

# TASMANIAN RACING APPEAL BOARD

## Appeal No 34 of 2016/17

<b>Panel:</b>	<b>Tom Cox (Chair) Kate Brown Rod Lester</b>	<b>Appellant:</b>	<b>Steven Davis</b>
<b>Appearances:</b>	<b>David Farquharson on behalf of the Stewards Adrian Crowther on behalf of the Stewards  Kevin Ring on behalf of the Appellant</b>	<b>Rules:</b>	<b>Australian Harness Racing Rule 240(a)(i)</b>
<b>Heard at:</b>	<b>Launceston</b>	<b>Penalty:</b>	<b>Suspension – 3 months</b>
<b>Date:</b>	<b>26 July 2017</b>	<b>Result:</b>	<b>Upheld</b>

### REASONS FOR DECISION

1. The appellant was the driver of *Shanghai Knight NZ* in Race 2 – The Auststar Freight Distribution Mobile, over 1930 metres at the Devonport Harness Racing Club meeting on 30 June 2017. Following the race, the Stewards inquired into the appellant's tactics in driving that horse and, over the course of the inquiry, charged and found the appellant in breach of AHRR240(a)(i) in driving in a manner that unlawfully advantaged another horse, namely *Ima Ginger Rogers* in the home straight with a lap remaining in the race.
2. The particulars of the charge are conveniently set out in the Stewards report dated 30 June 2017.

*Stewards opened an inquiry into an incident that occurred in the home straight with a lap remaining. SHANGHAI KNIGHT NZ (Steven Davis) which was racing in a one wide line and under pressure, shifted outwards when being urged by its driver and, in doing so, allowed the stablemate IMA GINGER ROGERS (Rohan Hadley) which was racing in a midfield marker peg position, sufficient room to move away from the marker pegs and into free running. Evidence was taken from driver Steven Davis who explained that SHANGHAI KNIGHT NZ was under pressure at that point of the race and that he was driving the gelding forward to remain competitive in the race. Evidence was also taken from Natalee Emery (PUSHKIN NZ) and Rohan Hadley the driver of IMA GINGER ROGERS that ultimately was successful in winning this race. Subsequently, Steven Davis was charged pursuant to Rule 240(a)(i) by driving in a manner that unlawfully advantaged IMA GINGER ROGERS by providing that mare sufficient room to be moved away from a marker peg position and into clear running. Mr Davis pleaded not guilty to the charge however, after further consideration, Stewards found Mr Davis in breach of the rule*

*and his licence to drive in races was suspended for a period of three (3) months. Stewards directed this term of suspension commence immediately.*

3. The Stewards proceeded to suspend the appellant for a period of three months.
4. The particulars of the charge filed belie the seriousness of the allegation made against the appellant. Quite rightly, the Stewards for this Board put the charge squarely on the basis that the appellant moved up the track and allowed Rohan Hadley on *Ima Ginger Rogers* to extract himself from an unfavourable position on the appellant's inside on the pegs and, further, that the appellant did so because his wife has a financial interest in *Ima Ginger Rogers*.
5. Because of the seriousness of the charge, which involves allegations akin to race fixing by deliberate, albeit spontaneous, conduct, this Board must reach a high level of satisfaction that the appellant acted in the manner alleged and did so with the intent to unlawfully advantage another horse. That is how the stewards approached the matter and the basis upon which the appellant was penalised.
6. Before turning to the facts, we also observe that the rule requires that "someone" be unlawfully advantaged. The charge was levied on the basis that the subject of that advantage was a horse. In our view, this anomaly is neither here nor there. It was common ground that the allegation involved conduct that advantaged the connections of that horse and, in particular, the appellant's wife and, by extension, him.
7. The salient facts are relatively simple. There is no doubt from the footage of the race that, as the field raced down the home straight with a lap remaining, the appellant, with Mr Hadley trapped to his inside on the pegs, shifted up the track from the true "one out" position. As he did Mr Hadley moved off the pegs into clear running by piercing the gap that was created by the appellant's move up the track. Mr Hadley then advanced forward in the race, ultimately winning it.
8. We observe at this point that the Stewards, quite rightly, were entitled to be highly suspicious of what occurred and, quite properly, commenced and conducted a thorough inquiry into the appellant's conduct.
9. The Stewards contend that:
  - (a) The footage is compelling evidence that what the appellant did was designed to advantage the horse to his inside.
  - (b) The appellant was required to protect his position in the one out line and keep Mr Hadley to his inside on the pegs.
  - (c) The fact that the appellant allowed Mr Hadley, on the favourite, to obtain a run was unthinkable if the appellant was truly driving his horse to obtain the best possible position.

- (d) The footage depicts the appellant using the whip once (as a decoy they say) followed by two tugs of the reins to restrain his drive immediately before Mr Hadley moved through the gap created by the appellant.
  - (e) Finally, the driver of the horse to the appellant's outside felt pressure from the inside.
10. There is no doubt that the case for the Stewards has significant merit and, standing alone, would satisfy this Board to the requisite degree. However, there are matters which have been put by the appellant that are worthy of consideration.
11. He contends:
- (a) At no stage did he use his reins to assist Mr Hadley on his inside.
  - (b) Rather, he used the whip to legitimately attempt to move his drive forward.
  - (c) When he did use the reins, by hitting the horse down the rump, it did not respond.
  - (d) The horse was tiring and "out of petrol" at that stage of the race.
  - (e) The pace of the race was fast and that contributed to his horse tiring.
  - (f) He did not tug on the reins to pull the horse up the track. If he had, he says, the horse's head would have noticeably moved outward. No such movement is evident on the footage.
  - (g) The horse in front of Mr Hadley had clear space to his outside and at one point indicated it would move outside and commence to move forward. For some unknown reason that did not occur which opened up space and assisted Mr Hadley to make the move.
  - (h) The appellant did drift up the track, but only marginally, and that was simply on account of the natural movement of the horse.
  - (i) Ultimately, Mr Hadley would have obtained the run as the appellant's drive was flagging behind.
12. It is apparent that the Stewards did not accept any of these matters. In our view, some regard must be had to the unchallenged evidence of the appellant that his drive was tiring. Regard must also be had to the fact that his horse's head does not appear to have moved outward at the relevant time. There is also the fact that only one "tug" can be clearly seen in the footage and the other is obscured, assuming it to have occurred.
13. The appellant has denied he deliberately did what he did to advantage Mr Hadley. He was challenged before the Board as to what he was doing during

the relevant time in the race. He maintained he was simply trying to advance his drive, but without success. He further said that his hand movements were solely for that purpose and, although he drifted up the track, he did not do so to advantage Mr Hadley to his inside.

14. The parties' positions are difficult to reconcile. In our view, some benefit of the doubt should be afforded to the appellant. His conduct, viewed through the footage, is highly suspicious but we have not reached the requisite degree of satisfaction for such a serious allegation to find that the appellant deliberately shifted up the track to advantage Mr Hadley. The appellant's horse was tiring. He was relatively convincing in his evidence about this fact to the Board. He may have been attempting to advance it forward, but without success, and that may be the explanation for his hand movements. He may also have drifted up the track without intent to do so, although this seems unlikely given that the driver to his outside felt pressure from the inside.
15. We cannot tinker with the penalty imposed by the Stewards to reflect our suspicions. The appeal must be upheld and the appellant's deposit returned to him.

**DATED: 7 August 2017**