

RACING NEW SOUTH WALES

APPEAL PANEL

11 December 2015

MR R CLUGSTON — PRINCIPAL MEMBER
MR C CLARE
MR D McKEE

IN THE MATTER OF THE APPEALS OF
SERG LISNYY

REASONS FOR DECISION

CHAIRMAN: These are appeals by licensed apprentice jockey Serg Lisnyy (hereinafter referred to as “the Appellant”) against the penalties imposed by Stewards at the Broadmeadow Racecourse on 31 October 2015 (“the first appeal”) and the Skellatar Park Racecourse at Muswellbrook on 1st November 2015 (“the second appeal”) in respect of two (2) separate breaches of AR137(a).

The particulars of the “careless riding” charge involved in the first appeal were that as the rider of *Mystical Tale* in Race 5 the Garis Group Fillies and Mares Maiden Plate at the Broadmeadow Racecourse Beaumont inner track on 31 October 2015 the Appellant did at the 1200 metres permit his mount to shift in when insufficiently clear of *My Amazing Cool* which resulted in that horse having to be checked.

The particulars of the “careless riding” charge the subject of the second appeal were that as the rider of *Snippets Anchor* in Race 7 the Class One Handicap at the Skellatar Park Racecourse Muswellbrook on 1 November 2015 the Appellant did after being positioned behind *Hey Evey* near the 500 metres ride his mount into an area to improve where there was insufficient room between that horse on his inside and *Sir Aussie* resulting in *Sir Aussie* and Oberland being carried wider with both of those horses being subject to heavy contact prior to *Sir Aussie* being checked

severely at the entrance to the home straight and Oberland being severely hampered and extremely unbalanced.

The Appellant entered pleas of not guilty to each charge before the Stewards panels on duty at Broadmeadow on 31 October 2015 and at Muswellbrook on 1 November 2015. The Stewards at Broadmeadow on 31 October 2015 found the first charge proved and suspended the Appellant's licence for seven (7) meetings commencing on 4 November 2015 and expiring on 19 November 2015 on which day he may ride. The Stewards presiding at Muswellbrook on 1 November 2015 found the second charge proved and imposed a suspension of nine (9) meetings commencing on 19 November 2015 and expiring on 2 December 2015 on which day he may ride. The Appellant was granted a stay of proceedings on 3 November 2015 until further order of the Panel.

The Appellant entered a plea guilty to each charge in the proceedings before the Panel. Consequently, these appeals are rehearings on the questions of penalty in relation to each charge. The Stewards were represented in the proceedings before the Panel by Mr G. Rudolph, Deputy Chairman of Stewards – Racing and Mr W Pasterfield, Solicitor, appeared for and with the Appellant by leave. The transcripts of the Stewards' inquiries conducted at Broadmeadow Racecourse on 31 October 2015 and at Skellatar Park Racecourse on 1 November 2015 and the hearing of the charges which took place on each of those days and the video recordings of each race were admitted into evidence in the proceedings before the Panel.

Facts (First Appeal)

The evidence discloses that the Appellant's mount *Mystical Tale* jumped slowly from barrier five (5) in a field of eleven (11) and took up a position towards the rear of the field. After travelling approximately 150 metres his mount was travelling about four (4) horses off the fence when he allowed his mount to cross to the fence at a time when My *Amazing Cool* (apprentice A. Adkins) was travelling on the fence and approximately one and a half (1 ½) lengths rearward of the Appellant's mount. The video recording of the race discloses that in crossing to the fence the Appellant has caused apprentice Adkins to check away from the heels of the Appellant's mount as apprentice Adkins' mount was improving along the fence.

Facts (Second Appeal)

The evidence is that Appellant's mount *Snippets Anchor* jumped from a wide barrier in a field of nine (9) and took up a position towards the rear of the field. In the

run to the home turn the Appellant's mount was racing fiercely when the Appellant attempted to improve his position between *Hey Evey* (A. Threadwell) and *Sir Aussie* (apprentice M. Weir) and when rounding the home turn his mount made heavy contact with *Sir Aussie* causing that horse to be checked and Oberland (R Thompson) which was travelling outside *Sir Aussie* to become unbalanced and screwed sideways.

Penalty (First Appeal)

In assessing the penalty of licence suspension for seven (7) meetings the Broadmeadow Stewards panel utilised the "Careless Riding Penalty" template. This Panel notes the following relevant entries in that document:

1. Stewards assessed the level of carelessness as grade two (2) on an ascending scale of one (1) to three (3);
2. Stewards assessed the consequences of the Appellant's careless riding as grade two (2) on an ascending scale of one (1) to six (6) on the basis that another runner suffered a check;
3. Stewards applied a discount of fifteen (15) per cent to reflect the Appellant's inexperience as an apprentice rider;
4. Stewards applied a premium or additional loading of thirty three (33) per cent as the Appellant had incurred six (6) suspensions for careless riding in the previous twelve (12) months;
5. The formula appearing in the template resulted in a penalty of seven (7) meetings suspension after taking into account the various assessments and allowances made by Stewards.

The Panel in forming its own opinion in relation to the appropriate penalty in this case agrees with the general approach taken by Stewards when completing the Penalty template however it appears to the Panel that a total adjustment percentage of "+18" should have resulted in a penalty of eight (8) meetings. However, as the Appellant has now entered a plea of guilty to the charge before this Panel he is, in terms of the Penalty template, now entitled to a further discount of ten (10) per cent in mitigation of the overall penalty. As a result of the total adjustment percentage becomes "+8" and the final penalty becomes seven point five six (7.56) meetings which in terms of the penalty sheet is adjusted up to eight (8) meetings. However, ultimately the Panel considers that, in all of the circumstances of this case, the appropriate penalty is a license suspension of seven (7) meetings.

Penalty (Second Appeal)

The Panel has had the advantage of citing the “Careless Riding Penalty” template utilised by Stewards at Muswellbrook in assessing their penalty of nine (9) meetings licence suspension. The Panel notes the following relevant entries in that document:

1. Stewards assessed the level of carelessness as grade three (3) on an ascending scale of one (1) to three(3);
2. Stewards assessed the consequences of the Appellant’s careless riding as grade two (2) on an ascending scale of one (1) to six (6) notwithstanding that the Chairman of the Stewards’ panel, Mr P Cullen, described the level of interference to two (2) runners as severe;
3. Stewards failed to apply a discount of fifteen (15) per cent to take into account the Appellant’s inexperience as an apprentice rider;
4. Stewards failed to apply a premium loading of thirty three (33) per cent to reflect the seven (7) suspensions incurred by the Appellant for careless riding in the previous twelve (12) months.

The Panel agrees with the Stewards in assessing the level of carelessness as grade three (3) however the Panel considers that as there was severe interference to two (2) other runners the appropriate grading in respect of the consequences of the Appellant’s riding is grade three (3). Consequently, the Panel considers that the appropriate starting penalty was suspension for ten (10) meetings. Further, the Panel calculates the total discounts at twenty five (25) per cent (ten (10) per cent for plea of guilty and fifteen (15) per cent for inexperience) and applies a premium of fifty (50) per cent in respect of the Appellant’s record of seven (7) suspensions for careless riding in the previous twelve (12) months. The end result is a total adjustment percentage of “+25” which when applied to the starting penalty of ten (10) meetings results in a suspension of twelve (12) meetings. In those circumstances the Panel considered that it was appropriate that the Appellant be given a Parker direction in relation to his second appeal. As a consequence of that direction the Appellant sought leave to withdraw his second appeal and the Panel allowed that application.

Orders (First Appeal)

The orders of the Panel are:

1. Leave granted to the Appellant to withdraw his appeal against the finding of guilt made by Stewards at Broadmeadow Racecourse on 31 October 2015;

2. Finding of guilt made by Stewards confirmed;
3. Appeal against the penalty imposed by Stewards dismissed;
4. Penalty of licence suspension for seven (7) meetings imposed by Stewards confirmed, such suspension to commence on 15 December 2015 and to expire on 30 December 2015;
5. Appeal deposit of \$200 forfeited.

Orders (Second Appeal)

The orders of the Panel are as follows:

1. Leave granted to the Appellant to withdraw his appeal against the finding of guilt made by Stewards at Skellatar Park Racecourse on 1 November 2015;
2. Finding of guilt made by Stewards confirmed;
3. Leave granted to the Appellant to withdraw his appeal against the penalty imposed by Stewards;
4. Penalty of licence suspension for nine (9) meetings confirmed, such suspension to commence on 31 December 2015 and to expire on 9 January 2016 on which day he may ride;
5. Appeal deposit of \$200 forfeited.

The Panel views the Appellant's recent history of careless riding as a matter of some concern. Accordingly, the Panel recommends that Stewards consider referring the Appellant to the Riding Skills Panel for assessment of his suitability to become a fully fledged rider.