

NEW SOUTH WALES HARNESS RACING APPEAL PANEL

APPEAL PANEL MEMBERS

Hon. W Haylen KC

P Kite SC

B Judd

RESERVED DECISION

22 SEPTEMBER 2023

**APPELLANT AARON GOADSBY
APPEAL AGAINST THE DECISION OF NSW HARNESS
RACING STEWARDS TO DISQUALIFY “ARTISTIC SCOTT”
& “KOZACYNSKI” FROM RACE 10 AT NEWCASTLE ON
21 JULY 2023**

RESPONDENT HRNSW

AUSTRALIAN HARNESS RACING RULES 64

DECISION

- 1. Appeal Dismissed. The Stewards decision to disqualify ARTISTIC SCOTT and KOZACYNSKI from Race 10 at Newcastle on 21 July 2023 is confirmed.**

1. Mr Aaron Goadby, as trainer, has appealed against the decision of Stewards to disqualify two of his horses from race 10 at Newcastle held on 21 July 2023. The two horses were Artistic Scott and Kozaczynski. Mr Formosa drove Artistic Scott and Mr Tom Ison drove Kozaczynski. Artistic Scott finished first in the race at odds of \$6, while Kozaczynski finished out of a place as the \$1.70 favourite.
2. The disqualification of these two horses came about as a result of a sequence of curious and troubling events. Artistic Scott was to carry saddle cloth number 5 and start from barrier position 5 but ran in saddle cloth number 7 and started from barrier position 7. Kozaczynski was to carry saddle cloth number 7 and start from barrier 7 but ran in saddle cloth number 5 and started from barrier position 5. During the race call the horses were called by reference to their race book number with Kozaczynski hailed as the winner. Apparently a good deal of confusion amongst the patrons followed.
3. Before the winner of the race was declared, the Stewards began an inquiry as to how the two horses came to run in the wrong saddle cloth numbers and start from the wrong barrier positions. On the night Mr Goadsby was not at the track but had nominated Mr Stanton as his authorised representative at that meeting. Mr Stanton told the Stewards that he did not notice that the horses were wearing the wrong saddle cloth numbers. Another person had picked up the saddle cloths and put the numbers on the horses but Mr Stanton said he did a last minute look over the horses before they went out. He did not pick up the fact that the numbers for the horses were wrong. The two drivers, Mr Formosa and Mr Ison, did not take any notice of the saddle cloth numbers other than to position their horses to start from the barrier position corresponding to the saddle cloth numbers. Mr Parkes was the starter but he did not pick up on the fact that the saddle cloth numbers were wrong.
4. The Stewards acted quickly after receiving this information from the stable representative, the drivers, and the starter. AHRR 64 was read to the inquiry participants: If a horse fails to start from its correct handicap mark or its correct barrier position it may be disqualified or declared a non-starter in the race. The Chairman of Stewards, Mr Westwood, then made the following statement: "We feel there's no other option for us because they've both started from the wrong barrier position that they will both be disqualified from the event." The placings were then amended with Mr Goadsby's horses removed from the finishing order. This was the final decision of the Stewards on the question of disqualification.
5. After adjourning, the inquiry was continued to investigate the circumstances that allowed this embarrassing event to occur. Mr Goadsby joined the further inquiry by telephone. The Starter, Mr Parkes was asked to take the inquiry through his pre-race checks as the horses went out onto the track. Mr Parkes admitted that he only scanned one horse because they came out 3 at a time. He just looked at the number and not the actual cloth number of the horse. Mr Goadsby's horses were sent out with the wrong cloth numbers.
6. Mr Stanton said that a Mr Jacob Yallop got the saddle cloth numbers and handed them out. He was a staff member of another business owned by Mr Goadsby but he was not a licensed person but was just helping out. Mr Stanton had checked everything else, but not the saddle cloth numbers.
7. After these disclosures Mr Goadsby made a number of observations and submissions to the Stewards. He stated that at every level, including his stable and the starter, the entire circumstances were an embarrassment. Submissions were then made that no unfair advantage had been obtained by his horses by starting from outside

barriers and that they had commenced from the rear of the field. Reference was then made to other cases where horses had started from incorrect barriers and won but the race was not taken from them, but a fine was regarded as appropriate. The Chairman again read the terms of AHRR 64 in order for Mr Goadsby to understand the basis on which the Stewards acted in the circumstances of this race. It appears that the Inquiry by the Stewards is ongoing and had been adjourned to await the decision of the Panel on this Appeal.

8. Mr Goadsby duly filed an appeal contesting the conviction and the penalty. Subsequently the appellant sought to amend the appeal to relate to both horses. The amendment was not opposed and the appeal proceeded accordingly. Notwithstanding that the notice of appeal purported to challenge conviction there was no challenge to the fact that the horses started from incorrect barrier positions. The disqualification was challenged on the basis that there were many cases where starting from the wrong barrier did not result in disqualification and a modest fine was applied by Stewards. It was alleged that the winning horse was actually disadvantaged by its starting position and the other horse gained no advantage. He also raised the incompetence of the Starter as a ground of Appeal.
9. Having regard to the unique issues raised by this case, both parties filed detailed submissions for consideration by the Panel. Those submissions were supported by oral evidence given at the hearing by the Chairman of Stewards on the night, Mr Westwood, and from Mr Yallop, the person who had distributed the saddle cloths on the night although not a licensed person. It should be noted that Mr Yallop was clearly still distressed by his involvement in this saga and had simply been allowed to help on the night including the handing out of saddle cloths. He had no reason to believe that what he was asked to do was in breach of harness racing rules.
10. The submissions for Mr Goadsby made much of the fact that he had not been called upon prior to the disqualification decision and was thereby denied procedural fairness. At the Appeal hearing it was ultimately agreed that this issue could be cured by this hearing and dealt with to finality as part of the Appeal. In support of that approach over 70 individual cases were referred to where a monetary penalty had been imposed by Stewards for starting from the incorrect barrier or being in the wrong starting position. Mostly these cases were brought under AHRR 162(1)(g). That rule provides that a driver shall not start from the wrong barrier position. The cases included examples of a driver straying out of the allotted position. There is no provision requiring the Stewards to apply this rule. It is one of a number of provisions open to the Stewards. It is also limited to penalising the driver only. It might be noted that the evidence from the drivers was that, although they had each "done the form through the week when the fields came out" they simply lined up in the position indicated by the saddle cloth numbers. In this case the failures of the drivers were relatively minor compared to those of the stable and the starter. The Stewards were entitled to consider a wider and more severe penalty as being appropriate.
11. It was also argued for Mr Goadsby that the Stewards were in error in applying AHRR 64 "as there was no other option" available. In argument it was conceded by HRNSW that the Stewards had options, including to take no action. Further, the rule specified that the Stewards "may disqualify" a horse or declare such a horse as a non-starter. There were restrictions in other rules that rendered them unsuitable for the purposes of the event under consideration. In short the rule was described as being discretionary. It was then submitted that because of the nature

and seriousness of this event the Stewards considered that no other penalty or approach was suitable. The Panel accepts that submission. This was an extraordinary set of factors: The stable failed by allowing an unlicensed person to hand out the saddlecloths; Mr Stanton did not pick up the error in his final check; the drivers did not notice that the saddle cloths were wrong; the Starter did not check these horses because the runners went out in a bunch and he did not stop them; and the race caller was thereby drawn into calling the wrong horses during the race. In evidence it was stated that this type of error would usually be picked up when horses were in the enclosure. It might also be said that this line of misinformation about the identity of the horses misled the betting public.

12. Having regard to all the evidence, the Panel is satisfied that the Stewards were entitled to take action under AHRR 64 to disqualify these horses. It follows that the Appeal is dismissed.

Hon Wayne Haylen KC – Principal Member

Mr P Kite SC – Panel Member

Mr B Judd – Panel Member

22 September 2023