

**DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT : **GRAEME RICHARD MARRIOTT**

APPLICATION NO. : **A30/08/248**

PANEL : **MR D MOSSENSON (CHAIRPERSON)**
 MR L ROBBINS (MEMBER)
 MR J SYME (MEMBER)

DATE OF HEARING : **29 MARCH 1995**

IN THE MATTER OF an appeal by Mr G R Marriott against the determination of the Western Australian Trotting Association Stewards on 22 February 1995 imposing a 12 month disqualification under Rules of Trotting Rule 497.

Rule 497 states:

- "(1) When any horse which has been presented to race is found to have administered to it a drug:
- (a) any person who administered the drug to the horse;
 - (b) the trainer; and
 - (c) any other person who was in charge of the horse at any relevant time,
- is deemed to have committed an offence.
- (2) It shall be a defence to a charge under sub-clause (1) for the trainer and any other person who was in charge of the horse at any relevant time to prove that he took reasonable and proper precautions to prevent the administration of the drug."

At the Stewards' inquiry, the appellant was charged as follows:

"... that the urine sample taken from MUSTANG EXPRESS subsequent to his winning performance in Race 3, the Ford Probe Handicap run at Gloucester Park on Friday, 11th of November 1994, has upon analysis been found to contain Ketoprofen, therefore as Trainer of MUSTANG EXPRESS for the race you are deemed to have presented the horse for the race not free of drugs. ..."

The Tribunal is satisfied that the Stewards did not fall into any error in the manner in which they approached this case. They did investigate the matter further at the request of the appellant. The onus lay on the appellant to demonstrate, pursuant to Rule 497(2), that he took reasonable and proper precautions to prevent the administration of the drug.

The evidence demonstrated that it was fairly easy to get to the appellant's stables. The Stewards were satisfied that the precautions were not reasonable and proper. The appellant admits (on page 30 of the transcript of the inquiry before the Stewards) that his security is poor. There was nothing to link Mr Gill Cooper and the vehicle which was allegedly near the property sometime prior to the offence occurring. The onus is not on the Stewards but rather on the appellant and Mr Marriott has failed to discharge that onus.

We are satisfied that Mr Marriott was correctly convicted of the breach of the rules and we do confirm the conviction.

Mr Marriott has failed to demonstrate that there were any extenuating circumstances requiring anything other than the imposition of the penalty which the Stewards did impose, even if it were the case that it were proven that Mr Marriott did not administer the drug. It would not, without more, provide the extenuating circumstances. The presence of a drug in the horse which was presented to race comprise the relevant elements of the offence which Mr Marriott was charged with.

The penalty which was imposed is the lightest penalty which the Stewards could impose in the absence of extenuating circumstances. Accordingly, the penalty is confirmed.

The fee paid on lodgement of the appeal is forfeited.



DAN MOSSENSON, CHAIRPERSON

2/16/1995

