

# TASMANIAN RACING APPEAL BOARD

## Appeal No 22 of 2014/15

<b>Panel:</b>	<b>Mr T Cox (Chair) Mrs K Brown</b>	<b>Appellant:</b>	<b>Mr W Rattray</b>
<b>Adviser:</b>	<b>Mr D Arnott</b>		
<b>Appearances:</b>	<b>Mr K Rattray on behalf of the appellant Mr A Crowther on behalf of stewards</b>	<b>Rule:</b>	<b>Australian Harness Rule AR149(2)</b>
<b>Heard at:</b>	<b>Launceston</b>	<b>Penalty:</b>	<b>A 4 race date suspension</b>
<b>Date:</b>	<b>7 August 2015</b>	<b>Result:</b>	<b>Upheld</b>

### REASONS FOR DECISION

1. The appellant has appealed against conviction and penalty imposed by Stewards arising from a charge pursuant to AR149(2) in Race 8 at Devonport on the 20th of July 2015.

2. The particulars of that charge were essentially that the appellant had driven in an unacceptable manner by moving *Karalta Dazzler* into a three wide position, failing to progress and then failing to take an opportunity to move back in the running line. He pleaded guilty before the Stewards and a 4 race date suspension was imposed. He lodged a Notice of Appeal and an Application for a Stay of Penalty on the 22nd of July 2015.

3. The appeal was heard on the 7th of August 2015. The appellant was represented by Mr Kent Rattray and the Stewards were represented by Mr Crowther. The film of the race was viewed and the parties had an opportunity to make submission both as to that and generally.

4. The appellant's position was that although he pleaded guilty before Stewards he only did so because he thought he would obtain the benefit of such a plea by way of reducing the penalty from a fine to a reprimand. Clearly when making that decision it was not in his mind that he was likely to be facing a suspension.

5. The appellant submitted that he did not consider himself guilty of driving in an unacceptable manner. He contended that the charge requires a serious mistake or series of errors which in combination, amount to an unacceptable drive rather than a mere error of judgment in the tactics employed by a driver. The appellant accepted that his initial decision to move out three wide when he did was an error of judgment, but the fact that he decided to remain in that position rather than take cover was not a serious mistake or an act deserving of punishment. It was submitted that despite his initial error, the choice of moving back in the field and taking cover was a poor option over staying three wide on the track with over 1000 metres to the winning post. This was so, he contended, because of a number of matters. First, after his move around the field it was clear to him that the death position was not going to be available to him. Secondly, as he made the move there was a call in the field giving notice of his run which, in turn, mobilised the horse in the death to push forward. Thirdly, Mr Duggan's horse *Poker Storm* moved off the pegs momentarily and held the one out line to the appellant's inside. Fourthly, if the appellant was to take cover he would need to drop in behind Mr Duggan's horse leaving the appellant well off the pace. Finally, his horse was not a sprinter, rather it was a stayer and on a tight track such as Devonport, the appellant considered that his chances were better traversing more ground on the outside at a modest speed, rather than dropping back in the hope his drive could close the

distance on the run home. Of note, by the time the appellant found himself three wide, the appellant was approaching a point in the race and on the track when he would have moved out wide in any event in accordance with his instructions. He said he took into account his experience with *Karalta Dazzler* in making the decision to hold that position at that time.

6. In response, the Stewards contended that the appellant chose to go wide at the point he did, that in doing so he forced his drive to travel more ground than it should have and that the appellant could not have known that Mr Duggan was blocking any move inside because the appellant didn't look to his inside for a run.

7. The Board accepts that the appellant's choice to go three wide when he did was fraught and by taking that course he forced his drive to travel more ground. However, we do not accept that the appellant did not look at or consider taking cover on the inside. It was clear on the film that Mr Duggan's horse (although not Mr Duggan himself) was within the sight range of the appellant at the relevant time.

8. The Stewards submitted that in staying three wide *Karalta Dazzler* had covered significantly more distance than it would otherwise had to run. The extent of that extra distance was disputed by the appellant based on his race instructions, and it was submitted by him that by going wide early rather than with a lap to go, as he had been instructed, that he had only covered around 15 metres more than he would otherwise have done. The Board accepted that interpretation. It was undisputed that *Karalta Dazzler* finished 4th and by a matter of 4.5 metres from the winner. It had gone into the race as favourite.

9. While clearly what constitutes an acceptable drive is a matter of judgement in each case, it would normally involve a consideration of the track, the horse's previous runs, strengths and weaknesses and the experience of the driver. The Board did not consider that, having regard to all of the evidence, the appellant's decision to remain in the three wide position was unreasonable to the extent necessary to amount to an unacceptable drive. It was a poor drive on account of the timing of the appellant's decision to attempt to take the death, but after that decision the appellant found himself in an invidious position and, in our view, employed tactics (by remaining in that position) which were not, by any standard, unreasonable. The appellant is a junior driver; and conceded in hindsight that he misjudged his initial decision to go out wide when he did, however he gave a good account of his decision making thereafter, and the Board accepted that it was consistent with his knowledge of the horse, his race instructions and the opportunities which he had at each point in the race. We also note that the losing margin was significantly less than is usually the case when an unacceptable drive is alleged.

10. The appeal is upheld with regard to conviction and the appellants' deposit will be returned to him.

11. In accordance with Section 34(2) of the *Racing Regulation Act 2004* his deposit will be returned to him.