

**RACING NEW SOUTH WALES APPEAL PANEL**

**IN THE MATTER OF THE APPEAL OF  
LICENSED JOCKEY HUGH BOWMAN**

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Appeal Panel: **Mr P. Santucci — Chairman**

**Mr J. Nicholson**

**Mr P. Losh**

Appearances: **Appellant: Self-represented**

**Racing NSW: Mr M. Van Gestel, Chairman of Stewards**

Date of Hearing: **Tuesday 20 September 2022**

**REASONS FOR DECISION**

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**TRANSCRIPTION FROM DIGITAL RECORDING**

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**CHAIRMAN:** We thank the parties for their submissions and I propose to give some reasons now of the Panel so this can be done quickly and, hopefully, the transcription can be prepared. Our reasons are as follows.

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The appellant, Hugh Bowman, was the rider of number 8, Lost And Running, in race 8 and Royal Randwick racecourse on 17 September 2022. On the same day the Stewards, consisting of Mr Van Gestel, S. G. Railton, T. P. Moxon and J. E. Earl conducted an inquiry into the appellant's ride. The appellant was charged under AR131(b), which states:

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***A rider must not, in the opinion of the Stewards:***

*(b) fail to ride his or her horse out to the end of the race and/or approaching the end of the race;*

The particulars of the charge that were given to the appellant on the day are recorded in the transcript of the Stewards inquiry as follows:

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*We charge you as the rider of 3<sup>rd</sup> placegetter, Lost And Running, in race 8 the Shorts, conducted at Royal Randwick Racecourse on 17 September 2022 that you did fail to ride out Lost And Running over the final stride of the event.*

35 The appellant pleaded guilty to that charge. The Stewards imposed a penalty of a 13-day suspension.

Pursuant to section 42 of the Thoroughbred Racing Act 1996, the appellant has appealed against that penalty. The appellant represented himself on this appeal and  
40 the Stewards were represented by Mr Van Gestel as the Chairman of Stewards.

The appeal book was tendered in the appeal as exhibit A, the video footage of the race was tendered in the appeal as exhibit B, a written statement from Mr Bowman was tendered as exhibit C, and a media release from Racing NSW dated 3 August  
45 2022 was tendered as exhibit D. The Panel was also shown video footage of Mr Bowman's ride on Avilius in 2020 and although it was not formally marked, we have received that into evidence. The Panel has received also helpful written submissions from Mr Matthew Stirling, a solicitor for Mr Bowman.

50 Turning to the facts of the present case, the facts that appear to be uncontroversial to the Panel were as follows:

- a) The appellant rode his horse vigorously into the straight;
- b) He changed his hand holding the whip at about the 60m mark;
- c) He appeared to encourage the horse again to stretch out after that time; and
- 55 d) Lost And Running came third by a margin of about a short half head.

However, the central factual issue was the gravity of the appellant's conduct in the final stride approaching the winning post.

Mr Bowman, appearing for himself, offered a number of factors both in writing and  
60 orally that he said the Panel should consider. Mr Bowman was very familiar with the

horse, having ridden him in nine of his 16 starts and also in trackwork and trials. Mr Bowman says that he did encourage the horse and he told us that the horse did push with his hind legs approximately seven metres from the finish line and did not commence another stride until after he had crossed the finish line.

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Mr Bowman urges that there was nothing more he could do to encourage the horse to stretch out even a millimetre more than he was already trying to do. He noted that he did not sit up during the ride but had simply changed his hands and that was the reason for him pleading guilty. Mr Bowman submitted that the manner of his ride did not make a difference to the outcome. He encouraged us to consider the horse's action independently of his own conduct, particularly when viewed at full speed. Mr Bowman said he was riding with the rhythm of the horse and that pushing a horse's head down would have had no bearing on how the finish took place in light of what he submitted was the horse raising its head as it crossed the finish line. And, as a general matter, he noted that the conduct was confined to only the final stride.

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Mr Bowman acknowledged that he'd received a sentence of 13 days for the same charge in respect of his riding of Avilius in 2020 but submitted that that was a more serious offence and involved him failing to ride the horse out for what he said was three to four strides in that race. He said that this incident was more confined and less serious, and Mr Bowman suggested that a penalty of a reprimand or a fine was appropriate in this case.

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Mr Van Gestel appeared for the Stewards and pointed to a number of factors. He said that we will not know precisely how the race was affected by the conduct of Mr Bowman, but that we should assume that Lost And Running lost a realistic chance of a different place in this race. As to sentencing, Mr Van Gestel took us to a number of precedent penalties. He refers to Mr Bowman's record, including the ride on Avilius in 2020, a ride at Canterbury earlier in the year where a fine was issued, and a ride in particular on 15 February 2017 at Randwick where a five-day suspension was given for a dead-heat for second.

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Mr Van Gestel also pointed to the significance of this race as a Group 2 race with prize money of \$1 million in the lead-up to the Everest and the difference in prize money  
95 between second and third was in the order of \$100,000. Mr Van Gestel suggests that betting on the event may well have been affected, including quinellas and trifectas, had the outcome been different, and for those reasons submitted that 13 days was an appropriate sentence and considered that the riding of Avilius was of the same seriousness as this particular ride.

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Turning then to the considerations of the Panel. This Panel has summarised the applicable principles on a number of occasions. The offence to which the appellant has pleaded guilty is a breach of the Rules of Racing and that that regulatory regime bears a close relationship to professional discipline rather than, for example, the  
105 criminal law. Disciplinary proceedings in this respect are described as being protective. In such proceedings the penalty must recognise the importance of deterrence, particularly in regard to the protection of the public. Deterrence, both specific to the particular jockey charged and general deterrence for other riders, will have a broad application in respect to the Rules of Racing. The principles of protection extend not  
110 only to the punting public, but also the promotion of safety and welfare of horses and jockey, and the integrity of racing.

In respect of Australian Rule of Racing 131(b), integrity is an important element. By integrity we are not suggesting that the appellant's error was deliberate or that it  
115 involved misconduct. As Mr Van Gestel accepted, it was a misjudgement. But the integrity involved in this particular rule is bound up with participants and followers of racing and, in particular, punters and owners should have confidence that horses are given as far as possible every chance to finish in the best place in the race.

120 We are persuaded that in this particular case a suspension remains the appropriate sanction. Nevertheless, we consider there should be a modification to the sentence imposed.

We accept Mr Van Gestel's submission that this was a very close margin for second  
125 place and that this was a race of some significance being a Group 2 race in the lead-

up to the Everest. We accept also that Mr Bowman clearly has not raised his hands  
up the neck of the horse for its final stride. That means the horse could have been  
deprived of the chance of flattening out across the line and, consistently with the  
charge, it certainly prejudiced the horse from having the full opportunity to compete for  
130 second.

By comparison, however, the Panel was taken to the footage of the Avilius ride by Mr  
Bowman in 2020 for which he received a penalty of 13 days. Again, Mr Van Gestel  
asked us to conclude that this charge is of the same gravity as the Avilius ride. There  
135 was a dispute between the parties as to whether the Avilius ride involved Mr Bowman  
failing to ride out for only two strides, as was submitted by the Stewards, or three to  
four strides as was advanced by Mr Bowman.

The Panel is satisfied that the Avilius ride involved Mr Bowman failing to ride out for  
140 about three strides. We consider also that in the Avilius ride it cost the horse pace in  
that race.

The Panel considers, however, that there are differences in the ride concerning Lost  
And Running. First, the conduct is confined to only the final stride of the race. Second,  
145 at full speed the Panel is not able to detect a loss of pace in the horse in the final stride  
of this race. That suggests to the Panel that this offence is of lesser gravity than the  
Avilius ride.

We were also taken by Mr Van Gestel to the details of a charge against Mr Bowman  
150 on 15 February 2017 at Randwick in which a five-day suspension was imposed for a  
dead-heat for second. The Panel was reluctant to put too much weight on that  
suspension in the absence of seeing the footage, but we were satisfied that the offence  
is more serious in this case and requires greater than a five-day suspension.

155 We also were taken to a number of precedent penalties in respect of country races.  
The Panel was unable to put too much weight on those factors, given the absence of  
detail around those particular offences and without seeing the footage. Nevertheless,

we feel we are able to calibrate the suspension based on the previous suspensions given to Mr Bowman.

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For those reasons and in light of the significance of the race and Mr Bowman's previous record, we consider that a seven-day suspension would be the appropriate penalty commencing from the same date. The orders we propose are as follows:

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- 1) The appeal against severity of penalty is allowed.
- 2) The penalty of a 13-day suspension is set aside. In lieu thereof a suspension of 7 days is imposed.
- 3) Appeal deposit returned.

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Those are the reasons of the Panel. We thank the parties for their submissions and to Mr Stirling in his absence.

**M. VAN GESTEL:** Can I clarify, so the orders are clear, that the appellant is free to resume riding on Sunday 25 September.

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**CHAIRMAN:** Yes. He will miss the Saturday races.

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**CONCLUSION OF DIGITAL RECORDING**  
**CONCLUSION OF REASONS FOR DECISION**

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