



COMMISSION HEARING

TORONTO, ONTARIO – DECEMBER 3, 2010

**IN THE MATTER OF THE RACING COMMISSION ACT S.O. 2000, c.20;
AND IN THE MATTER IN THE APPEAL AND REQUEST FOR HEARING OF
STANDARDBRED LICENSEE DAN MEGENS**

On May 30, 2010, the Judges issued Standardbred Official Ruling SB42350 wherein Dan Megens ("Megens") was given the penalty of a 3-day driving suspension (June 4, 5 and 6, 2010) for bearing down in the first turn while driving CAMYTHICAL, forcing the driver of PHILAN CHARLIE to pass on the inside of two consecutive pylons in race 11 at Flamboro Downs on May 26, 2010, in violation of Rule 22.05.01(a) of the Rules of Standardbred Racing. CAMYTHICAL finished 1st and was placed 4th.

On May 30, 2010, Megens filed a Notice of Appeal, pursuant to Rule 24.01(b) of the Rules of Standardbred Racing.

On December 3, 2010, a Panel of the ORC, comprised of Commissioner Brenda Walker as Chair, convened for the purpose of hearing this matter.


Rick Rier appeared on behalf of the Administration of the Ontario Racing Commission (ORC). Megens attended the Hearing and was unrepresented.

After reviewing the evidence, hearing the testimony of Judge Dave Stewart and upon considering the closing submissions, the Panel denied the appeal and upheld the original decision of the Judges of the three-day driving suspension and the placing of the horse from 1st to 4th. Megens will serve his three-day suspension on December 7, 8 and 9, 2010.

The Transcript of the Panel's Reasons for Decision is attached to this Ruling.

DATED at Toronto this 24th day of December 2010.

BY ORDER OF THE COMMISSION


John L. Blakney
Executive Director

ONTARIO RACING COMMISSION

RE: STANDARD BRED HEARING

IN THE MATTER OF AN APPEAL AND REQUEST FOR HEARING OF

DAN MEGENS

Held Before:

Brenda Walker, Commissioner

This is an excerpt of a Hearing of the Ontario Racing Commission re: **DAN MEGENS**, taken before Toronto Court Reporters, Suite 1410, 65 Queen Street West, Toronto, Ontario, at 10 Carlson Court, Suite 400, Toronto, Ontario, on the 3rd day of December, 2010.

Appearances:

Rick Rier,

representative for the Ontario
Racing Commission
Administration

1 Hearing continued ...

2 HEARINGS CLERK: All rise.

3 MR. CHAIRMAN: Please be seated. This is the hearing for Dan
4 Megens SB42350 ORC rule 22.05.10(a), three days driving suspension for driving
5 CAMINTHICO number 3, 1st place and got placed 4th causing number 9 to go inside
6 the pylons. After carefully listening to the testimony and reviewing the evidence the
7 appeal has been denied. The tape shows that number 9 did leave from the rail and
8 was protecting his position and it was up to Megens driving number 3 to ensure that
9 there was room and not force number 9 into the pylons. The three day suspension
10 stands and then we will deal with the next one and it is the appeal of Dan Megens for
11 failing to appear for a hearing. The ORC tries to accommodate the appellants and a
12 hearing was set which Mr. Megens failed to appear. A meeting at his training farm
13 was scheduled which he also failed to attend and the meeting at the ORC head office
14 was scheduled which he also failed to attend. Although reasons were given, some
15 health, some others, there should be no doubt that Mr. Megens did everything
16 possible to make sure he attended. Consideration is taken into the fact that Mr.
17 Megens did attend a hearing scheduled for September the 29th and was asked to
18 reschedule because the hearings were running late and there was a fire alarm. For
19 these reasons that I have denied the appeal but I have varied the penalty. The
20 penalty will be as following, so a \$500.00 fine and that's all for that one. Any
21 questions? So there is the three days from the first one and the \$500.00 for the
22 second one.

23 MR. MEGENS: Well, I do have a question. Would it appease the
24 Commission if Mr. Moffat did the interview right now?

25 MR. RIER: It's too late.

26 MADAME CHAIR: We don't need an interview now.

1 MR. RIER: We don't need the interview now.

2 MADAME CHAIR: That's what this dealt with.

3 MR. MEGENS: But wasn't that the point?

4 MADAME CHAIR: It was the point originally to have the interview but
5 because the interview didn't take place this hearing had to take place.

6 MR. MEGENS: I find it unfortunate that the circumstances that the
7 Commission really doesn't care much about this, the circumstances, at all and that if it
8 was the one my choosing to help my friend, if I have to be uncharitable and cannot
9 help a friend in order to please the Commission I would make that same choice
10 again.

11 MADAME CHAIR: And that's being a good friend. That's fine and
12 that's why you did get some leniency here because you could have got more than
13 what we just gave you. We have dropped the original fine because we did take some
14 of those things into consideration and that you did have records and that you did
15 show up on that date and that's why I gave you leniency there and dropped your fine
16 but it still stands to the fact that there were things that were set up that were
17 cancelled and you could have gone out of your way a little bit more too to
18 accommodate Mr. Moffat by having the meeting, phoning him a little earlier and trying
19 to get it set up. I know there was some misunderstanding too but --

20 MR. MEGENS: I got that - I got the call from my friend and I left right
21 away and I called. I did. I tried to be as cooperative as possible.

22 MADAME CHAIR: And so when you got the call from your friend did
23 you phone Mr. Moffat right away?

24 MR. MEGENS: Immediately. That's why he shows up at 4:00 - at
25 2:20 and says he has the call routed to him at 1:24 so 1:20 to 1:24.

26 MADAME CHAIR: So if you had waited five minutes you could have
27 had the meeting done too.

1 MR. MEGENS: That's right but I'm not sure when he is going to be
2 there exactly, right?

3 MADAME CHAIR: Yes.

4 MR. MEGENS: I find it unfortunate. I find it very unfortunate. I think
5 also the other case too is unfortunate too because I think it is as Mr. Macdonald said,
6 had he done it again it wouldn't have done it.

7 MADAME CHAIR: Yes, but I mean we had to look at he says that now
8 and when you look at it as when we are seeing the tapes; from what we can see on
9 the tapes and that's what I have to make my decision on, okay? And he did have the
10 rail. He did have the rail and even if his feet were beside you, you had to wait in
11 order to get into that space and he was trying to protect his rail. I mean in hindsight
12 sure, maybe he shouldn't have done that. If he had got dropped I mean he might
13 have been in a different situation, you know what I mean?

14 MR. MEGENS: Yes.

15 MADAME CHAIR: But he still - his feet were there ahead of you and
16 you know you did have to wait until he --

17 MR. MEGENS: But I couldn't wait at the time. The whole race was
18 going in that direction. As I say, if I had moved over how could I give him more
19 space?

20 MADAME CHAIR: Well, you just had to sit out there a little longer
21 before everybody - and you are the only one. Everybody was scooting down and
22 that's unfortunately you were --

23 MR. MEGENS: I think that was the point in my argument was that that
24 was the dynamic of the track.

25 MADAME CHAIR: It is and that is why some people give themselves
26 more - a lot of people. If you are at London everybody is way out there because that

1 turn comes so soon. They give themselves that room. They all were out there and
2 then they come around and they all do make that sweeping turn.

3 MR. MEGENS: Well, I think in this case it is a case that by the time
4 they had caught up to me there was not going to be any space there in two seconds
5 and there is no place I could have gone and to prove that I drive the space when you
6 decide to come through and I would had to crash everybody else. So thing is that
7 you can say at one point there is space there. There might have been enough width
8 at this point but at that point it is not going to be there. Like the whole race was
9 happening there and I think that is a crucial point and I think that should have been
10 determinative as well.

11 MADAME CHAIR: Okay.

12 MR. MEGENS: Thank you.

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16 CERTIFIED CORRECT: _____
17 RAYMOND P. MACDONALD, B.A., CVR
18 Commissioner of Oaths
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