

CONSENT ORDER
OF THE
RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: JARRAD NOSKE

APPLICATION NO: A30/08/711

PANEL: MR D MOSSENSON (CHAIRPERSON)

DATE OF DETERMINATION: 23 OCTOBER 2009

IN THE MATTER OF an appeal by Mr Jarrad NOSKE against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 26 September 2009 imposing a fine of \$1500 for breach of Rule 137A(5)(a) (i) of the Rules of Thoroughbred Racing.

On 6 October 2009, an appeal was lodged against the severity of the fine imposed by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing for breach of rule 137A(5)(a)(i) of the Rules of Thoroughbred Racing.

On 12 October 2009, the Chairman of Stewards wrote to the Tribunal advising the following:

"On 1 August 2009, new national rules were introduced. On the 25 September 2009 the Australian Racing Board (ARB) introduced changes to those existing rules. The Board also directed that these new rules be effective 26 September 2009.

Apprentice Jarrad Noske was fined under these new rules on Saturday 26 September 2009.

On review of the RWWA Act 2003 Section 45 (5) states:

"Rules of racing may adopt, either wholly or in part and either specifically or by reference, the Australian Rules of Racing, the Australian Rules of Harness, the Australian Greyhound Racing Rules and any other rules or standards, codes or specifications-

- (a) As at the time the rules of racing are made or at any time before then;-
- (b) As amended from time to time.

Further Section 45 (7) and (9) of the RWWA Act prescribes:

(7) Notice of the making of the rules of racing is to be published in the Gazette

(9) Rules of racing come into operation on the day of publication of the notice referred to in subsection (7) or such later date as is provided for in the rules of racing.

The new rules were in fact gazetted on Friday 9 October 2009."

The Chairman in his letter acknowledged that the new rules had not been promulgated at the time of the offence and after having sought legal advice in this matter, the Stewards had determined to rescind the fine of \$1500 and the charge deleted from Apprentice Noske's record. Jarrad Noske therefore has no case to answer and as such no appeal is required.

On 13 October 2009, Mr Noske wrote to the Tribunal seeking to withdraw his appeal and refund of application fee.

On 15 October 2009, the Chairman of Stewards confirmed that he did not oppose the refund of the application fee to Mr Noske.

For all the above reasons:

1. by consent leave to withdraw the appeal is granted;
2. the fee paid on lodgement is refunded.



DAN MOSSENSON, CHAIRPERSON

