

RACING APPEAL PANEL OF NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF MR BLAKE SHINN

Appeal Panel: **Mr R. Beasley SC – Principal Member; Mr J. Fletcher; Mr K Langby**

Date of hearing: **28 July 2016**

Date of decision: **28 July 2016, orders made. Reasons published on 2 August 2016**

Appearances **Mr Shinn: Mr P O’Sullivan, solicitor**

Racing New South Wales: Mr M. Van Gestel, Chairman of Stewards

Introduction

1. On 18 June 2016 Thud, a 4 year old bay mare, ran fourth in the Schweppes Handicap over 1200m, which was Race 4 of the ATC meeting conducted that day at Rosehill Gardens Racecourse (“the Race”). Thud was ridden by Blake Shinn, and co-trained by Mr Peter and Paul Snowden. Thud had started at \$6 in betting, and drifted out to \$8.50. She finished 0.8L from the winner of the race (Butterboom). There was a dead heat for second between Flamboyant Lass and Magic of Dreams, who finished half a length from the winner.
2. Following the running of the race, the Stewards commenced an inquiry into Mr Shinn’s ride. During that inquiry Mr Shinn gave evidence, as did Mr Paul Snowden.
3. The Stewards’ Inquiry was adjourned on 18 June, and was continued on 28 June 2016, at which time Mr Shinn and Mr Paul Snowden gave further evidence. Evidence was also taken from Mr Peter Snowden, and from Mr L Dalton, the Racing NSW Betting Steward.

4. Following a short adjournment of the Inquiry that day, the Stewards charged Mr Shinn under Rule 135(b) of the Australian Rules of Racing (“The Rules”). That Rule is in the following terms:

AR135. (b) *The rider of every horse shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity to win or to obtain the best possible place in the field.*

5. Four particulars were given in support of the charge. They were as follows:

1. *That rounding the home turn, you failed to shift your mount to the outside of BONETE (NZ), which would have afforded you the opportunity of establishing a run that had developed between BONETE (NZ) & MAGIC OF DREAMS; thereby providing you with the opportunity to improve & travel behind MISS TENPINS, when it was reasonable and permissible for you to do so.*
2. *That on straightening you remained for a short distance racing behind BONETE (NZ), and soon after you allowed THUD to shift inwards, to race directly inside BONETE (NZ), which resulted in THUD being held up for clear running between FRILL SEEKING and BONETE (NZ), until near the 200M.*
3. *That for some distance approaching the 100M, you failed to ride with sufficient purpose & vigour in an endeavour to improve your position between MISS TENPINS & BONETE (NZ) where in the opinion of the stewards it was reasonable and permissible for you to do so.*
4. *That near the 100M, you desisted from attempting a run between MISS TENPINS & BONETE (NZ), whereby you directed your mount in across the heels of MISS TENPINS, resulting in THUD being inconvenienced & losing momentum; when at all relevant stages in the opinion of the stewards it was reasonable & permissible for you to continue to endeavour to improve between MISS TENPINS & BONETE (NZ).*

6. After hearing further evidence and submissions, the Stewards found Mr Shinn guilty of the charge. Their reasons are set out at pages 44 and 45 of the transcript of the Inquiry. After hearing submissions on penalty, the Stewards imposed a penalty of a suspension from riding for one month, to commence on 15 July 2016, meaning Mr Shinn would be free to ride from 15 August 2016.
7. In this appeal to the Panel, Mr Shinn appeals both the finding of guilt, and the severity of the penalty.
8. A number of witnesses gave evidence before the Panel, and their evidence is discussed below. In addition, the transcript of the Stewards' Inquiry was admitted into evidence on the appeal, along with all of the exhibits that formed part of that Inquiry. The transcript and exhibits formed the appeal book, and that book was marked as Exhibit A. Further, almost all witnesses used film of the race in question as an aid to the evidence they presented to the Panel. Four angles of the film of the race were admitted into evidence on the appeal as Exhibit D. Film of Thud winning an 1100m race at Canterbury on 10 June 2015 (when ridden by Mr Shinn) was also admitted into evidence as Exhibit E

Evidence of Racing NSW

9. Mr Mark Van Gestel called evidence from three witnesses – Mr Leigh Dalton, Mr Ray Livingstone and Mr Phillip Dingwall.
10. Prior to giving evidence, Mr Dalton had prepared two detailed charts which became Exhibits B and C in the appeal. Amongst other matters, Mr Dalton's evidence proved that the race was run at a slower than average tempo. It also demonstrated that Thud finished fastest of all the horses in the race.
11. At the Steward's Inquiry, Mr Shinn's evidence was that he thought the pace was fast. Clearly, he was wrong in his assessment of pace.

12. Mr Dalton also gave evidence at the Stewards' Inquiry that horses trained by the Snowden's, when favoured by punters, tend to run well (T 15 L710-20). Thud eased in the betting market prior to the race.
13. The second witness called by Mr Van Gestel was Mr Livingstone, who is a Senior Stipendiary Steward of twenty-year's experience.
14. Mr Livingstone gave his evidence with the use of the film from the race (Exhibit D), taken at four different angles. While viewing the film, Mr Livingstone made certain observations and criticisms of Mr Shinn's ride on Thud in the race. Those criticisms were consistent with the four particulars of the charge.
15. During the course of Mr Livingstone's evidence, the film of the race was played in slow motion on several occasions, and in real time. The aspects of the ride that the Panel's attention was drawn to in the course of Mr Livingstone's evidence included:
 - (a) Rounding the home turn, and in particular at the top of the straight, Mr Shinn failed to shift Thud to the outside of Bonete to take a run that was developing between that horse and Magic of Dreams. This would have allowed Thud to travel behind Miss Tenpins, and ultimately achieve clear running.
 - (b) Running on past the 400m mark until close to the 200m mark, Mr Shinn continued to run behind Bonete and then shifted inwards, racing on the inside of Bonete and being held up for a run. This problem could have been avoided by looking for a run on the outside, or by having moved to the outside near the top of the straight.
 - (c) Mr Shinn's riding in the last approximately 150m lacked vigour, and he failed to take a run that opened up between Miss Tenpins and Bonete. Instead, Mr Shinn elected to take Thud back to the inside, losing momentum in the process, and being slightly impeded by Bonete.
16. Mr Livingstone's evidence also involved showing the Panel the film of Mr Shinn's ride on Thud on 10 June 2015, in an 1100m race at Canterbury (Exhibit E). Mr Livingstone's

opinion was that Mr Shinn had shown more endeavour in that run at an earlier stage, having ridden the horse purposefully from before the turn, taking it to the outside, and then with full vigour from the top of the straight (Thud ran on to win that race).

17. The last witness called by Mr Van Gestel was Mr Phillip Dingwall, the Deputy Chairman of Stewards. Mr Dingwall has nearly thirty years racing experience both in Australia, and in Hong Kong and Malaysia.
18. Mr Dingwall was also critical of Mr Shinn's ride at the top of the straight when he failed to race to the outside of Bonete. He described Mr Shinn's assessment of pace as "astonishing". He considered Mr Shinn's error in not moving Thud to the outside behind Miss Tenpins as a "culpable" error.
19. He was equally critical of Mr Shinn's lack of effort to "fossick" for a run after entering the straight, and described his decision to sit behind Bonete and then move in as a "zero percent play". He also noted that this was not a case of a jockey failing to take a split second opportunity.
20. In relation to Mr Shinn's ride on Thud in the last 150m, Mr Dingwall made similar criticisms to Mr Livingstone regarding a lack of vigour, and the failure to take the more outside run between Bonete and Miss Tenpins.

Evidence of Mr Shinn

21. Mr Shinn describe Thud as a lightly framed horse with a short sprint. This was consistent with his evidence at the Stewards' Inquiry: T 1 L 36-39. There was a measure of support for this assessment from Paul Snowden at the Stewards' Inquiry: T 5 L 215-220.
22. Mr Shinn told the Stewards at the Inquiry that his instructions were that the horse was "underdone". This statement was not accurate. He had been told the horse was "vulnerable", largely because it was first up at 1200m, but not because Thud was unfit

(Thud had run in two barrier trials before the race). The Panel does not believe anything turns on this incorrect description of the appellant's instructions.

23. In relation to Particular 1, Mr Shinn's explanation for following Bonete (a \$15 chance) and not moving out wider behind Miss Tenpins related to his assessment of the race. He believed Miss Tenpins (a \$11 chance who had been racing in listed races before this event) would run poorly and die on her run. He considered racing behind her would hold up his own mount. To an extent, his pre-race assessment proved correct. Miss Tenpins ran second last.
24. Another reason Mr Shinn gave for sitting where he was at the top of the straight related to his view that Thud only had a short sprint. While this view does not appear to be fully supported by the film of the Canterbury race the Panel was shown, we note that race was a lower quality 1100m race, restricted to 3 yo fillies. Mr Shinn's view was also supported by Thud's trainer: again, see T 5 L 215-220.
25. Mr Shinn was also taken to T29 L 1379 of the transcript where he appeared to agree with the proposition that taking the run between Bonete and Magic of Dreams after entering the straight was the "most reasonable" option he had. Mr Shinn told the Panel he had not meant to agree with this proposition. Certainly agreeing to it would be inconsistent with all his other evidence, and to some extent the appeal itself. The Panel accepts the evidence of Mr Shinn that he misspoke in answering this question. His clear and otherwise consistent evidence was that he did not shift to the outside or get on the back of Miss Tenpins as he thought that horse would tire, and he wanted to save his own mount for a short sprint.
26. In relation to Particular 2, Mr Shinn's evidence was that he thought Bonete was going to shift out. He thought this because he saw that horse's head turn to the left, a matter confirmed by the race film. As things transpired, Bonete held its ground, or marginally shifted in.

27. In relation to his ride in the last 150m (Particulars 3 and 4), Mr Shinn denied riding with an unreasonable lack of vigour. He failed to take the run between Miss Tenpins and Bonete as he thought Miss Tenpins would shift out. This was an erroneous assumption. Miss Tenpins shifted in.
28. It is difficult to tell if Mr Shinn's decision to cut back to the inside cost Thud the race. It is possible it did. Any punter who supported Thud and who viewed the head on film would be disappointed that Mr Shinn failed to take a run that was available between Bonete and Miss Tenpins. Mr Shinn essentially admitted error here: see T 30 L 1462. The issue is whether that error was culpable.
29. When cross examined by Mr Van Gestel, Mr Shinn admitted that for a short time before the 100m mark he was not riding Thud at full throttle. He says he did once making the inside run he took.
30. Mr Greg Child's gave expert evidence in support of Mr Shinn's ride. Mr Child's is a retired jockey, who enjoyed a long and successful career. His evidence was that in his view Mr Shinn's explanations in relation to particulars 1 and 2 of the charge were based on reasonable decisions. He considered the assessment Mr Shinn made about Miss Tenpins tiring, and his own horse's sprint, as being reasonable reasons for not moving out wider once entering the straight. Mr Child's equally thought that Mr Shinn's ride from the 400m to inside the 200m was reasonable, in the sense that his assessment that Bonete would shift out was reasonable.
31. Mr Child's frankly conceded an error on Mr Shinn's behalf in not taking the run available between Bonete and Miss Tenpins inside the final 150m. He described it as a judgement call that Mr Shinn got wrong. He did point out however that Miss Tenpins changed strides near the 100m mark (or shifted legs), and marginally shifted out before shifting in as Mr Shinn made his inside run. He did not consider the error Mr Shinn made to be a culpable one, although that is of course a matter for the Panel.

Precedents concerning AR 135(b)

32. Both Mr Van Gestel and Mr O’Sullivan referred the Panel to appropriate authorities concerning the proper interpretation to be given to AR 135(b). The leading authority might still be the decision of Mr T Hughes QC (for the Panel) in the matter of Chris Munce dated 5 June 2003. In those reasons Mr Hughes QC said:

“One must keep in mind that on its true interpretation it [AR 135(b)] is not designed to punish a jockey unless on the whole of the evidence ...[the Panel]...is comfortably satisfied that the person charged was guilty of conduct that in all the relevant circumstances fell below the level of objective judgment reasonably to be expected of a jockey in the position of the person charged in relation to the particular race...

The relevant circumstances in such a case may be numerous; they include the seniority and experience of the person charged. They include the competitive pressure under which the person charged was riding in the particular race. They include any practical necessity for the person charged to make a sudden decision between alternative courses of action.

The rule is not designed to punish jockeys who make errors of judgment unless those errors are culpable by reference to the criteria described.”

33. The Panel was also provided with authorities by Mr O’Sullivan emphasising the need to consider not only the evidence and opinions of the Stewards, but the explanation given by the rider.

Submissions and conclusion

34. In relation to Particular 1, Mr Van Gestel submitted that the only reasonable option available to Mr Shinn was to take his mount to the outside of Bonete to seek a run. He pointed to the admissions made by Mr Shinn that he was aware of the availability of an outside run: T 2 L 100-3 and T 6 L300 – T 7 L 305.

35. The Panel does not agree with this submission. Taking Thud further to the outside was one option available to Mr Shinn. In hindsight, it may have been the correct move. However, the Panel accepts the explanation of Mr Shinn that he thought Miss Tenpins would tire, and that he wanted to save his horse for a short sprint home. Perhaps he was in error. If he was, it was short of culpable error of the kind described in the authorities.
36. The Panel also accepts Mr Shinn's explanation in relation to Particular 2. He thought Bonete was going to shift out. That horse did not. This may have been an error, but not a culpable one.
37. The position is different in relation to Particulars 3 and 4. Mr Shinn's decision not to take the run between Bonete and Miss Tenpins, and his decision to elect to take an inside run, were errors. They were errors of the kind that fully justified the Steward's Inquiry, and the laying of the charge. Mr Shinn is a very experienced and successful rider, and high standards are expected of a top level rider such as him.
38. However, ultimately the Panel is not comfortably satisfied on this occasion that Mr Shinn's error involved a breach of AR 135(b). He gave an explanation as to why he took the inside run, rather than the available run between Miss Tenpins and Bonete. He felt Miss Tenpins would shift out. Perhaps for a stride that horse did. In the end, Mr Shinn made an error in riding for the inside run. The Panel however is not convinced on this occasion that the ride involved culpable error.
39. Accordingly, the appeal must be allowed, and the finding of guilt set aside.

40. In the circumstances, we again confirm the orders made on 28 July 2016 as follows:

1. Appeal by Mr Shinn against the finding of guilt under AR 135(b) is upheld.
2. The finding of guilt against Mr Shinn in relation to AR 135(b) is set aside.
3. The penalty of one month suspension is set aside.
4. The appeal deposit is to be refunded.

Dated : 2 August 2016

Mr R Beasley SC, Principal Member

Mr J Fletcher

Mr K Langby