

## APPEAL PANEL OF RACING NEW SOUTH WALES

### IN THE MATTER OF THE APPEAL OF LICENSED JOCKEY TOMMY BERRY

Heard at Racing NSW Offices

Appeal Panel: **Mr L. Vellis - Convenor; Mrs J. Foley; Mr J. Murphy**  
Representatives: **Appellant – Self-represented**  
**Racing NSW - Mr T. Moxon, Deputy Chairman of Stewards**  
Date of Hearing: **22 February 2024**  
Date of Reasons and Orders: **22 February 2024**

### REASONS FOR DECISION ON PENALTY

#### Introduction

1. On Friday 16 February 2024, licensed jockey Mr Tommy Berry (**Appellant**) pleaded not guilty to a breach of AR 131(b) following his ride on the horse Parabellum in race 6, the Bivouac First Yearlings Handicap, run over 1,600 metres that day at the Canterbury race-meeting. Parabellum finished 5<sup>th</sup>, beaten into 4<sup>th</sup> place by a short half-head by Brynner, ridden by Tom Sherry. AR 131(b) provides that:

*A rider must not, in the opinion of the Stewards:*

...

*(b) fail to ride his or her horse out to the end of the race and/or approaching the end of the race.*

2. The particulars of the charge were that the Appellant "*did fail to ride that horse out to the end of the race in race 6 and the horse was ultimately placed 5<sup>th</sup>, beaten a short half-head for 4<sup>th</sup> place*".
3. The Stewards considered that the Appellant's error warranted a 7 day base suspension of his permit to ride in races. They discounted this to 4 days on the basis of the Appellant's immediate pleas of guilty.

#### Evidence and submissions

4. Mr Berry has appealed against the severity of penalty imposed. The Appellant was self-represented at the appeal and Mr T Moxon, Deputy Chairman of Stewards, represented Racing NSW. An appeal book containing the transcript of the Stewards' Inquiry was

tendered in evidence. Film of the race from multiple angles was also shown to the Panel, and tendered as an exhibit.

5. Mr Moxon submitted that the penalty imposed by the Stewards was appropriate, given other penalties for the same breach of the rule, and that given the margin of a short half-head, the Appellant's actions in the last 1-2 strides before the winning post may have compromised Parabellum finishing 4<sup>th</sup>, which also has prizemoney and betting implications.
6. The Appellant's evidence can be summarised this way:
  - a) he fully admitted he made an error in the race;
  - b) he stopped riding the horse perhaps a stride to two strides short of the finishing post, having ridden his mount with full vigour down the straight;
  - c) his error in stopping riding and rising in the saddle near the post did not cost his horse 4<sup>th</sup> place. He felt his horse did not lose any momentum and given the horse's head was coming up he could not push it back down; and
  - d) a fine or reprimand was the more appropriate penalty.

## **Resolution**

7. AR 131(b) is an important rule concerning the integrity of racing. By "integrity", we are not suggesting that the Appellant's error was deliberate, or that it involved misconduct. It did not. The integrity issue involved in the rule is bound up in this: participants and followers of racing, and in particular punters and owners, should have confidence that horses are given, as far as possible, every chance to finish in the best possible position they can in a race. That occurs when horses with a realistic chance of winning, placing or finishing in the money for a race are properly ridden out at the end or approaching the end of a race. Although it was a mere error, because of the Appellant's error, that did not happen in the relevant race here.
8. Having viewed footage of the film of the race, the Panel is not able to confidently say that the Appellant's error either did or did not cost Parabellum 4<sup>th</sup> place. We don't know – it's just too close to call. The Appellant felt that his actions did not cost his mount any momentum, but our collective view is that this cannot be stated with absolute certainty. Certainly, the Appellant did not restrain his horse in any way. The charge would probably be different in such circumstances. But in a race where 4<sup>th</sup> place was decided by such a small margin, we are of the view that the Appellant's error in stopping riding probably a stride to two strides short of the line was one that leaves us uncertain as to what might have happened had he kept riding with vigour right to the line. It was a relatively minor error of judgement, right at the end of the race, but we accept that it at least prejudiced the chances of Parabellum finishing 4<sup>th</sup>, even if we cannot say with certainty or even on the balance of probabilities that it did cost the horse 4<sup>th</sup> place.

9. With respect to penalty, the Panel has taken account of the Appellant's plea and other precedent penalties. We also take into account the fact that a suspension at this time of the year will cost the Appellant the opportunity to ride in races carrying high stakes. Taking all matters into account however, we are in agreement with the Stewards – a 4 day suspension is the appropriate penalty for the breach of the rule involved here.

**Orders**

10. The Panel makes these orders:

- a) Appeal against severity of penalty dismissed.
- b) Penalty of 4 day suspension of the Appellant's license to ride in races confirmed. Such penalty commences on Sunday 25 February 2024, and expires on Thursday 29 February 2024, on which day the Appellant may resume riding in races.
- c) Appeal deposit forfeited.

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