



APPEAL RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 1 December 2010

SUBJECT: **APPEAL HEARING RESULT – JOCKEY: NIKITA BERIMAN**

Panel Judge Russell Lewis (Chair), Mr Joshua Bornstein, Mr Graeme Johnson.

Appearances Mr Patrick Wheelahan appeared as Counsel for Ms Beriman.
Ms Heidi Lester appeared on behalf of the Stewards.

At an adjourned inquiry on Tuesday 9 November 2010, jockey Nikita Beriman was found guilty of a charge under the provisions of AR 135(b) for failing to take all reasonable and permissible measures throughout the race to ensure her horse was given full opportunity to win or obtain the best possible place in the field.

The charge relating to her ride on *Shadow Land* in Race 3 the *Warrnambool Mazda 6 Maiden Plate* (1400m) at Warrnambool on Thursday, 4 November 2010. The particulars of the charge being that from near the 250 metre mark, until after passing the 50 metre mark, she failed to make sufficient effort to improve her position between *Napoleonic* (Lincoln Coffey) and *Egyptian Waltz* (Neville Wilson) when in the opinion of the stewards she had the opportunity to do so.

Ms Beriman had her licence to ride in races suspended for a period to commence at midnight on Tuesday, 9 November 2010 and to expire at midnight on Wednesday 9 February 2011 – a total of 3 months.

A Notice of Appeal against **the decision and severity of the penalty** was lodged on Wednesday, 10 November 2010.

Taking into account Ms Beriman's suspension for careless riding which expired at midnight on Thursday 18 November 2010, a stay of proceedings was granted effective from this date to midnight Tuesday, 30 November 2010.

DECISION: **Appeal against decision dismissed.**

Penalty varied – period of suspension to now expire at midnight on Friday, 14 January 2011.

TRANSCRIPT OF PROCEEDINGS

RACING APPEALS AND DISCIPLINARY BOARD

**HIS HONOUR JUDGE R.P.L. LEWIS, Chairman
MR J. BORNSTEIN
MR G. JOHNSON**

EXTRACT OF PROCEEDINGS

DECISION

**IN THE MATTER OF THE WARRNAMBOOL MAZDA 6
MAIDEN PLATE OVER 1400 METRES AT WARRNAMBOOL
ON 4/11/10**

JOCKEY: NIKITA BERIMAN

MELBOURNE

WEDNESDAY, 1 DECEMBER 2010

MS H. LESTER appeared on behalf of the RVL Stewards

MR P. WHEELAHAN appeared on behalf of the Appellant

CHAIRMAN: In this appeal, the charge and the details of the charge have been adequately set out on page 1 of Mr Wheelahan's submissions, Mr Wheelahan being counsel for the Appellant. A correct statement of the onus of proof, the standard of proof and the tests to be applied are also contained on pages 1, 2 and 3 of Mr Wheelahan's submissions, so I will not descend to repeating those propositions.

The Board is satisfied that there was a run between horses and that the Appellant made no attempt to take the run. Her explanation as to why she did not attempt to take the run may well go to the question of penalty. However, in the Board's view, her decision not to persevere was not a mere error of judgment but was rather an error of judgment of a kind which may only be characterised as culpable or blameworthy.

Objectively considered, Nikita Beriman's failure to take the run represented a significant departure from the standard of riding expected of an experienced and able rider. In the Board's view, there is no doubt that had Shadow Land taken a run, she would certainly have finished in a better place than last.

Accordingly, it is the unanimous view of the Board that the charge has been proved, in the result that the appeal against conviction is dismissed.

DISCUSSION

In this case, there are two principal mitigating factors apart from the fact that the Appellant has no previous conviction for this offence. The Board takes into account the financial situation of the Appellant but in a qualified way, for the simple reason that there is a limit to the extent to which the Board will take financial liabilities into account, for obvious reasons. But the Board is more impressed with the fact that it is clear from the evidence given and indeed from the Board's reading of the transcript that the prime reason for this offence occurring was the psychological disadvantage which the Appellant was riding under, having had a fall at Ballarat. It seems to the Board to be a matter of commonsense that that would have affected her decision.

So in the circumstances, we are prepared to reduce the penalty. The Appellant is suspended from this day, such suspension to expire at midnight on 14 January 2011.

END OF EXTRACT