

HEARING RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 2 October 2012

SUBJECT: **HEARING RESULT: PENALTY – JOCKEY: DANNY NIKOLIC**

Panel Mr Brian Forrest (Chair), Mr Stephen Curtain, Mr Jeremy Rosenthal.

Appearances Mr Sandip Mukerjea of Minter Ellison Lawyers appeared on behalf of the Stewards.

Mr Sandy Robertson, instructed by Mr David Wood of Wood Fussell Lawyers, appeared as Counsel for Mr Nikolic.

Charge 1 Breach of AR 175(a)

Any person, who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.

Charge 2 Breach of AR 175A

Any person bound by these Rules who either within a racecourse or elsewhere in the opinion of the Committee of any Club or the Stewards has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised.

The charges relate to the abusive language and threats made by Mr Nikolic towards Racing Victoria's Chairman of Stewards, Terry Bailey, at Seymour racecourse shortly before the running of Race 6 on Tuesday, 4 September 2012.

Plea Charge 1 – not guilty.
Charge 2 – not guilty.

Decision As handed down by the Board on Friday, 21 September 2012:

Charge 1 – the Board finds the charge proved.
Charge 2 – the Board finds the charge proved.

Penalty Charge 1 - Mr Nikolic disqualified for a period of 2 years.
Charge 2 - Mr Nikolic disqualified for a period of 1 year.

Penalty (cont)

Both periods of disqualification to be served concurrently and deemed to have commenced on 4 September 2012 to take account of the period since being stood down.

The Board further orders that the decision of the Stewards on 4 September 2012 to stand down Mr Nikolic be set aside.

Georgie Gavin
Registrar - Racing Appeals and Disciplinary Board

**RACING APPEALS AND DISCIPLINARY BOARD
(Original Jurisdiction)**

***Reasons for Decision on Penalty
in the matter of jockey Mr Danny Nikolic
as heard on 19, 20, and 21 September 2012 and 2 October 2012***

Mr B Forrest Deputy Chair

Mr S Curtain Member

Mr J Rosenthal Member

On 4 September 2012, at Seymour races, jockey Mr Danny Nikolic subjected Chief Steward Mr Terry Bailey to a verbal outburst, that on any view was contemptible.

The language directed at Mr Bailey was not only grossly offensive to him, but worse, contained a sinister threat to his family. So much so, that in the immediate aftermath Mr Bailey arranged security at his home for a week.

The Board regards Mr Nikolic's action as dishonourable and a flagrant breach of the Rules.

In a career as a jockey spanning 22 years Mr Nikolic has enjoyed considerable success. Along the journey he has become well known and his riding skills admired.

Jockeys are an integral part of the public face of thoroughbred racing. Racing authorities recognise this in requiring jockeys make themselves available for promotional purposes from time to time.

A licence to ride carries with it responsibilities for the image and well being of racing, particularly so for successful jockeys whose activities are more likely to attract public interest, because of their profile.

Mr Nikolic is an example of a successful jockey attracting considerable publicity which, regrettably, because of his conduct on the day, has tarnished the image of racing.

The many who earn their livelihood in racing, and obey the Rules, are entitled to expect that licensed persons do not, by their actions, undermine the image or interests of racing. Equally for others, whether they be people in the community at large, for whom racing is an enjoyable pastime, or who are otherwise involved in racing in one way or another have a similar expectation.

It is also imperative for the wellbeing of racing, that participants can be confident that the stewards, as the persons responsible for the day to day control of racing, discharge their duties free of any risk of being compromised, by the spectre of threats to themselves or their families.

In determining the appropriate penalty the Board takes into account that the penalty reflects the seriousness of the misconduct and denunciation of it. Also important on penalty is to take into account personal deterrence and general deterrence.

The Board has considered the submissions of Mr Mukerjea for the Stewards and Mr Robertson for Mr Nikolic. Mr Robertson's submission was in essence a plea for leniency, for a jockey under intense personal scrutiny and asking that he be given another chance as he approaches the twilight of his career.

The nature of the conduct reflects poorly on Mr Nikolic and there is, in the Board's opinion, little in the way of mitigating circumstances.

Mr Nikolic does not gain credit for previous good conduct. He does not have an unblemished record relevant to these charges. In June 2010 he received a \$2,000 fine and in November 2010 a \$10,000 fine and licence suspension for 6 months with 4 months suspended.

Further, as Mr Nikolic claimed that the allegations made against him were a fabrication there is no question of any remorse or contrition.

The racing industry has been Mr Nikolic's life. Disqualification is a drastic penalty but in the Board's opinion no lesser penalty is appropriate in the circumstances.

The unanimous decision of the Board is that on each charge Mr Nikolic be disqualified, under Charge 1 for a period of 2 years and under Charge 2 for a period of 1 year. Both periods of disqualification are to be served concurrently and deemed to have commenced on 4 September 2012 to take account of the period since being stood down.

Finally, the Board orders that the decision of the Stewards at Seymour on 4 September 2012 to stand down Mr Nikolic be set aside.