

## Appeal decision

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**Date:** 15 October 2014

**Code of racing:** Harness

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**Appeal panel:** Mr B Miller (chair), Mr P James and Mr D Kays.

**Appearances:** Mrs K Bennett appeared on behalf of trainer Frank Bennett.  
Miss K Wolsey, stipendiary steward, appeared on behalf of the stewards.

**Decision being appealed:** \$5000 fine – AR190(1).

**Appeal result:** Appeal dismissed.

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### **Extract of proceedings – in the matter of the Trottips.com TQO or Better Trotters Handicap at Albion Park on Saturday 5 July 2014. Trainer: Frank Bennett**

THE CHAIRMAN: This appeal by trainer Frank Bennett arose as a result of an enquiry by stewards conducted at the offices of Racing Queensland at Brisbane on Thursday 18 September 2014. The issue concerned the positive swab returned by the horse It's Three By Two after it had won Race 9 at Albion Park on Saturday 5 July. Evidence provided to the steward's inquiry identified by analysis the presence of caffeine, theophylline, paraxanthine and theobromine. The trainer Mr Frank Bennett and his wife Mrs Karen Bennett gave evidence before the stewards that no one in their stable had administered any substance containing caffeine or its derivatives to the horse at any point in time prior to the horse being tested. Their evidence centred on what they each believed to have been an attempt by a person or persons unknown or certainly not positively identified who may have had some benefit to be gained by the horse in question being tested and subsequently the trainer or associates thereof being disqualified. Both Mr and Mrs Bennett were adamant in their protestation as to their innocence and the stewards accepted certainly that there was no evidence to suggest that they had been the perpetrators of any administration of the drug in question.

The relevant rule is Rule 190 and the charge levelled under that rule identified sub-paragraphs 1, 2 and 4 as being the appropriate constituent elements. Those sub-sections read:

- (1) *A horse shall be presented for a race free of prohibited substances.*
- (2) *If a horse is presented for a race otherwise in accordance with sub-rule 1, the trainer of the horse is guilty of an offence.*

- (4) *An offence under sub-rule 2 or sub-rule 3 is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse.*

As can be seen from the wording of the rule it is irrelevant for that purpose to determine if the trainer administered the drug. There are other rules that identify that, if proof of administration was available to identify that the trainer had so acted, then a very much more serious charge and possible penalty would have been manifested. The rule identifies that once the horse is presented to race then as a matter of strict liability the trainer is guilty of an offence. It was on that basis that the stewards ultimately found that Mr Bennett, the appellant, was guilty of the charge.

Unfortunately the evidence adduced by the appellant as to how the drug came to be within the horse's system is not relevant. This is something that Mr Bennett was unable to reconcile with his regimen of training throughout many years. It was shown to the stewards and to this board during the evidence that Mr Bennett's record was exemplary and never before had he in many years of training both here and in New Zealand been adjudged guilty of any offence that resulted in a breach of the rules.

This board and the stewards by virtue of their imposition of a fine of \$5000 with no suspension or disqualification being included obviously had sympathy for Mr Bennett having been placed in this position. The facts of the matter are enunciated fully throughout the transcript and it can be seen that certainly at some point in time other parties attempted to interfere with a motor vehicle and perhaps with horses that had been trained and owned by Mr Bennett and his wife. The problem that this board has in identifying whether to interfere with the conviction and/or the penalty imposed is that the rules demand strict adherence to compliance. Mr Bennett and his wife were aware that there had been intrusions into their property on occasions prior to this incident. In fact complaints had been made to the local authorities in respect thereto but it appears that no charges were levelled even though there was, on a strict reading of the information noted in the transcript, sufficient evidence to raise a presumption that a certain person/s had trespassed upon the property owned by the Bennetts at certain times.

Mr Bennett made it quite plain that the property was in an area where it would be almost impossible, without significantly large expenditure, to ensure that no intruders could have access thereto. It was that fact that persuaded him that he was not guilty of any offence and should not be visited with any penalty.

Unfortunately this board cannot agree with his protestations or those of his wife in that regard. The rules demand that a trainer take precautions to safeguard his property and in particular the horses who have been placed in his care. It is the reason why the "presentation rule" which is what Mr Bennett has been charged under, was written into the

legislation. It demanded that steps be taken to negate as best as possible attempts to interfere with horses or property.

The stewards imposed a fine of \$5000 when, in the opinion of this board, they would ordinarily have imposed a very much more significant fine or a significant period of disqualification. That they imposed the fine would appear to the members of this board that Mr Bennett is someone that is capable of being an asset to the industry but for him to do so in the future and to be that asset it will be necessary for him to take precautions to ensure that his stables are secure and safe and that the horses likely to race in the near future are properly guarded. In the opinion of this board it is incumbent upon Mr Bennett, if he wishes to remain in the industry, that he take every available step to defend his property and his horses even though the cost thereof might be substantial.

In the opinion of this board the fine of \$5000 is not unreasonable and in fact is at the lower end of the scale. However, this Board does not propose to interfere with that fine by increasing same or imposing any period of suspension or disqualification.

In the circumstances the determination of this board is that the appeal is dismissed both as to conviction and as to penalty.

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)