

TASMANIAN RACING APPEAL BOARD

Appeal No 8 of 2018/19

Panel:	Tom Cox (Chair) Wendy Kennedy Suzanne Martin	Appellant:	Steven Davis
Appearances:	Anthony O'Connell on behalf of the Appellant Roger Brown on behalf of the Stewards	Rules:	Australian Racing Rule 190 (1), (2) and (4)
Heard at:	Level 2 Marine Board Building 1 Franklin Wharf Hobart, Tasmania	Penalty:	\$3,000, of which \$1,500 is suspended for two years
Date:	30 November 2018	Result:	\$2,000, of which \$1,000 is suspended for 12 months

REASONS FOR DECISION

1. On the 30th November the Tasmanian Racing Appeals Board heard an appeal against the penalty imposed on trainer Steven Davis for an offence under ARR 190 (1), (2) and (4).
2. The appellant had presented the horse IMA GINGER ROGERS to a race at the Launceston Pacing Club on 24th August 2018 and a post-race swab sample had detected the prohibited substance arsenic in IMA GINGER ROGERS' system. IMA GINGER ROGERS won first place in Race 3 and was subsequently disqualified from the subject race pursuant to AHRR 195 and placings amended accordingly. The appellant was found in breach of AHRR 190 (1), (2) and (4), and fined \$3,000, of which \$1,500 was to be suspended for a period of two years on the condition that there be no further offences of this nature.
3. The appellant's grounds of appeal were that the penalty was excessive and that the Stewards did not take into account the points put forward at the stewards inquiry.
4. This case stands on all fours with the matter of Mark Reggett (Appeal No. 26 of 2017/18), save in three respects:
 - a. firstly, the appellant in this case has been in the industry for over 27 years without a prior breach of relevant rules of racing, whereas Mr Reggett was only a trainer of some two years' experience;
 - b. secondly, after the Stewards issued a notice to industry participants in September 2017 warning about the risk of elevated readings for arsenic by the ingestion of horses of treated pine, the appellant replaced all the treated pine posts on his property, save with respect to one fence line, which he

intended to replace in time. In the interim, various products were applied to the fence line to discourage IMA GINGER ROGERS and other horses from chewing it. By contrast Mr Reggett took little action in response to the stewards notice; and

- c. thirdly, IMA GINGER ROGERS was not known to chew on fence posts, save in the days before it raced, when hay was withdrawn from its feeding regime. It was most likely that in this short period of time, the horse has chewed on the posts and thereby elevated its levels of arsenic. By contrast, the horse the subject of Mr Reggett's penalty was known to chew on treated pine.
5. To avoid the risk of the horse presenting to a race with a prohibited substance, the appellant effectively had two options. He could have moved the horse to another paddock, although we note and accept his evidence that this was problematic for various reasons. Alternatively, he could have elected not to race the horse. Completely eliminating the risk by either of these options is effectively the mark of his culpability in our view.
 6. In these circumstances we consider his culpability to be less than that of the culpability of Mr Reggett's, with all other matters being equal. In the circumstances, the fine will be varied to \$2,000 with half of it suspended on condition that he not breach this rule for a period of 12 months.
 7. The Board orders that the prescribed deposit be refunded in full to the appellant.