



Gaming Commission

KATHY HOCHUL
Governor

BRIAN O'DWYER
Chair

December 18, 2023

By email [REDACTED]

Andrew J. Mollica, Esq.
[REDACTED]

Garden City, NY 11530

Re: Stewards' disqualification of *Brick Ambush* in the 9th race at Aqueduct Race Course on December 16, 2023

Dear Attorney Mollica:

This letter responds to your December 17, 2023 letter, in which your clients Reeves Thoroughbred Racing and Danny Gargan seek to appeal the stewards' decision to disqualify the horse *Brick Ambush* in the 9th race conducted at Aqueduct Race Course on December 16, 2023.

Your letter states disagreement with the decision of the stewards. This disqualification decision was a judgment call based on questions of fact, which the stewards are empowered to make pursuant to Commission Rule 4039.20 (9 NYCRR § 4039.20), and the decision is therefore not appealable to the Commission, pursuant to Rule 4039.5.

New York Courts have long held that stewards' placement decisions are questions of fact that cannot be appealed. See, e.g., In the Matter of the Seventh Race of June 12, 1996 at Belmont Park [*May I Inquire*] (NYSRWB 1996), *confirmed*, *Matter of Moshera v. Bilinski*, 244 A.D.2d 555 (2d Dep't 1995); see also *Discenza v. N.Y. Racing Ass'n*, 134 Misc. 2d 3, 7-8 (N.Y. Civ. Ct. 1986); *Shapiro v. Queens County Jockey Club*, 184 Misc. 295, 300 (N.Y. Mun. Ct. 1945).

For these reasons, the stewards' decision is final and the New York State Gaming Commission cannot consider your appeal.

Sincerely,

Kristen M. Buckley,
Acting Secretary