

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR A MONISSE (MEMBER)

APPELLANT: COLIN CHARLES REEVES

APPLICATION NO: A30/08/662

PANEL: MR P HOGAN (PRESIDING MEMBER)
MR J PRIOR (MEMBER)
MR A MONISSE (MEMBER)

DATE OF HEARING: 14 DECEMBER 2006

DATE OF DETERMINATION: 4 JANUARY 2007

IN THE MATTER OF an appeal by Colin Charles Reeves against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 15 November 2006 imposing a fine of \$5,500.00 for 6 breaches of Rule 273(7) of the Rules of Harness Racing.

Mr C C Reeves appeared in person.

Mr J A Zucal and Mr W Delaney appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

I have read the draft reasons of Mr J Prior, Member.

I agree with those reasons and conclusions and have nothing to add.



A E Monisse

ANDREW MONISSE, MEMBER

DETERMINATION OF
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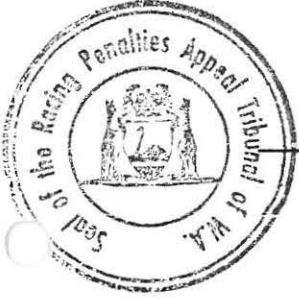
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Mr J A Zucal and Mr W Delaney appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

This is a unanimous decision of the Tribunal.

The appeal against penalty is upheld. The penalty imposed by the Stewards is varied to a total fine amount imposed of \$3,250.00, being \$1,000.00 for the first offence, \$500.00 for each of the second, third, fourth and fifth offences and \$250.00 for the sixth offence.



A handwritten signature in dark ink, appearing to read "P. Hogan", written over a horizontal line.

PATRICK HOGAN, PRESIDING MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MR P HOGAN
(PRESIDING MEMBER)

APPELLANT: COLIN CHARLES REEVES

APPLICATION NO: A30/08/662

PANEL: MR P HOGAN (PRESIDING MEMBER)
MR J PRIOR (MEMBER)
MR A MONISSE (MEMBER)

DATE OF HEARING: 14 DECEMBER 2006

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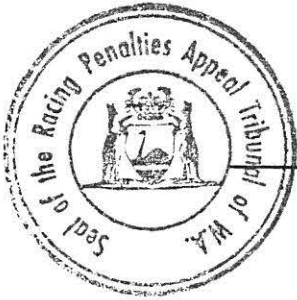
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THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J PRIOR (MEMBER)

APPELLANT: COLIN CHARLES REEVES

APPLICATION NO: A30/08/662

PANEL: MR P HOGAN (PRESIDING MEMBER)
MR J PRIOR (MEMBER)
MR A MONISSE (MEMBER)

DATE OF HEARING: 14 DECEMBER 2006

DATE OF DETERMINATION: 4 JANUARY 2007

IN THE MATTER OF an appeal by Colin Charles Reeves against the determination made by the Racing and Wagering Western Australia Stewards of Harness Racing on 15 November 2006 imposing a fine of \$5,500.00 for 6 breaches of Rule 273(7) of the Rules of Harness Racing.

Mr C C Reeves appeared in person.

Mr J A Zucal and Mr W Delaney appeared for the Racing and Wagering Western Australia Stewards of Harness Racing.

Introduction

This is an appeal against the penalty of \$5,500.00 imposed on Mr C C Reeves by the Racing and Wagering Western Australia Stewards of Harness Racing for 6 breaches of Rule 273(7) of the Rules of Harness Racing.

Rule 273(7) is in the following terms:

“(7) A person shall ensure that the correct horse is presented to start in a race.”

The Appellant was the owner and trainer of a number of horses. One of those horses was HIDDEN DRAGON. On 6 occasions between 19 September 2006 and 5 November 2006 he presented for racing a horse he named and entered as HIDDEN DRAGON. The presentation was incorrect, because the horse was in fact not HIDDEN DRAGON, but a different horse named RUMBLE HARD MAN. On the first 5 occasions, the horse raced. On the 6th and last occasion, the mistake was discovered by the Stewards at the pre-race checking of brands and markings, and the horse did not race. It was because of the discovery on 5 November 2006 that the Stewards investigated the previous starts, and discovered the earlier mistakes.

There was nothing sinister about the incorrect presentations. Each was an honest mistake. Having been alerted to the mistake, the Appellant co-operated with the Stewards in their investigation and effectively pleaded guilty at the inquiry. The Appellant was found guilty and fined for his negligent actions, not for any deliberateness.

The Stewards in their reasons for convicting the Appellant said the following:

“The Stewards accept on the evidence before us that the incorrect presentation of HIDDEN DRAGON was not any form of deliberate, premeditated or fraudulent action on your behalf. The incorrect presentation can at worst be described as negligence on your behalf when you failed to take available steps to confirm the identity of the horse and proceeded on the mistaken assumption that the horse you

were training, nominating and racing over the period was HIDDEN DRAGON. It is disappointing to the Stewards that the procedures and the protocols in place to prevent incorrectly presented horses from racing would appear to have failed until the sixth occasion where ultimately the error was detected. This clearly highlights the need for internal review and action accordingly. It is a matter for the authority to address. It does not however, detract from your responsibility as the nominator and trainer of the horse to ensure you are nominating and presenting the correct horse."

The Appellant gave information to the Stewards on 5 November 2006 at the track, soon after the mistake was discovered. He informed the Stewards that HIDDEN DRAGON had been raced approximately 3 years before the period of time under investigation. It broke down and was given to Mr Bartholomew, owner of a neighbouring property for use by his children. Approximately 7 months before the 1st start, Mr Bartholomew commented that HIDDEN DRAGON was looking good. It was agreed to start racing HIDDEN DRAGON again. The Appellant went down to Mr Bartholomew's property, and took delivery of the horse he believed was HIDDEN DRAGON. He started training that horse again.

Mr Bartholomew also gave information to the Stewards on 5 November 2006 at the track. He confirmed that over the period of time that he had HIDDEN DRAGON spelling at his property, he had 2 other standard breeds there as well, being agisted by their owners. (As later transpired, one was obviously RUMBLE HARD MAN.) On being asked questions by the Stewards, Mr Bartholomew confirmed that HIDDEN DRAGON came to his property and he was quite sure that it was HIDDEN DRAGON that left to go back to Mr Reeves.

HIDDEN DRAGON was located on the same day, 5 November 2006, after the mistake had been discovered. Mr Reeves' wife went down to Mr Bartholomew's property on her return from the track and before the day was over. She went with the express purpose of checking to see if HIDDEN DRAGON was there, and found that it was.

It was reported back to the Stewards that the people who had agisted the other two horses there had been feeding HIDDEN DRAGON and treating it as their own, thinking that it was their horse RUMBLE HARD MAN.

Not only was Mr Reeves mistaken, but so too were Mr Bartholomew and the owners of RUMBLE HARD MAN. The mistake was compounded on and after the first day the horse was presented to race, because the Stewards made the same mistake. The horse was checked by the Stewards prior to racing on 19 September 2006, and on each of the next 5 occasions that it was presented. The mistake was not noticed on each of the pre-race checking of brands and markings until the last presentation on 5 November 2006. On that last occasion, the horse did not race.

Obviously, both HIDDEN DRAGON and RUMBLE HARD MAN had different brands. However, when he picked up the horse from Mr Bartholomew, Mr Reeves did not check the brand against the Assessment card. Further, on each of the occasions that the horse was presented Mr Reeves did not check the brand. He relied on the fact that the Stewards had carried out their own pre race inspection of brands and markings.

The reason for the mistake was that the two horses were very similar. At the inquiry on 15 November 2006, Mr Reeves said:

"No, if I had I would have taken note of it, you know, but there was no way, the horse's attitude was so uncannily the same, he had the same bad attitude, I took him swimming, he swam down the harbour. When I came to shoe him, took size 7's on the front, 8's on the back, angles were similar, gear was similar. I mean there was nothing in any of, normally, you know the chance is almost, like you know, Ripley's Believe It Or Not type thing, you know, like the chances of two horses being that similar. You get 'em home, it had a different foot or smaller feet or he, there'd be something, a telling mark, but at no point did I ever think that the horse wasn't who it was"

The Stewards Reasons

The Stewards gave comprehensive reasons for arriving at the penalty. They acknowledged the plea of guilty, and the Appellant's co-operation at the inquiry. They made the point that the incorrect presentation was by way of negligence, not deliberate action. They acknowledged that their own procedures and protocols had failed to detect the mistake until the 6th occasion, when the mistake was finally detected. Mr Reeves' longstanding good record in the industry was also taken into account. The Stewards said that despite the mistake, and the matters in mitigation, it remained Mr Reeves' responsibility as nominator and trainer to ensure that he was presenting the correct horse. In this respect, he failed.

The Stewards imposed a penalty of \$5,500.00. The penalty was apportioned as between the 6 offences, the last one on 5 November 2006 attracting a fine of \$500.00, because the horse did not race on that day. The other 5 offences attracted fines of \$1,000.00 each. The Stewards said:

"The Stewards have considered such other precedents that are available. We believe the penalty must provide an active incentive to all trainers that they must be vigilant in ensuring that they establish beyond any doubt, the identity of horses in their care, particularly when first racing, when first commencing to enter them for racing. Relying on assumptions or mistaken beliefs when more reliable means are readily available, is simply not good enough and needs to be discouraged."

The Grounds of Appeal

The Appellant's written document sets out his ground of appeal. It is as follows:

"...the penalty imposed is severe compared to previous penalties handed out under the same offence."

Determination

At the hearing of this Appeal, the Appellant tendered a document headed "Historical Data", which was received as Exhibit 2.

That Exhibit contained the following information from the Stewards' records:

DATE	CODE	NAME	DETAILS	PENALTY	RACED (Y/N)
21/7/89	Thoroughbreds	Grantham P	Presented wrong horse to race on 3 occasions	6 month disqualification (concurrent)	Yes
26/3/1996	Harness	Emmett L	Presentation of incorrect horse	\$ 1,000	No
26/3/1996	Harness	Olivieri RA	Failure to correctly identify horse trained by him	\$ 1,000	No
1/3/1997	Thoroughbreds	Wolfe S	Mistakenly presenting wrong horse at Albany trials	\$ 500	No
28/04/1997	Thoroughbreds	Enright JJ	Presented incorrect horse at Lark Hill Trials	\$ 500	No
2/08/04	Thoroughbreds	Parnham ND	Presented incorrect horse at trial	\$ 300	No
19/09/05	Thoroughbreds	Brockman VA	Presented wrong horse to trial when right horse on course but brought out confused trial numbers between the two	\$ 200	No
30/10/2005	Harness	Elliott GB	Presented incorrect horse	\$ 250	No
0/2005	Harness	Reed MG	Presentation of incorrect horse	\$ 350	No
21/11/2005	Thoroughbreds	Pope WW	Presented incorrect horse to trial	\$ 200	No
13/09/2006	Thoroughbreds	O'Brien PD	Presented incorrect horse to race at Kalgoorlie on 27/8/06	\$ 1,000 fine	No

At the hearing of this appeal, the representative of the Stewards advised us that all of the breaches referred to above were for rules equivalent to Rule 273(7) of the Rules of Harness Racing, in particular an offence of Presenting the Incorrect Horse.

Having considered the penalties imposed above and the factual circumstances of this appeal, I am satisfied that this case can be distinguished from most of the above penalties,

because in this case the Appellant has breached the rule six times by the six presentations of the incorrect horse and on five of those occasions the incorrect horse actually raced. On the five occasions the incorrect horse raced, stake money was won and lost and the general public was at liberty to bet on the race.

I am satisfied that when an incorrect horse has actually raced this is significantly more serious than an incorrect horse being presented or racing at a trial, because this behaviour has the effect of reducing the public confidence in the racing industry.

I am further satisfied, as the Stewards have referred to in their Decision, it is always the responsibility of the nominator and trainer of the horse to ensure they are nominating and presenting the correct horse for a race or a trial.

Notwithstanding that obligation always remains on the trainer or nominator, I am satisfied that the Stewards' behavior in this matter, in particular on the five subsequent occasions that the horse was presented after the initial race on 19 September 2006, has compounded the error of the Appellant.

Rule 45(1) of the Rules of Harness Racing is in the following terms:

"A horse is ineligible to start in a race unless a Steward or other person authorized by the Controlling Body is satisfied by physical inspection that the horse is the horse described in the registration certificate."

That Rule creates a positive duty for the Stewards' representative to ensure that the correct horse which is presented to start in a race actually starts in a race or at the very least meets the description in the registration certificate.

In this matter, the Stewards both at the inquiry and on the hearing of the appeal, confirmed that the internal procedures of the Stewards had failed in ensuring there was compliance with the above Rule.

When the horse was presented on the second to the sixth occasions to race and on four of those occasions actually raced, the Stewards' activity compounded the error of this Appellant.

In those circumstances, I am satisfied that the Stewards fell into error in imposing a penalty of a fine of \$1,000.00, for the second, third, fourth and fifth offences given they had imposed a fine of \$1,000.00 for the first offence.

I am satisfied when considering the circumstances of this case that the tariff of penalties imposed for similar types of offences, referred to in Exhibit 2 above, that the penalty of \$1,000.00 fine imposed for the first offence was within the acceptable range and was not manifestly excessive in the circumstances.

Conclusion

I would allow the Appeal with respect to the penalties imposed for the second, third, fourth and fifth offences, by reducing the fine amount in each case from \$1,000.00 to \$500.00 and on the sixth occasion where the horse did not actually race, I would reduce that fine from \$500.00 to \$250.00. A fine of \$250.00 is consistent with penalties imposed in the data set out in Exhibit 2, when incorrect horses have not raced.

As a result of my decision, the total fine amount imposed is \$3,250.00, being \$1,000.00 for the first offence, \$500.00 for each of the second, third, fourth and fifth offences and \$250.00 for the sixth offence.



John Prior

JOHN PRIOR, MEMBER