

# TASMANIAN RACING APPEAL BOARD

## Appeal No 13 of 2023-24

<b>Panel:</b>	<b>Mr Patrick O'Halloran</b>	<b>Appellant:</b>	<b>Mr Troy Madden</b>
<b>Adviser:</b>	<b>Mr Mike Stiles</b>	<b>Rules:</b>	<b>AHRR 149(2) unacceptable drive</b>
<b>Appearances:</b>	<b>Mr Ross Neal on behalf of the Stewards</b>		<b>Mr Nathan Ford on behalf of the appellant</b>
<b>Heard at:</b>	<b>Conference Room Office of Racing Integrity Prospect Government Offices 171 Westbury Road Prospect TAS</b>	<b>Penalty:</b>	<b>Suspension of 5 Tasmanian race dates</b>
<b>Date:</b>	<b>22 December 2023</b>	<b>Result:</b>	<b>Dismissed</b>

### REASONS FOR DECISION

1. The appellant was the driver of GOING GREAT GUNS in Race 5 of the Burnie Harness Racing Club meeting held on 17 November 2023.
2. Within the Stewards Report of 17 November 2023 it was recorded that:

*'GOING GREAT GUNS – Raced outside the leader until under pressure approaching the bell. Gave ground, beaten in excess of 70 metres. A post race Veterinary inspection failed to detect any significant issues. A second Veterinary inspection approximately 90 minutes after the first confirmed the initial findings'.*

***General:** Stewards opened an inquiry into Troy Madden's driving tactics of GOING GREAT GUNS, which started as the race outsider at \$21 (fixed) and raced outside the leader before being under pressure approaching bell, tiring significantly, beaten 70.7 metres. Stewards, after taking evidence from driver T Madden and trainer B Yole as well as the driver of CAROLS JUDGE, T Rattray, which unsuccessfully challenged for the position outside the leader, adjourned the inquiry to a time and date to be fixed, to allow them to confirm or otherwise the evidence tendered to his point, and to review the performances of GOING GREAT GUNS.*

3. Within the Stewards Report of 26 November 2023 it was, relevantly for the purposes of this appeal, stated:

***Supplementary:** Stewards concluded an inquiry adjourned from the Race 5 at the Burnie Harness Racing Club's meeting held on Friday 17<sup>th</sup> November, 2023, regarding the tactics adopted on, \$38.50 race outsider, GOING GREAT GUNS, by driver Troy Madden. Stewards, after taking initial evidence on the night adjourned the inquiry to review performances of GOING GREAT GUNS and confirm or otherwise, evidence tendered by driver Madden. Tonight, further evidence was taken from driver Madden, as well as further questions put to driver Madden, which he declined to make comment on, these questions*

*included reference to GOING GREAT GUNS' recent racing performances and whether he considered various options during the race itself. Stewards after taking all evidence into account and reviewing of the race in question, charged driver Madden under AHR Rule 149(2), which reads:*

*'A person shall not drive in a manner which in the opinion of the Stewards is unacceptable'*

*In charging driver Madden, Stewards alleged that he drove GOING GREAT GUNS from the start of the race and until approximately 600 meters remaining (final lap) in such a consistent, solid manner, giving the horse no mid-race respite, leaving the gelding uncompetitive over the final lap, giving ground to be beaten in excess of 70 metres. Driver Madden pled not guilty to the charge. After being unable to provide further evidence to support his not guilty plea, and reviewing all the circumstances, Steward found him guilty as charged. On the matter of penalty, being aware driver Madden had been found guilty of the same charge in recent months and also taking into account his not guilty plea, Stewards suspended his licence to drive for five (5) race dates.*

4. Within his Notice and Grounds of Appeal – against conviction and penalty – the appellant provided – *'I am not guilty of the offence. I pleaded not guilty. I believe all the pressure on the race was from another person and that I only held my rightful position on the very leader bias tight burnie track that is my horse normal racing pattern'*.
5. To this Board the appellant submitted that in determining whether that rule had in fact been breached consideration need be had to:
  - That it was the first time the appellant had driven that horse – and as such (notwithstanding his concession that the appellant knew the horse's racing pattern and horses racing history) he was not to know that the horse was going to underperform on the night
  - That all the appellant had done within the small 600 meter tight turning Burnie track - was hold his position (a position that he did not make rather a position he found) in circumstances where he had every right to hold that position and was thus only doing what he was allowed to do
6. In response to queries of clarification from the Board the appellant conceded that he 'hadn't given his horse all the opportunity in the world'.
7. In regard to the reference to the 'other person' in the ground of appeal it was submitted:
  - the 'other person' was Todd Rattray
  - that driver Todd Rattray driving CAROLS JUDGE could properly be classified as the 'main perpetrator', who had been driving ungenerously on the small tight turning track and where he had been content to sit out there three wide
  - that RATTRAY had not been held to account in the same way, or at all, compared to the appellant notwithstanding that his horse did not finish in the placings and got beaten by 40 meters
8. The appellant submitted that the penalty was excessive as the Stewards:
  - had not mitigated the penalty in consideration of the contributing factor of RATTRAY's driving.
  - Had not properly taken into account that the appellant made a living driving horses and that a suspension of that length would grossly affect his income
9. Within their submission to the Board Stewards noted that within the initial inquiry Mr Madden provided that his instructions were *'I was instructed to push forward, the one horse we thought was better than, if we couldn't obtain the lead well I was to sit in the breeze for*

*the journey* - and that further *'Once you get on the track you're representing the stable and you have to make decisions for the stable at that point in time'*.

10. It was acknowledged that, separate to the consideration of prerace instructions, plainly decisions have to be made by all drivers on the track that best advantage the horse. It was however the maintained position of the Stewards of this race that the appellant, by the way he drove the horse, did not assist and in fact grossly affected its chances of finishing in a higher place by attempting to press on and drive the horse beyond its capabilities.
11. Stewards noted that in the initial inquiry they had clearly articulated their reasons for charging the appellant - including that GOING GREAT GUNS been driven beyond its capabilities.
12. The Stewards further submitted:
  - that it had been explored with the appellant in the initial inquiry how the horse had been driven at its previous start(s) and the horse's racing pattern and form
  - with reference to past form, it was clear that in the lead up to this race the horse had been struggling and was out of form and needed 'all possible favours' to obtain the best possible finishing position
  - it would have been well known to the appellant that horses that are less favoured in races or less credentialed need everything in their favour to obtain the best position in the race.
  - with that in mind the least favourable position in a race is the position that the appellant occupied in this race and by continuing to let the horse run freely outside the leader the horse's energies were dissipated and found wanting and faded out.
13. On the issue raised in the appellant's Notice the Stewards submitted that there was no error in not questioning Rattray as Stewards had closely reviewed the race film footage and they had identified no causative link or explanatory context relevant to the appellant's driving. It was the position of Stewards that Rattray had been well within his scope to attempt to gain a position outside the leader and was caught in a position he didn't want to be caught in.
14. In regard to factors considered by Stewards on penalty - within the inquiry Stewards confirmed with the appellant that they had taken into consideration 'the fact that you were suspended for a similar breach in May (2023) which held up at appeal as you're well aware of'.
15. The Board observes that the breach in May 2023 was in fact for the same rule and with reference to the Appellant 'being found guilty of the same charge in recent months' Stewards provided this Board – without objection from the appellant – a copy of the Stewards Report of 28 May 2023 which relevantly provided:

*Race 1 – Cavalor Equicare Pace – 1680m Mobile*

*General: Driver T Madden was found guilty of unacceptable driving in that after racing wide from the start and around the first turn he persisted in driving forward, securing the lead passing the 1100 metres, significantly contributing to the solid tempo run over the first 700 metres. This early effort having an adverse effect on the gelding, placing it under pressure from the 800, effectively rendering it uncompetitive with 500 metres remaining. Stewards after considering driver Madden's evidence and after referring to his driving record, suspend his licence to drive for three (3) meetings. Driver Madden will be free to return to race driving on Monday June 12<sup>th</sup>, 2023 [AHR Rule 149(2)]*

16. The appellant appealed that earlier conviction and penalty – with such appeal being dismissed - refer Appeal No 16 of 2022-23.
17. In regard to penalty the Stewards submitted to this Board that the appellant had breached this rule twice within a reasonable period and as such there had to be the expectation of an escalation of penalty.

### **Consideration and Determination**

18. Notably Rule 149(2), its purposes and the jurisdiction of this Board, were relevantly considered at paragraphs 28 of Appeal No 16 of 2022-23 (involving the same appellant).

19. Within para 29 it was further relevantly stated:

*In this jurisdiction, where an appeal is in the nature of a rehearing to be heard and determined upon the evidence of the original hearing subject to any other evidence admitted pursuant to s 30(6B) of the Racing Regulation Act 2004, the question for the Board is whether it is comfortably satisfied that the appellant's drive was unacceptable in accordance with the tests set out above.*

20. The Board has carefully considered the race film and has also had the assistance of an adviser, Mr Stiles.
21. In our view, the manner of driving disclosed by a close consideration of the race film supports the conclusion that the appellant's drive was unacceptable. The Board observes no error in the Steward's description or characterisation of the appellant's driving.
22. In regard to penalty – as was observed at para 38 Appeal No 16 of 2022-23 - penalties for breach of this rule must appropriately mark the seriousness of the offence and send a clear message to other drivers that instructions and tactics are one thing, but they must yield to the particular circumstances of a race. It is incumbent on drivers to make decisions in the best interests of the horse they are driving and with the view to it obtaining the best possible place. Then, as is now, the appellant's drive did not do this.
23. In consideration of the penalty ultimately imposed on the appellant for the earlier breach of Rule 149(2) (when the appeal was dismissed in July 2023) Stewards in this matter were correct to identify specific deterrence as a relevant factor that was enlivened in the exercise of their discretion.
24. In our view, the suspension imposed by Stewards was appropriate in the circumstances. It is not outside of the range of penalties ordinarily imposed for breaches of this rule.
25. The appeal is dismissed, and the decision of Stewards is affirmed.
26. As the appeal is dismissed the Board orders, pursuant to ss.34(1A), (2), (4A) and (4B) of the *Racing Regulation Act 2004* that 50% of the appellant's prescribed deposit is forfeited to the Secretary of the Department and that the appellant pay 50% of the cost incurred in the preparation of the transcript of the Stewards inquiry.

**DATED: MARCH 2025**