and Bob Burgess represented Gregg McNair (trainer of Aracache Hanover), Douglas McNair (driver of Aracache Hanover) and the owners of Aracache Hanover (Chad Aaron, Virginia Berkner and William Salmeri).

3. Shortly after the start of the 12<sup>th</sup> race at Flamboro Downs on August 15, 2010, the final of the Confederation Cup with a purse of \$547,000, the favourite in the race, Aracache Hanover, made a short break (off stride).

4. Judge William Maertens testified that on seeing the break they immediately posted the inquiry sign. The posting of the inquiry sign also dealt with a possible violation of the urging rule by the driver of Aracache Hanover, Doug McNair, just before the finish line. At the conclusion of the race, Judge Maertens confirmed that the Judges put in a call to the race paddock to notify officials there that they wished to talk to driver, Paul MacDonell, to inquire if he was interfered by the break of Aracache Hanover. Mr MacDonell was driving the number 9 horse, Malicious, in the race and was in the trailing position at the start of the race immediately behind Aracache Hanover.

5. SB Rule No. 22.27 reads, "When a horse breaks from its gait in a race the driver shall: (a) take the horse to the inside or outside of other horses where clearance exists; (b) properly attempt to pull the horse to its gait; and (c) continuously lose ground while on the break. If there has been no violation of (a), (b) or (c) above, the horse shall not be set back unless a contending horse on its gait is lapped on the hind quarter of the breaking horse at the finish...."

6. Judge Maertens testified, utilizing the video replay of the race, that driver McNair complied with the rules. Mr. McKenzie submitted that, in his opinion, the horse did not lose ground as required by the rule. Mr. McNair provided undisputed testimony that he went from going full speed to three quarter speed at this point in the race.

7. Mr. MacDonell confirmed in his testimony that he told the Judges following the race that he was not interfered with by Aracache Hanover. No other drivers exercised their right which is a requirement under the rules, to file an objection, if they believe the actions of another horse or driver impeded or interfered with them during the running of the race. This lack of objection included the driver of the appellant's horse.



8. SB Rule No. 22.23.04 reads, “A driver, or the person in control of the horse, is required to: (a) keep a line in each hand for the entire race, from the starter’s call to the gate until the finish of the race, except for the purpose of adjusting equipment.

9. SB Rule No. 22.23.05 reads, “Violation of any of the provisions in Rule 22.23.01 to 22.23.04 may result in any of the following penalties: a) fine; b) suspension; c) placement; d) disqualification; and/or e) any other penalty ordered.”

10. Policy Directive No. 5-2009 re Penalty Guidelines Rule 22.23 reads, “Any violation of Rule 22.23 to include subsections 22.23.01, 22.23.02, 22.23.03 and 22.23.04 is an offence and covered by this penalty structure. For an offence where a driver had driven with both lines in one hand and struck the horse with the whip, the Judges shall place the horse last. Placing of a horse may be considered by the judges where the misuse of the whip caused interference with another horse or, in the opinion of the Judges, there has been a flagrant disregard for these rules”.

11. The video replay clearly showed Mr. McNair take both reins in one hand and raise his whip just before the finish line. Mr. McNair provided undisputed testimony that he was just celebrating winning a major race. Judge Maertens testified that the horse was not placed because Mr. McNair did not strike the horse with his whip and as per the rules placing is not called for.

### **Issue**

12. Did the ORC Judges at Flamboro Downs during the running of the 12<sup>th</sup> race on August 15, 2010 properly interpret and apply the Rules of Standardbred racing as they relate to the short break in stride of Aracache Hanover just after the start of the race and with the whipping rule violation of driver McNair just before the finish line of the race?

### **Decision**

13. After carefully listening to the testimony and reviewing the evidence and submissions, the Panel denies the appeal.

### **Reasons for Decision**

14. Based on the testimony of Judge Maertens with his ten years of experience as a Judge supported by the video evidence and the testimony of drivers McNair and MacDonell, it is reasonable to conclude that the Judges correctly interpreted and applied the rules of racing to both the break of Aracache Hanover at the start of the race and whipping rule violation near the end of the race.

15. Notwithstanding driver McNair’s admission that he planned to let Jody Jamieson take the lead rather than get caught in a deadly speed duel, the video evidence is clear that Mr. McNair lost ground while his horse was on the break. Mr. Jamieson passed him and took the lead. Attempts to align the rule to the rest of the field are irrelevant as it is impossible to ascertain what those horses and drivers were doing in the race at that time as they would all be looking for a position and certainly not looking to challenge for the lead. Supporting evidence that Mr.



COMMISSION HEARING

TORONTO, ONTARIO – NOVEMBER 17, 2010

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McNair lost ground was his undisputed testimony that he went from full speed to three quarter speed at this point in the race.

16. In terms of credibility for Judge Maertens' evidence, in addition to his experience and qualifications as a Judge, was the undisputed submission that the ability to watch a race live is far superior in terms of offering opinion as to just watching a video replay.

17. The inquiry sign was posted by the Judges seeing the race live. No driver or connection to any horse in the race lodged a claim of foul including the appellant's own driver. Given the \$500,000 plus purse it is reasonable to conclude that had there been any rule violations someone connected to any of the other horses in the race would have lodged a claim of foul.

18. Clearly there was a whipping rule violation by Mr. McNair near the finish line of the race. Again the Judges correctly interpreted and applied the rule. Mr. McNair did not strike the horse when he put both reins in one hand and waived his whip in the air as per Judge Maertens' testimony. Therefore placing or disqualification is not called for by the rules.

19. Mr. McKenzie's precedent case as per his Factum, Exhibit 3, is clearly not relevant. In terms of a relevant precedent ruling, one needs to refer to the Spence matter, SB 053/2010. The facts in that Hearing are very similar in terms of what occurred at the start of the race and the correct interpretation and application of the rules by the Judges.

19. The Administration did not raise the issue of a frivolous appeal during the hearing. The Panel, therefore, has chosen not to exercise its right to make such a determination. It does note that the appellant opted to not call any witnesses, nor did it present any new material evidence, nor did it demonstrate that the Judges erred in their interpretation and application of the rules. The appellant also basically ignored one aspect of his appeal, the alleged whipping violation and attempted to infer that a horse must lose ground to the entire field, something Judge Maertens correctly asserted was not realistic. In summation, the appellant did not provide anything of value to the Panel save and except cross-examination.

DATED this 18<sup>th</sup> day of November 2010.

Rod Seiling  
Chair