

RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF MR HO LUN CHAU (ALLAN CHAU)

Appeal Panel: **Mr R. Beasley SC – Principal Member; Mr J Murphy; Ms J Madsen**

Date of hearing: **11 August 2017**

Date of decision: **11 August 2017**

Appearances **Appellant – Mr Ho Lun Chau**
Racing New South Wales – Mr P Dingwall, Deputy Chairman of Stewards

REASONS FOR DECISION

The Panel

Introduction

1. The appellant is a licenced jockey who rode the racehorse ‘Miss Forbidden’ (“the horse”) in the XXXX Gold Maiden Handicap, which was a 1000 m race conducted at the Wagga Wagga Racecourse on 1 August 2017 (“the Race”).
2. The horse finished in 5th place. Following the race, the Stewards conducted an inquiry into alleged interference caused by the appellant’s horse to the horses Nessarose and Little Rio approaching the 600m. He was ultimately charged with a breach of AR 137 (a), which is in the following terms:

AR 137 Any rider may be penalised if, in the opinion of the Stewards,
(a) He is guilty of careless, reckless, improper, incompetent or foul riding.

3. The particulars of the charge were as follows:

“...that you, Alan Chau, as the rider of Miss Forbidden in race 1...did passing the 600 metres permit your mount to shift inwards when insufficiently clear of Nessarose, which was carried in onto Little Rio, resulting in Nessarose and Little Rio being checked and losing the running to which they were entitled.”

4. The appellant pleaded not guilty to the charge. After hearing submissions as to guilt, the Stewards found the charge to be sustained. After hearing submissions on penalty, the Stewards imposed a penalty of a six-meeting suspension – such penalty commencing on 9 August.
5. The penalty was arrived at by the application of the Penalty Guidelines for Careless Riding. The carelessness involved in the appellant’s ride was assessed by the Stewards to be ‘Medium’, and the level of interference was graded as 2 – ‘checked and or lost rightful running’. This would ordinarily result in a 7 meeting suspension. The penalty was decreased to 6 meetings after a 10% loading was applied for the appellant’s record, but a 10% discount for contribution, and a further 10% discount for the nature of upcoming meetings.
6. The Panel has stated in many previous appeals that it is not bound by the Penalty Guidelines, but would only depart from their general application for good reason. As this is an appeal by rehearing, the Panel of course has to reach its own conclusions as to issues such as the grade of carelessness, or (in this case, which is an appeal against both guilt and severity of penalty) whether there was any carelessness at all.

Evidence and submissions

7. The appellant represented himself before the Panel. The Stewards were represented by Mr P Dingwall, the Deputy Chairman of Stewards. The appeal book, which included the transcript of the Stewards’ Inquiry, was marked as exhibit A, and the film of the race as exhibit B.

8. At the Stewards' inquiry, it became clear that Mr Chau's horse had made contact at about the 600m mark with Nessarose, ridden by Rebeka Prest. On the inside of Nessarose was the horse Little Rio, ridden by Brooke Sweeney. Ms Sweeney's evidence was that she had pressure on the outside of her, but that pressure mainly came from Mr Chau, not Ms Prest: T1 L 40-47.
9. Ms Prest for her part said that Mr Chau was "*pushing me inwards*": T 2 L 80. She said that he made contact, and that Mr Chau pushed her on to "*Brook when he pushed for the run up in between me and Brad Vale* [the rider of the horse Smashby, that was travelling 4 wide at the 600m]": T 4 L149-151.
10. Mr Chau's submission to the Panel, consistent with his evidence at the Inquiry, was that he held his line, although the horses were racing 'neat'. He agreed contact was made (T4 L 171), but he denied shifting in: T5 L 210 (see also T7 L 309-320). He said what appeared to be a check suffered by Nessarose was as much as that horse being perhaps both intimidated, and becoming extremely tired (that horse did run a long last).

Resolution re finding of guilt

11. The Panel's own observations of the film are that the appellant did shift in slightly on his mount. We note also that he did concede this at the Inquiry: see T 10 L 475-481.
12. While the film of the race is not perfect, we are comfortably satisfied that Mr Chau has shifted in and caused interference. We are therefore comfortably satisfied that the finding of guilt should be sustained, and the appeal dismissed. However, we are also satisfied that Ms Prest's horse Nessarose shifts out slightly and contributes to the interference, and this must be reflected in assessing penalty.

Penalty

13. The Panel, as mentioned above, is not bound by the Penalty Guidelines. We take the view however that they should be applied in this case. They serve many purposes, including achieving consistency in sentencing. They should only be departed from for good reason.

14. While applying the guidelines, we take the view however that the carelessness here should be assessed at 'low', not 'medium'. Further, we assess contribution at 25%, not 10%. Applying a premium for record of 10%, and the further 10% reduction for the nature of the upcoming meetings, we would then round down the penalty to be imposed to a 4 meeting suspension in lieu of a 6 meeting suspension.

Orders

15. The Panel makes the following orders:

1. Appeal against finding of guilt dismissed.
2. Finding of breach of AR 137(a) confirmed.
3. Appeal against penalty allowed.
4. In lieu of a 6 meeting penalty, a penalty of a 4 meeting suspension is imposed.
Such penalty to commence on Monday 14 August.
5. Half of the appeal deposit to be refunded.