

**INTERNAL REVIEW DECISION**  
(Internal Review Decision Notice in response to an Application for Internal Review)

<b>PART 1: Details of Internal Review</b>	
<b>Internal Review Number:</b>	Internal Review 0015-17
<b>Applicant's Name:</b>	D. McMullen
<b>PART 2: Decision History</b>	
<b>Original Decision:</b>	Breach of Australian Harness Racing Rule 247
<b>Original Decision Makers:</b>	N. Torpey, K. Wolsey & J. Hackett
<b>Date of Original Decision:</b>	11 March 2017
<b>Internal Review Decision:</b>	Original decision on penalty confirmed.
<b>Internal Review Decision-Maker:</b>	Mr Ross Barnett APM, Racing Integrity Commissioner (on advice from Mr Kane Ashby, Internal Adjudicator, Queensland Racing Integrity Commission)
<b>Date of Internal Review Decision:</b>	5 April 2017
<b>PART 3: Summary of Internal Review Application</b>	
<p>The Applicant, Ms Danni-elle McMullen, was the driver of the horse REMEMBER THEM in race 3 at Albion Park on 11 March 2017. The stewards conducted a stewards' inquiry with the Applicant and the trainer, Mr G Franklin, after race 3, due to REMEMBER THEM leading, which was contrary to recent race tactics. The stewards accepted the explanation for the change in tactics. During the stewards inquiry the Applicant acted in an improper manner.</p> <p>This resulted in the Applicant being charged with a breach of Australian Harness Racing Rule 247.</p> <p>The stewards report states: <i>Stewards questioned G Franklin the trainer and D McMullen the driver of REMEMBER THEM regarding the horse leading in tonight's even compared to the recent tactics adopted on the gelding. Trainer G Franklin advised that the horse was down in class tonight however, did not give specific instructions to lead and was of the view that REMEMBER THEM was able to obtain the position in the lead after having to work forward when after being caught wide. After considering the matter stewards accepted the explanation but reminded Mr. Franklin of the obligations under the rules to advise of any intended change of tactics.</i></p> <p><i>Following the inquiry Stewards found D McMullen guilty of the contravention of Rule 247 by acting in an improper manner during the inquiry and a fine of \$500 was imposed. Stewards stayed \$200 of that find for a period of twelve months on the condition that D McMullen does not breach any similar rule regarding conduct in the next twelve months.</i></p> <p>Rule 247 states: <i>A person attending before the controlling body its members or employees, the stewards, officials, or at any proceeding under these rules, shall not speak or behave in a malicious, intimidatory or otherwise improper manner.</i></p> <p>The Applicant was fined \$500. \$200 of the fine was suspended for a 12-month period on the condition the Applicant did not breach any similar rule regarding conduct in the next 12 months.</p>	



The Applicant has sought a review on penalty only, and requests the fine be reversed and be issued a reprimand only.

#### PART 4: Reasons for Internal Review Decision

The Applicant submitted written reasons as part of her review application in defence of the aforementioned stewards' decision regarding penalty, which in summary stated there were "*extenuating circumstances*" and reasons "*one unnecessary comment*" was made following the stewards' inquiry. The Applicant stated she had driven REMEMBER THEM to instructions and consistent with the previous week and felt the inquiry into the tactics adopted should have been a matter for the trainer and not the driver. During the inquiry the stewards' failed to ask "*my opinion*" and felt the "*inquiry took more time than necessary*." The Applicant stated she was a full time employee at Albion Park Harness Racing Club (APHRC) as a marketing coordinator and had organised an ovarian cancer fundraiser for which she was an ambassador. Prior to entering the stewards room, the Applicant witnessed the host of the event suffer a medical condition (understood to be an anxiety attack) and became concerned for the host and the function. The Applicant felt the stewards were unnecessarily wasting her time by adjourning the inquiry after each race, which resulted in the Applicant not being released from the inquiry until an hour after her last drive. The Applicant became "*frustrated and agitated*" by this and "*in hindsight worded my statement incorrectly and discourteously*". The Applicant alleged in previous times she had not been treated with respect by the former head steward claiming he delivered an obscene remark towards her. Lastly, the Applicant stated she was remorseful for her comment however, believed there were mitigating circumstances and a reprimand was the appropriate action.

Subsequent to listening to the audio of inquiry the reviewer finds, Mr Franklin and the Applicant attended a stewards' inquiry into a variation of race tactics. The inquiry heard REMEMBER THEM, which led in the race was in contrast to its previous ten starts. Mr Franklin expressed his concerns the rule had many "*greys area's*" and reluctantly accepted he was guilty of failing to inform stewards of any intended change of tactics. The stewards did not take any direct action against Mr Franklin however, reminded him of his responsibilities under the rule.

Subsequent to adjourning the inquiry the Applicant stated:

*Applicant – "You actually didn't even ask my opinion so I'm not sure why I am even in here"*

*Chairman – "Mr Franklin answered the questions"*

*Applicant – "Well I'd appreciate it if you don't waste my time next time"*

The Applicant was requested to attend a further stewards' inquiry and asked to explain her aforementioned comments. The Applicant continued to argue "*it was a waste of her time attending the inquiry*" and stated her comment made was in a "*nice gesture to say*". The Applicant added she had a busy night with six drives, gearing up her own horses and organising a function.

The reviewer notes the Applicant accepted seven (7) drives for the meeting.

Subsequent to considering the comments the Applicant was issued with the abovementioned charge and penalty.

The stewards under Australian Harness Racing Rule 15(1)(a) are empowered to direct and control at any meeting or race the activities, of in amongst others, licensed participants. Licensed participants are bound by the rules of their respective codes and required to attend inquiries when directed by stewards. The reviewer accepts the inquiry was conducted within a normal process and Mr Franklin answered the questions to the satisfaction of the stewards.



regarding the variation of race tactics. In the circumstances there appeared to be no apparent reason why the Applicant commented “*Well I'd appreciate it if you don't waste my time next time.*”

The reviewer finds although there is a standard of conduct required by participants and officials during a stewards' inquiry, the Applicants comments are deemed to be at the lower end of the scale which is reflective in the penalty imposed.

The reviewer does not accept the extenuating circumstances noted by the Applicant and finds the Applicant accepted seven (7) driving engagements for the meeting and therefore her commitment was to her drives and horses and not the upstairs function.

The Applicants disciplinary history notes one (1) similar related offence under rule 231(2) in April 2014. The Australian precedents for an offence under rule 247 have incurred penalties between \$200 and two (2) year disqualification.

The reviewer finds the Applicants behaviour appeared to be completely unprovoked arising out of attending a customary stewards' inquiry. The reviewer notes each case is treated on its own evidence and circumstances. The penalty imposed against the Applicant for such comment is found to be consistent with a low-end offence when applying the aforementioned precedent scale.

Therefore, in considering all the evidence and mitigating circumstances, the reviewer accepts the original decision is appropriate and therefore confirms the decision.

## **PART 5: Review Rights following Internal Review Decision**

In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

For further information regarding the processes for an external review of the decision, please contact QCAT:

### **Queensland Civil and Administrative Tribunal**

Registry Location: Level 9, 259 Queen Street, BRISBANE QLD 4001  
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Phone: 1300 753 228  
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