

RACING NEW SOUTH WALES

APPEAL PANEL

20 December 2016

MR R CLUGSTON — CONVENOR
MR T CARLTON
MR J FLETCHER

IN THE MATTER OF THE APPEAL OF
LUKE MURRELL

REASONS FOR DECISION

CONVENOR: This is an appeal by registered racehorse owner Luke Murrell (hereinafter referred to as “the Appellant”) against the severity of the penalty imposed by Stewards at the offices of Racing NSW, Druiitt Street, Sydney on 15 November 2016 for breach of AR 175A. That Rule is in the following terms:

“Any person bound by these Rules who either within a racecourse or elsewhere in the opinion of the Committee of any Club or the Stewards has been guilty of any conduct prejudicial to the image, or interests or welfare of racing may be penalised.”

The particulars of the charge were that the Appellant did post comments on the Australian Bloodstock Facebook page on 26 October 2016 such conduct being prejudicial to the image and interests of racing.

The Appellant pleaded guilty to the charge before the Stewards and the Stewards imposed a monetary penalty of \$5,000. The Appellant adhered to his plea of guilty in the proceedings before the Panel. The appeal is therefore a rehearing on the question of penalty.

The Stewards were represented in the proceedings before the Panel by Mr P. Dingwall, Deputy Chairman of Stewards and Mr W. Pasterfield, Solicitor, appeared for and with the Appellant by leave. The transcript of the Stewards’ inquiry conducted

at the offices of Racing NSW on 15 November 2016 and the exhibits tendered in those proceedings were admitted into evidence in the proceedings before the Panel.

The agreed facts in this case are that a field of seven (7) runners contested Race 6 at Canterbury Park Racecourse on 26 October 2016. Three (3) of the runners were trained by licensed trainer Mr C. Waller viz. *Montauk* (G. Schofield), *Estikhraaj* (J. Collett) and *Zourkhan* (R. Hutchings). After jumping moderately from the barriers *Zourkhan* took up a forward position and raced outside the leader *Beretta* (B.Avdulla) until shortly before the home turn. At that point of the race *Zourkhan* commenced to weaken and *Montauk* and *Estikhraaj* raced past the leader *Beretta* with *Montauk* eventually prevailing in a close finish from *Estikhraaj* with *Beretta* finishing third 4.2 lengths behind *Estikhraaj* and *Zourkhan* finishing in sixth placing 5.8 lengths behind the winner.

In his evidence before the Stewards the Appellant conceded that he was a registered racehorse owner and a co-director of Australian Bloodstock, a licensed horse syndicator.

At 4.31pm on 26 October 2016 the following post appeared on the Australian Bloodstock Facebook page:

“So if you disclose a change of tactics in NSW and have more than half the field in the race does that mean you are not guilty of team riding? *Zourkhan*, 2nd up, has had 7 runs in Australia and 6 of them have been in the last pair in 6 of them. However, today he is ridden to ensure speed in the race for the stablemates, who fight the finish out and *Zourkhan*, the pest, runs tailed out. It’s not a good look for integrity in racing and very sad that the Stewards continue to turn a blind eye. Let’s get the sport clean. Amazing the owners of *Zourkhan* are happy to play this game also – I’m sure they’re not happy. Full disclosure, I backed a winner and saved on the second, so not talking through my pocket, but imagine showing people that and trying to get them to invest. Disgusting”.

In his evidence before the Stewards the Appellant conceded that he was responsible for posting those comments. However, a few days later the Appellant posted the following apology on the Australian Bloodstock Facebook page:

“Just further to my post on Wednesday, I notice with interest the Stewards asked the question of the rider of *Zourkhan* in the Stewards’ report and, given the instructions, that’s fair play and well done to them – that’s all I was asking. I shouldn’t have questioned their integrity and for that I apologise. We all know their integrity is

beyond reproach. Likewise, I didn't mean to insinuate Chris Waller was cheating as, knowing Chris, he's not that type of person at all and I again apologise to him and his staff if I upset them. That was not my intention. I have had horses with Chris in the past and will happily have horses with him in the future, as he certainly knows his business and the man is a genius with a racehorse. Racing in New South Wales is miles ahead of any other state in Australia in terms of integrity and the overall running of it and my comments certainly were out of line. Given the prize money and opportunities in New South Wales as an owner, you would be made not to race here. Sincerely, Luke Murrell."

The Appellant's apology published on Facebook was reinforced in his evidence given at the Stewards' inquiry. In response to a question from the inquiry Chairman, Mr P. Dingwall, seeking an explanation for his Facebook posting the Appellant said (at page 3 lines 137-141):

"Look, I watch a lot of races, I suppose, probably more so than just about anybody and it was just a combination of things leading up, things that I see get missed on a regular basis and, look, I shouldn't have said it. I was stupid and, yeah, I fully admit that but, yeah, look, it's just a lesson learnt and I am more than happy to hand in my social media privileges, so yeah , which I wouldn't ..."

And in response to an observation made by the inquiry Chairman to the effect that his comments "didn't shed the industry in a good light" the Appellant said (at page 3 lines 153-157):

"No, no. It's stupid and, you know, the whole social media is stupid. Yeah, look, its – yeah, it doesn't help anyone and I appreciate that and, look, I apologised to Chris about it, Mr Waller, and, look, I apologise to you guys and whatever you need me to say, I'm more than happy to put my hand up and admit I've done the wrong thing".

In addition, the Appellant indicated to Stewards that he was prepared to make a written apology on the Racing NSW website.

The Panel has considered the evidence and the submissions on the question of penalty. The Panel notes that in assessing penalty the Stewards took into account the following matters:

1. the Appellant's guilty plea entered at the first available opportunity;
2. the Appellant's co-operation with Stewards during their inquiry;

3. the Appellant's written apology on the Australian Bloodstock Facebook page;
4. the Appellant's prior clear conduct record over a number of years as a registered owner and licensed syndicator.

In general terms the Panel agrees with the approach taken by Stewards in assessing the appropriate penalty in this case. In particular, the Panel agrees with the Stewards' conclusion that a monetary penalty is the appropriate penalty. The Panel would add that the Appellant's initial Facebook comments constitute a relatively serious breach of the Rules of Racing as they have a clear tendency to undermine public confidence in the integrity of the Stewards involved in the supervision of racing in New South Wales.

The Panel has also considered a comparative table of penalties in previous cases of breach of AR 175A. There are a number cases referred to in the table however no one case involved comments impugning the integrity of Stewards. The Panel takes the view therefore that the comparative table of penalties offers very little assistance in relation to the assessment of the appropriate penalty in this case.

Ultimately, the Panel considers that in all of the circumstances of this case the appropriate penalty is a fine of \$5,000.

The orders of the Panel are as follows:

1. Appeal is dismissed;
2. Penalty of \$5,000 monetary penalty imposed by Stewards is confirmed however, \$2,000 of that penalty is stayed for a period of 12 months on condition that the Appellant does not commit the same or similar breach in that period;
3. Appeal deposit of \$200 is forfeited.