

## Appeal decision

---

**Date:** 5 May 2014

**Code of racing:** Harness

---

**Appeal panel:** Judge W Carter (chair), Mr B Miller and Mr P James.

**Appearances:** Mr S Neaves appeared on behalf of trainer Jason Carkeet.  
Mr D Farquharson, chairman of stewards, appeared on behalf of the stewards.

**Decision being appealed:** Conviction recorded but no penalty imposed – AR190(1), (2) and (4).

**Appeal result:** Appeal upheld.

---

**Extract of proceedings – in the matter of the APG Sales Here This Sunday Pace (C1-C2) over 2138 metres at Albion Park on 11 February 2014. Trainer: Jason Carkeet**

THE CHAIRMAN: On 11 February 2014 the appellant, Mr Carkeet, presented the horse Chevals Diamond for Race 1 at Albion Park in which it was successful. The usual swabbing procedures were adopted and after appropriate analysis it was found that that horse had been presented for the race and had raced whilst there was a prohibited substance in its system, that prohibited substance being hyoscine. Upon inquiry questions arose as to the source of the contamination and the stewards found that the contamination probably occurred from a pre-mixed feed which had been used in the stable and which had been sold by an apparently reputable feed merchant.

Having charged the appellant with a breach of Rule 190, the stewards were concerned that Rule 190(2) required that there had to be some form of penalty imposed resulting from their finding that the trainer was guilty of an offence under sub rule 2. In fact the stewards did not impose a penalty but recorded a conviction against the appellant. The stewards, relying on sub rule 4 of 190, assumed that they were required to do that regardless of the circumstances in which the prohibited substance came to be present in the horse's system.

Under Rule 195 the horse in question was disqualified and any monetary reward for the appropriate people became unavailable.

Rule 256(6) provides, however, that although an offence is found proven, a conviction need not necessarily be entered or a penalty imposed. The stewards in their decision, and in determining "your culpability", concluded that the breach in question was "minimal", and then they proceeded to convict the accused but imposed no penalty. In the special circumstances of this case that finding cannot be supported.

Clearly Rule 256(6) grants to the stewards a discretion, not only in a case like this but indeed in any case, in appropriate circumstances to not necessarily impose a conviction on the person who is alleged to be in breach of the rule.

We are of the view that there is no evidence in this case of any wrongdoing or culpability on the part of the appellant. The stewards concluded that the horse had been presented for the race with a prohibited substance in its system, and that was proved and that therefore a conviction was justified. But there remains the question of culpability. Culpability cannot necessarily be presumed. In this case whilst it was the appellant who presented the horse, and whilst there was prima facie evidence of an offence, the question remains as to whether in this case there is in fact any culpability established on the part of the person. The stewards described "your culpability" as "minimal." In fact the appellant was on the evidence wholly ignorant of the fact that the horse's feed was contaminated with hyoscine.

Given Section 149ZE(3) of the *Racing Act 2002*, we are prepared to exercise the discretion available under Rule 256(6). It is our view that this was not an appropriate case in which to impose a conviction on the appellant. The fact that there is no evidence to establish any culpability on the appellant in the special circumstances of this case makes it inconsistent, in our view, for there to be a conviction entered against the appellant and, in our view, the appropriate order for us to make is that the conviction be quashed and the appeal be allowed.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)