

RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF MR SERG LISNYY

Appeal Panel: **Mr T Hale SC – Convenor; Mr C Tuck; Mrs S Skeggs**

Date of Hearing: **30 August 2017**

Date of Decision: **30 August 2017**

Appearances: **Appellant – Mr P O’Sullivan, solicitor**
**Racing New South Wales – Mr Philip Dingwall, Deputy
Chairman of Stewards**

REASONS FOR DECISION

(At the conclusion of the hearing the Convenor gave the following ex tempore reasons for decision on behalf of the Panel)

The Panel Introduction

1. Serg Lisnyy (the appellant) is a licensed jockey.
2. On Tuesday 22nd August 2017 he rode the horse ‘Oakfield Time’ in Race 5 at the Muswellbrook race course, the race was over a distance of 1050m.
3. Later that day there was a Stewards inquiry into the running of the race. The appellant was charged with and pleaded not guilty to a charge of careless riding in breach of AR137(a). The Stewards found him guilty of the charge and suspended him from riding for five meetings, being a period from the 1st September 2017 to the 9th September 2017 on which day he was permitted to resume riding.
4. The appellant has appealed to this Panel from the decision of the Stewards on both conviction and penalty. Pursuant to section 42 of the *Thoroughbred Racing Act 1996* this appeal is by way of a new hearing.
5. At the hearing of this appeal Mr Dingwall appeared on behalf of the Stewards and Mr O’Sullivan, Solicitor, appeared on behalf of the appellant.
6. AR137(a) provides:
that any rider may be penalised if in the opinion of the Stewards he is guilty of careless, reckless, improper, incompetent or foul riding.

7. The particulars of the charge are;
that you, Serge Lisnyy, as the rider of Oakfield Time in Race 5 the Class 1 Handicap 1000m did allow your mount to shift in for some distance approaching the 100m whilst riding it along after Floki had established a run to the inside of Oakfield Time and near the 100m, Oakfield Time shifted in to a position where Floki had to be checked severely, blundered and almost dislodged its rider.
8. At the hearing before us, the appellant pleaded not guilty.
9. Admitted into evidence was film of the race (which we found of great assistance) and the transcript of the inquiry before the Stewards. We received oral evidence from the appellant.
10. As the particulars of the charge state the incident occurred at approximately 100m from the finish. Having seen the film and taken into account the evidence we make the following findings
11. The Appellant's mount was racing approximately one off the rail. 'Floki' ridden by Josh Adams established a run on the rail inside of the appellant's mount. Approximately 100m from the finish the appellant's mount shifted inside. 'Floki' at that time was approximately a long neck into his run inside. As a consequence of the inside shift by the appellant the rider of 'Floki' was required to take evasive action which resulted in 'Floki' hitting the rail and losing his running. When the appellants horse shifted inside the appellant appeared to take some evasive action but did not stop riding and straighten the horse. We should also add that we do not accept the submission made on behalf of the appellant that 'Floki' was not entitled to take the run on the fence
12. In these circumstances, we consider that the charge of careless riding under AR137(a) has been established. Accordingly the appeal on conviction is dismissed and the finding of guilt made by the Stewards is confirmed

Orders

1. Appeal on conviction dismissed
2. Finding of Guilt by Stewards is confirmed

(The parties then addressed on penalty. After a short adjournment the Convenor gave the following decision on behalf of the Panel)

Decision on Penalty

1. The appellant has been found guilty of the charge of careless riding under AR137(a). We have now heard submissions on the question of penalty.
2. In determining the appropriate penalty to be imposed we take into account all of the matters that have been put to us in submissions. We also take into account the Careless Riding Penalty template which, as Mr O'Sullivan correctly says, is guide, but we are not bound it.

3. The matters which we have taken into account which we consider to be of the greatest weight are firstly the low level of carelessness, secondly our finding that the appellant did take evasive action, albeit not sufficient, and thirdly his good record.
4. In all the circumstances we consider that it is appropriate to reduce the period of suspension by one meeting to four meetings, so that the period of suspension now is for the period from the 1st September 2017 to the 8th September 2017 on which day the appellant may ride.

Orders

1. The appeal on penalty is allowed.
2. Penalty imposed by the stewards is set aside
3. In lieu thereof there will be a period of suspension from the 1st September 2017 to the 8th September 2017
4. Deposit refunded.