



COMMISSION HEARING

TORONTO, ONTARIO – SEPTEMBER 13, 2011

**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
STANDARD BREED LICENSEES MICHAEL WHELAN AND TERRY HUNTER**

On August 12, 2011, the Judges issued Official Ruling SB44114 Wherein Michael Whelan (“Whelan”) was issued a 3-day driving suspension and the horse My Whispering Eye finished first and was placed third for causing interference in violation of Rules 22.05.01 (a) and (b) in Race 4 at Georgian Downs on August 9, 2011.

On August 15 2011, Whelan and Mr. Hunter filed a Notice of Appeal, pursuant to 2008 Rules of Standardbred Racing.

On September 13, 2011, a Panel of the Ontario Racing Commission (ORC), comprised of Chair Rod Seiling, convened for the purpose of hearing this matter.

Tom Miller appeared on behalf of the Administration of the ORC. Whelan and Terry Hunter attended the Hearing and were represented by Anthony Haughan.

After reviewing the evidence, and hearing the testimony of Judge Craig Walker and Drivers Lyle MacArthur and Michael Whelan and upon considering the closing submissions, the Panel allowed the appeal in part. Whelan’s driving suspension is waived but the placing of the horse My Whispering Eye is confirmed.

A transcript with the Panel’s oral Reasons for Decision is attached to this Ruling.

DATED at Toronto this 20th day of September 2011.

BY ORDER OF THE COMMISSION



Rob McKinney
Acting Executive Director

ONTARIO RACING COMMISSION
STANDARD BRED HEARING
IN THE MATTER OF THE APPEAL AND REQUEST FOR HEARING OF
MICHAEL WHELAN and TERRY HUNTER

Held Before:

Rod Seiling, Chairman

These are an excerpt of the proceedings in the above mentioned matter held before The Ontario Racing Commission, Re: **MICHAEL WHELAN and TERRY HUNTER**, taken before Toronto Court Reporters, Suite 1410, 65 Queen Street West, Toronto, Ontario, at 10 Carlson Court, Suite 400, Toronto, Ontario, on the 13th day of September, 2011.

Appearances:

Tom Miller,

agent for the Ontario Racing
Commission Administration

1 Hearing continued ...

2 MR. CHAIRMAN: All rise. Please be seated. After
3 carefully reviewing the testimony and the submissions and of
4 course the video replay the appeal is denied. It is clear there was
5 contact and the panel accepts the testimony of experienced Judge
6 Walker that there was no room for Mr. Whelan to proceed up.
7 That testimony is supported by Mr. MacArthur who lodged the
8 appeal immediately after the race. Mr. Whelan clearly initiates the
9 hooking of the arches as he is moving up from behind the horse
10 thereby interfering/impeding Mr. MacArthur. It is unclear whether
11 Mr. MacArthur had to check his horse but there is no uncertainty
12 as to the hooking but it is not clear as to whether Mr. MacArthur
13 had to check his horse or not.

14 Measuring space via the video replays using
15 whether it is a pointer or a tape measure is an inexact science at
16 best and therefore the panel is unable to attach any weight to
17 support the claim the Mr. MacArthur moved in to close the hole
18 but in closing I want to say this appeal is really a case study re
19 interference calls because in the end the opinions and testimony
20 carry the day so many times as the video is not that helpful due to
21 the closeness of the players where in the end mere inches can
22 determine whether there was interference or not interference and
23 it truly is one of the toughest ones I have ever had to adjudicate
24 and I do feel for the appellants. It is just there is not enough there

1 for me to overturn the ruling of the Judges. So I'm sorry, but that's
2 the day.

3 MR. MILLER: If I may, Mr. Seiling, and I did bring it
4 up earlier, there was a three day suspension for Mr. Whelan we
5 need to look after. I did mention it in my submission.

6 MR. CHAIRMAN: I didn't hear it. Due to how close
7 this is I am going to waive the penalty. This is a very difficult one
8 and I don't see enough to overturn it but it is that close and so I
9 am not going to penalize Mr. Whelan his days. It could go either
10 way, flip your coin but I am upholding the decision of the Judges
11 based on what I have seen and what I have heard. Thank you.

12 MR. MILLER: All rise please.

CERTIFIED CORRECT

RAYMOND P. MACDONALD, B.A., CVR
Commissioner of Oaths