

NEW SOUTH WALES HARNESS RACING APPEAL PANEL

APPEAL PANEL MEMBERS

**Hon. W Haylen KC
E Schmatt AM PSM
J Murphy**

TUESDAY 25 JULY 2023

APPELLANT MICHAEL FORMOSA

RESPONDENT HRNSW

**AUSTRALIAN HARNESS RACING RULES
163(1)(a)(iii)**

DECISION

- 1. The appeal against the decision of the Stewards is upheld.**
- 2. The suspension of 18 days is set aside.**
- 3. The appeal fee is to be refunded to the appellant.**

1. On 26 July 2023, Harness Racing NSW Stewards opened an inquiry into the circumstances leading to the horse, BRADNESS ABUELA, being crowded for room, then being checked and breaking stride passing the winning post in Race 6 held at the Tamworth Harness Racing Club. Miss Ison was the driver of that horse and Stewards also interviewed Mr Michael Formosa, the driver of FOREVER SKYFALL. Miss Ison gave evidence that Mr Formosa was trying to cross her horse to lead coming into the turn at the end of the straight for the first time. She stated that her horse “got a little bit tight” from Mr Formosa’s horse and then got a bit tight from another horse on her inside, MANIC MIA. Miss Ison then spoke of her horse breaking “under pressure”: Mr Formosa had got a little bit close and she got a little bit close to MANIC MIA. After viewing the race Miss Ison stated that it was very clear that Mr Formosa did not hit her horse and she did not think it was his fault, apparently referring to her horse checking and breaking. In her view they were just under a lot of pressure going into the turn. Mr Formosa said that he was not aware of the incident where Miss Ison’s horse was checked and breaking stride. He said that he had no idea that he crossed close enough to cause interference.
2. In the context of this evidence, the Chairman of Stewards stated that it was accepted that Miss Ison’s horse did not “gallop immediately” on Mr Formosa crossing. Later it was also conceded that the galloping action of BRADNESS ABUELA did not happen until Mr Formosa’s horse was forward of Miss Ison’s horse. Mr Formosa argued that once he crossed Miss Ison’s horse, she grabbed hold of the horse and that was when the horse galloped. He also told Stewards that he had “no hesitation” in crossing her horse, apparently indicating that he had safely done so and was not responsible for the breaking and galloping of BRADNESS ABUELA. Later in the inquiry, the Stewards made it clear that there was no allegation of contact by Mr Formosa’s horse and Miss Ison’s horse. The concessions properly made by the Stewards, as outlined above, are of some significance in determining the outcome of these Appeal proceedings.
3. There are further matters of some significance. During the hearing Mr Formosa drew the Stewards attention to the fact that some aspects of the video were questionable because of the angle of the shot, a matter that was raised again during the Appeal hearing. It raises the possibility that some of the crucial shots relied upon by the Stewards did not tell the whole story. It was also difficult to conclude from the video that Miss Ison was restraining her horse leading up to and/or during the crossing action taken by Mr Formosa. On one view Miss Ison does not appear to restrain her horse until well after it was crossed by Mr Formosa’s horse. Ultimately, the Chairman of Stewards indicated that the issue of angles of the video pictures would be taken into account.
4. After deliberation, the Stewards announced their findings, stating that Mr Formosa should not have crossed Miss Ison’s horse and charging Mr Formosa under AHRR 163, namely, that a driver shall not cause or contribute to any interference. The Particulars of the charge were: As the trainer/driver of FOREVER SKYFALL in race 6 at Tamworth..., did allow FOREVER SKYFALL to shift in for some distance passing the winning post on the first occasion when insufficiently clear of BRADNESS ABUELA, which was crowded inwards and had to be steadied and thereafter checked and broke stride. Mr Formosa replied that he thought the horse galloped on its own accord but he was close and did not feel that he contributed to the following interference. He then stated that he was probably too close when crossing and accepted that he had to plead guilty.
5. In announcing the penalty, the Stewards commenced by referring to the guidelines and the appropriateness of a suspension of licence, beginning with a 35 day penalty. 7 days reduction was allowed in recognition of the guilty plea, however two recent suspensions

did not permit any further reduction. His general conduct was taken into account as was his level of experience. The Stewards found that his general conduct and demeanour was to his credit and allowed for a further reduction of 10 days, resulting in an overall suspension of 18 days. In the course of delivering this decision the Stewards also mentioned that there was “an element of inexperience in this incident” and that, “Perhaps a more experienced driver may have reacted differently.” While this is a significant statement, there is no evidence of the penalty being reduced because of Miss Ison’s comparative youthfulness and experience as a driver but it does suggest that an older hand may have dealt differently with the circumstances of this race.

6. Mr Formosa lodged an appeal against the severity of the penalty. After being provided with a video of the race, Mr Formosa sought leave to change his appeal to a plea of not guilty. At the start of the Appeal proceedings no objection was taken to that course although Mr Formosa was warned that if he failed with his amended appeal, he faced the possibility of an increased penalty, and the benefit of the 7 days reduction granted due to his guilty plea. Mr Formosa indicated that he understood that possible result but was confident, after reviewing the video replays for the first time, that he was not guilty of the charge and that there was no connection between his crossing Miss Ison’s horse and the difficulties suffered by BRADNESS ABUELA.
7. After close analysis of all the evidence, the Appeal Panel is comfortably satisfied that Mr Formosa’s appeal should be upheld. This was not an easy decision and it was not assisted by video replays on the day which fell well below the usual standard available to the Panel and the parties. It should be understood, however, that the difficulties were technical in nature and stretched the resources of Harness Racing.
8. The Panel firstly notes the high regard in which Mr Formosa is held by Harness Racing NSW. He is very experienced and has a good record. In this race he was driving a well fancied runner and chose to challenge for the lead before or at the end of the straight. At the turn out of the straight his horse was in full flight and drawing away from Miss Ison’s horse. While crossing in front of that horse Mr Formosa’s horse closely but clearly and easily achieved the lead. The Panel is not satisfied that Miss Ison began to restrain her horse either coming into the turn or at the turn. There was no touching of the horses or other contact. In the view of the Panel, some strides after being crossed Miss Ison’s horse breaks stride itself and continues for some time losing ground and galloping. Indeed, the Stewards accepted that the horse did not gallop immediately after being crossed and that its galloping action occurred when Mr Formosa’s horse was forward of Miss Ison’s. It is of some significance that Miss Ison does not hold Mr Formosa responsible for her horse breaking. All agree that this was tight racing but it appears that Miss Ison’s horse was not comfortable in that atmosphere. These were the unfortunate circumstances that led to the horse losing its chance in the race.
9. Having reached those conclusions, the Appeal Panel upholds the Appeal and sets aside the decision to suspend Mr Formosa. Mr Formosa shall have the Appeal fee returned.

26 July 2023

Wayne Haylen KC – Principal Member
Mr E Schmatt AM PSM – Panel Member
Mr J Murphy – Panel Member