

## RACING APPEAL PANEL NEW SOUTH WALES

### IN THE MATTER OF THE APPEAL OF LICENSED JOCKEY S LISNY

Heard at Racing NSW Offices on Tuesday 31 December 2019

APPEAL PANEL: Mr T Hale SC (Convenor)  
Mr R Clugston  
Mr C Clare

APPEARANCES: Mr Marc Van Gestel for the Stewards  
Mr Tony Crisafi for Appellant S Lisny

### REASONS FOR DECISION

1. **CONVENOR:** Serge Lisnyy, the Appellant, is a licensed jockey. On Sunday, 22 December 2019 he was engaged to ride at a race meeting staged by the Manning Valley Race Club at Taree Racecourse. In race 1 he was engaged to ride Hidden Hills. Race 1 was the TAB Maiden Handicap run over 1300 metres. The horse was unplaced.
2. Later that day the Committee of Stewards held an inquiry into the Appellant's ride and, in particular, an incident at approximately the 200 metre mark. As a result of that inquiry, the Appellant was charged with and found guilty of a charge under AR 131(a), which provides:  
  
*A rider must not, in the opinion of the Stewards:  
engage in careless, reckless, improper, incompetent or foul riding.*
3. The Stewards imposed a penalty of a period of suspension from Sunday, 29 December 2019 to Saturday, 4 January 2020. In determining that penalty the Stewards said that:

*"The way we grade this penalty is that it is a low degree of carelessness, however, a horse was checked and lost its rightful running. That starts you off with a five meeting penalty. You didn't plead guilty to the charge. You didn't get any mitigation for that."*

4. The Appellant appeals against both conviction and severity of penalty pursuant to section 42 of the *Thoroughbred Racing Act 1996*. The appeal is by way of a rehearing.
5. In the hearing before us the Stewards were represented by Mr Van Gestel and, with leave, Mr Tony Crisafi appeared for the Appellant. The pleas were taken and the Appellant maintained his plea of not guilty.
6. The particulars of the charges are:

*Serg Lisnyy, as the rider of Hidden Hills at the Taree race meeting on 22 December 2019 in Race 1, the Maiden Handicap 1300m, did allow his mount to shift in passing the 200m when insufficiently clear of Wow Wow Kapow, ridden by Andrew Gibbons, which he made contact with, which in turn resulted in Wow Wow Kapow shifting in front of Union Soldier ridden by Peter Graham, which had to be checked and lost its rightful running.*

7. As the particulars of the charge make plain, the charge concerns an incident that took place at approximately the 200 metre mark. Closest to the rails was Union Soldier, ridden by Peter Graham. To his outside was Wow Wow Kapow, ridden by Andrew Gibbons. Further to the outside was Hidden Hills, ridden by the Appellant. To the outside and forward of Hidden Hills was Wilful, ridden by Brooke Stower. At approximately the 200 metre mark Brooke Stower shifted in when she was about a length and a quarter ahead of the Appellant. The Appellant's mount then shifted in, coming in contact with Andrew Gibbons' mount. It in turn shifted in, in front of Peter Graham's mount, which had to be checked and lost its rightful running.
8. We received into evidence as Exhibit A the booklet of the transcript and other documents which had been before the Stewards. We also received as exhibit D film of the race.
9. The submissions of the Stewards may be summarised this way. The Appellant had not established a clear run on the inside of Brooke Stower's horse, Wilful. The Stewards acknowledged that the Appellant did not steer the horse to the inside and that it jumped. However, the Stewards submitted that, once it jumped inside, it was the Appellant's obligation to stop riding and straighten the horse. The Stewards acknowledged that the Appellant tried to

relieve the pressure on the horse on the inside by pulling the left rein. However, they submit that the Appellant continued to push with his right hand and, therefore, continued riding. In these circumstances it was submitted there was a minor degree of careless riding.

10. By contrast, the Appellant submitted that he saw a gap open up between Wow Wow Kapow, ridden by Andrew Gibbons, to the inside and Wilful, ridden by Brooke Stower, to the outside. He was improving on Brooke Stower. As he was attempting to move into that gap, Brooke Stower moved in somewhere between one and two horses. At this point Brooke Stower was a length and a quarter ahead. The Appellant's horse then jumped inwards to avoid the other horse. It was such a sudden movement that the Appellant struggled to retain his balance on the horse. It was conceded by the Stewards that the Appellant did not steer his horse in. The Appellant immediately pulled on the left rein to relieve the pressure on the inside horse, which was Andrew Gibbons' mount. The Appellant said in evidence on a number of occasions that the damage was done by his horse jumping in. In summary, he said that he did everything he could do to pull him off the inside horse. Although he had contact with the inside horse, he was able to straighten his horse, which he then rode out.
11. This Panel, having viewed the film on multiple occasions from different angles and with the assistance of the submissions of Mr Van Gestel and Mr Crisafi and also having the benefit of the evidence of the Appellant, have formed the opinion that the film gives considerable support to the submissions of the Appellant. It gives support to the Appellant's account that his mount unexpectedly jumped in when Brooke Stower's mount rolled in approximately a length and a quarter ahead. It gives support to the Appellant's account that when this occurred he did everything reasonable to avoid further inference to the horse to the inside. His efforts were successful because his horse straightened and was able to be ridden out.
12. The film, however, is by no means conclusive and the film also gives some support to the submissions of the Stewards. Ultimately, however, in the circumstances we cannot be comfortably satisfied that the charge has been

made out. Accordingly, the unanimous decision of the Panel is that the appeal be allowed.

13. The orders of the Panel are as follows:

(1) The appeal against the finding of guilt is upheld.

(2) The penalty is set aside.

(3) The appeal deposit is refunded.

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