

# **RACING APPEALS TRIBUNAL**

## **QUEENSLAND**

### **NOTICE OF DECISION**

**APPEAL NO:** RT015-07

**DATE:** 4 July 2007

**APPELLANT:** Mr Nicholas Martin Brown

**RESPONDENT:** Queensland Racing

**APPEAL FROM:** Appeal against penalty only of the decision of the Stewards to impose a fine of \$3,000.00 for a breach of Rule AR178.

**BREACH OF RULE:** AR178.

**DECISION:** Appeal upheld with penalty varied to 3 months suspension.

**APPEARANCES:** Mr Gene Paterson, Solicitor of Macrossan & Amiet appeared on behalf of the Appellant.

Mr Norm Torpey, Steward appeared on behalf of the Respondent.

### **REASONS FOR DECISION**

Mr Leo Williams AO - Chairman

Mr Brock Miller - Deputy Chairman

Mr Dennis Standfield - Member

This is an appeal by Mr Nicholas Martin Brown who is the holder of an Open Trainer's Licence against a fine of \$3,000.00 imposed upon him by the Stewards for a breach of AR178.

The fine was imposed on 5 June 2007 at a Stewards Inquiry held at the Mackay Turf Club and concerned the Appellant presenting the horse La Grishan in Race 8 at the Mackay Turf Club Meeting of 16 March 2007.

From the swab taken the drug Nandrolone (an anabolic steroid) was detected by the Racing Science Centre and the Australian Racing Forensic Laboratory.

The Appellant was charged with a breach of Rule 178 and while he pleaded not guilty at the Stewards Inquiry the Notice of Appeal and Submissions forwarded by his solicitors state that this appeal is proceeding by way of an appeal against penalty only.

Prior to the hearing there was forwarded detailed written Submissions by Mr Paterson for which the Tribunal is grateful. Part of those Submissions refer to the evidence given by the Appellant and Dr David Lemmon at the Stewards Inquiry as to how La Grishan was detected with the drug and is stated as:

- (a) *After the horse had shown signs of lameness in the off hind leg on the 8<sup>th</sup> January 2007, Dr Lemmon examined and treated the horse with 3 ml of the drug Répair.*
- (b) *The horse was further treated on the 16<sup>th</sup> January 2007 with 5 ml of the drug Répair.*
- (c) *Dr Lemmon gave Mr Nicholas Brown advice that the horse could not start for 45 days.*

*The race on the 16<sup>th</sup> March 2007 was 59 days after the horse had been treated by Dr Lemmon with the drug containing the Nandrolone.*

At the Stewards Inquiry, after finding the Appellant guilty and taking submissions on penalty, the Stewards referred to the previous penalties imposed for the drug Nandrolone. These were two disqualification periods of 6 months and one disqualification period of 5 months.

Notwithstanding that disqualification had previously been imposed, the Stewards obviously felt some sympathy for the Appellant and when imposing penalty stated (page 20 from line 43) the following:

*“But we have considered the matter in your case. We note you have 27 years of unblemished record and the circumstances surrounding this matter and the professional advice you received. However we do feel there is a breach of the rules and we do therefore feel that the appropriate penalty, taking into account the circumstances of this case and your set of circumstances - your personal circumstances - that the appropriate penalty is that you be fined an amount of \$3000.00. The stewards further order that you have 3 months in which to pay that amount in full.”*

While normally trainers seek that fines be imposed rather than disqualifications or suspensions for a breach of AR178, the Appellant does submit that the fine in this instance is manifestly excessive. In the Statutory Declaration of 1 July 2007 forwarded to the Tribunal, the Appellant states that he *“...would prefer to accept a suspension of my licence than incur a fine of \$3,000.00”*.

While there were some personal particulars taken at the Stewards Inquiry, the material since provided by the Appellant’s solicitors make it clear that the Appellant is basically a “hobby” trainer and that he only trains one horse at a time. La Grishan is raced by friends for which he does not charge training fees.

The Tribunal accepts the submission from Mr Paterson that the Appellant has a passion for the welfare and wellbeing of his horse La Grishan and horses generally. It is also noted that the Appellant has never previously been fined or even required to attend a Stewards Inquiry during his long involvement with racing.

Because of the particular circumstances of the Appellant, the Tribunal accepts that the fine of \$3,000.00 is excessive and makes the following Orders:

1. The appeal is upheld.
2. The penalty is varied to a period of 3 month’s suspension from 4 July 2007; and
3. The Appeal Deposit Fee is to be refunded.

Mr Leo Williams AO .....  
Chairman

Mr Brock Miller .....  
Deputy Chairman

Mr Dennis Standfield .....  
Member