

IN THE MATTER OF AN APPEAL UNDER ENABLING LEGISLATION OF THE LEGISLATURES OF THE PROVINCES OF PRINCE EDWARD ISLAND, NOVA SCOTIA AND NEW BRUNSWICK ESTABLISHING A MARITIME PROVINCES HARNESS RACING COMMISSION AND UNDER THE RULES AND REGULATIONS OF THE MARITIME PROVINCES HARNESS RACING COMMISSION.

Appeal Heard at Kensington, PE, November 4, 2011, 2:45 P.M.

BETWEEN: Simon Allard (Y39761)
MPHRC Licensee
Ontario
APPELLANT

AND: Roger DesRoches, Senior Judge
Kier Jones, Ron Gamble,
Associates, Judges' Panel, RED SHORES
@ CDPEC August 20th, 2011
RESPONDENT(S)

PRESENT:

A panel consisting of Chair Harold DeCoursey (NB) and Commissioners Robert Wilson (NB), Wendell Shaw (PEI), Fred Paynter (PEI), David Lewis (NS), James Cameron (NS) convened to hear the appeal. Debbie Walsh and Paul Hogan appeared at the hearing for the Administration. Appellant Mr. Simon Allard appeared in person and was represented at the Hearing by Robert Burgess via telephone conference call. Senior Judge Roger DesRoches and Associate Judges Kier Jones and Ron Gamble represented the Respondent(s). Summoned witnesses Ken Arsenault and Earl Smith were also present at the Hearing. Witness for the Appellant Ross MacInnis testified via telephone conference call. Witness for the Appellant, Doug Folkins Jr. did not answer when called to testify via telephone conference call.

The Chair indicated this Appeal Hearing was being conducted under the provisions of Section 7.3 of the Maritime Provinces Harness Racing Rules and Regulations and the procedure for the conduct of the Appeal Hearing would be guided by that Section.

The Chair introduced all those present and then asked the Appellant and Respondent(s) if they accepted the jurisdiction of the MPHR Commission Appeal Panel of six (6) Commissioners; at least one member from each of the participating Provinces of the Commission, to conduct the Appeal and to render a written Decision in due time. All parties accepted the jurisdiction of the Maritime Provinces Harness Racing Commission Appeal Panel of Six (6) Commissioners.

PRELIMINARY MATTERS:

The Chair asked if there were any Preliminary Matters to be dealt with, and there being none, the Appeal Hearing continued.

POSITION OF THE RESPONDENT JUDGES' PANEL:

Senior Judge Roger DesRoches indicated that following the completion of race # 9 they received a call on the radio from the starter that there was an incident in the first turn. Upon reviewing the replay of the pan shot they saw that Mr. Allard drove from the two or three wide path across to the outside of the track and appeared to try hit Earl Smith with his (Mr. Allard's horse's head). He did hit Mr. Smith, almost knocking him off the bike.

Mr. Earl Smith testified that Mr. Allard's horse's head was over his shoulder and "I was half off my bike after being hit by his horse and was trying to hold my horse."

Ken Arsenault stated that he noticed Mr. Allard with his whip over his horse's tail crossing from the two or three path along the rail to the outside fence towards Mr. Smith. "I thought he was trying to hurt Mr. Smith and that is why I went after Mr. Allard. Earl is 62 years old and could have been hurt."

END OF RESPONDENT'S SUBMISSION

POSITION OF THE APPELLANT – MPHRC LICENSEE DRIVER SIMON ALLARD

Mr. Allard testified that Earl Smith had yelled at him after Race # 8 because he (Allard) had dropped in front of Mr. Smith as they raced to the ¾ pole. "He was swearing at me and I did not like it."

"In race #9 Mr. Smith parked me the whole mile and by doing that did not drive his horse to win as my horse was the second favorite."

"After the race I was not proud of what I did and I came in person to apologize for that." Mr. Allard also stated that Kenny Arsenault hit him much harder than he had hit Mr. Smith.

Mr. Allard also gave testimony in regards to some medical issues he has had in the months prior to and following Old Home Week 2011.

Mr. Ross MacInnis testified that he was not aware of anything unusual during the running of Race # 8, but saw Mr. Allard and some others having a verbal exchange just inside the paddock area, but was not really aware of what they were saying. He was not sure that anyone had threatened to “get” Allard.

Mr. Robert Burgess stated that his client was not denying he had done something wrong, but was unhappy with the severity of the sentence. He stated that the problem in race # 9 was part and parcel of a problem in race # 8. He believes that the burden of responsibility falls too heavily on Mr. Allard.

END OF SUBMISSION OF APPELLANT MPHRC LICENSEE DRIVER SIMON
ALLARD

MAJORITY DECISION 3-2 OF THE MARITIME PROVINCES HARNESS RACING
APPEAL PANEL OF SIX (6) COMMISSIONERS - CHAIR NOT VOTING

After a thorough Appeal Hearing and post hearing deliberations, your MPHR
Commission by a majority decision finds as follows:

The Appeal of Simon Allard is DENIED, however the penalties are varied as follows:

- **Mr. Allard’s full suspension is reduced from 30 days to 15 days, November 29, 2011 to December 13, 2011 (inclusive)**
- **Mr. Allard’s fine is increased to \$1500.00**
- **Mr. Allard will be on probation for six months November 29, 2011 to May 28, 2012**

Reasons for Decision:

1. Appeal Board members who denied the appeal, but varied the penalties believed that Mr. Allard was in violation of the rules when he hit Mr. Smith with his horse following race # 9. However, they agreed with the Mr. Burgess, that Mr. Allard was bearing too much of the burden of responsibility for the incident.

The fact that Mr. Allard appeared in person, accepted full responsibility for his actions, and was very apologetic for the incident were mitigating factors for the decision to vary the penalties.

2. The Appeal Board members who denied the Appeal and were of the opinion that the penalties were appropriate and should not be varied believed that Mr. Allard's actions were the catalyst for Mr. Arsenault's actions and that he should be held accountable for those actions.

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HAROLD DECOURCEY

Chair

Maritime Provinces Harness Racing Commission Appeal Panel of Six (6),

DATED AT KENSINGTON, PRINCE EDWARD ISLAND THIS 4th DAY OF
NOVEMBER, A.D., 2011.

PH/Kensington, PEI, 04/11/11