



## INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

PART 1: Details of Internal Review	
Internal Review Number:	Internal Review 0071-17
Applicant's Name:	D McMullen
Original Decision:	Breach of Rule 149(2) of the Australian Harness Racing Rules
Original Decision Makers:	S Shinn, M Ross, A Carter, N Finnigan
Date of Original Decision:	18 August 2017
Internal Review Decision:	Original decision on charge and penalty confirmed
Internal Review Decision-Maker:	Mr Kane Ashby, Internal Adjudicator, Queensland Racing Integrity Commission
Date of Internal Review Decision:	14 September 2017
PART 3: Summary of Internal Review Application	
<p>The Applicant, Ms Dannielle McMullen, driver of GANGSTER BOY in Race 3 at Albion Park on 18 August 2017, was found guilty of a charge under Australian Harness Racing Rule 149(2).</p> <p>Australian Harness Racing Rule 149(2) states:</p> <p><i>"A person shall not drive in a manner which in the opinion of the Stewards is unacceptable."</i></p> <p>The stewards' report of 18 August 2017 states:</p> <p><i>"GANGSTER BOY (D McMullen) unsuccessfully challenged COMPLY OR DIE (NZ) for the lead for approximately 500m. The gelding was then compelled to lead the one wide line prior to commencing to give ground from the 400m. At a subsequent inquiry stewards suspended the driving licence of D McMullen driver of GANGSTER BOY for a period of four weeks. Ms McMullen was found guilty of a charge issued under the provisions of Rule 149 (2) in that in the opinion of the stewards her drive was unacceptable in that her challenge for the lead was too long sustained when that position was clearly unavailable. This resulted in GANGSTER BOY giving ground from the 400 metres to finish sixth beaten in excess of 26 metres. A post-race veterinary examination of GANGSTER BOY revealed no apparent abnormalities."</i></p> <p>The Applicant sought a review of charge and penalty on the basis she believed she only applied pressure to COMPLY OR DIE (NZ) for approximately 400m, that being the necessary time to know whether the horse would hold the lead or hand up. The Applicant believed she backed off as soon as she realised that the driver wanted to hold the position, coming into the front straight. Further, the Applicant felt there was nothing more that could be done to improve the finishing position of GANGSTER BOY on that occasion.</p>	



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

Stewards' opened an inquiry into the Applicant's driving tactics on GANGSTER BOY following Race 3 at Albion Park on 18 August 2017. The stewards, in summary, allege the Applicant challenged for the lead for a sustained period and such challenge was unacceptable in the circumstances.

During the steward's inquiry conducted on 18 August 2017, the Applicant in summary stated *"Yes, it is my understanding that Comply Or Die usually hands up when he has some pressure. Yeah, that's - so my - you know, the driving instructions were to try and lead. I gave it a good crack. I did - I probably went for a bit further than what I should have, but the only reason I did that was because there was a headwind down the back straight, whereas in the front straight I thought it might be a bit easier to cross because, you know, you haven't got that headwind. Other than that, I thought Comply Or Die should have handed up."*<sup>1</sup>

Mr Veivers, trainer of GANGSTER BOY, explained the driving instructions, stating *"I just told her to go forward and look for the lead. The way I saw it, Comply Or Die is a horse that hands up. It hands up every other week, albeit to the stablemate but I don't think that's a fair argument that it only hands up to stablemates. You know, every time I have seen it in its last - its recent runs, every time it has been pressured it has handed up."*<sup>2</sup>

A post-race veterinary examination of GANGSTER BOY revealed no apparent abnormalities.<sup>3</sup>

The Applicant's submissions in defence of the charge in summary state *"It is evident that Gangster Boy races much better when in front and considering Comply Or Die often hands up the lead, to afford my horse every opportunity to win I needed to attempt to lead as per the trainer's instructions. Due to the inconsistency of Comply Or Die's racing pattern it is extremely hard to know if the horse will hand up or hold the lead. I was and still am under the assumption that Comply Or Die is a horse that more often than not hands up the lead, especially when pressured."*

The Applicant provided statistics of COMPLY OR DIE'S previous twenty starts, noting the horse found the lead in nine of these starts and handed up the lead in five of the aforementioned starts. The Applicant added *"I believe that I only applied pressure to Comply Or Die for approximately 400m, which I feel was the necessary amount of time to know whether the horse would hold the lead or hand up, considering the inconsistent racing patterns. I believe that I backed off as soon as I realised that the driver wanted to hold the position, coming into the front straight. The Chairman stated that it was his opinion that a mile rate of 1.54 was way too fast for this class of horse, however this is not something I can agree with. Of the last 10 mile races (prior to run in question) that Gangster Boy has raced in, five were run in 1.54 miles, and a further four run in 1.55 miles. The trainer/owner was happy with the drive and felt there was nothing more that could be done to improve his finishing position on this occasion."*<sup>4</sup>

Subsequent to viewing the race footage, the reviewer finds the Applicant, driver of GANGSTER BOY, started from a seven wide line on the front row and drove aggressively with the whip in the early stages and challenged COMPLY OR DIE (NZ) for the lead. COMPLY OR DIE (NZ) commenced from a four wide line and found the lead relatively

<sup>1</sup> Transcript of steward's inquiry dated 18 August 2017, page 2

<sup>2</sup> Transcript of steward's inquiry dated 18 August 2017, page 6 and 7

<sup>3</sup> Stewards' report dated 18 August 2017

<sup>4</sup> Internal Review Application dated 28 August 2017



easy, before the Applicant raced to that horses outside shortly after the start and challenged for the lead for a period of approximately 500m until approaching the winning post. The inquiry heard COMPLY OR DIE (NZ) is a horse that consistently leads or races in a forward position and in nine previous starts led on five occasions. The reviewer acknowledges each race is run differently and due to the many complexities that unfold throughout a race, drivers are required to drive their horse as the race presents that is acceptable in the context of a race and leaves no room for query. The reviewer acknowledges the lead time (3.4) and (fast) first quarter (27.2) was a direct result of the Applicant's actions, in unnecessarily persisting for the lead for an extended period. GANGSTER BOY weakened from the 500m and was beaten in excess of 26m. The reviewer finds the race footage compelling and supportive that the Applicant's actions in challenging for the lead for the aforementioned extended period was unacceptable in the context of the race.

In weighing up the evidence, including the Applicant's submissions and context of the race, the reviewer is completely satisfied the drive was unacceptable in the circumstances and therefore finds the charge is proven.

The reviewer acknowledges racing is a sport that survives on wagering and the punter and connections are entitled to obtain a fair run for their money invested. The reviewer finds the Applicant's actions were not only detrimental to GANGSTER BOY's chances, but also that of COMPLY OR DIE (NZ) which started at \$4.00.

The Applicant's disciplinary history notes two previous offences under Rule 149(2), the most recent in June 2014 which incurred a twenty-five day suspension. The standard penalty for a breach of Rule 149(2) in Queensland incur penalties between three and eight weeks' suspension. In weighing up the matter of penalty, consideration was provided to the penalty precedent scale, the Applicant's recent disciplinary history under this rule and the Applicant's not-guilty plea. The reviewer finds the original four-week penalty falls into the lower end of penalty scale and, in considering the context of the race and the Applicant's actions, is not satisfied a further reduction in penalty is proven and therefore confirms the original decision on charge and penalty.

## **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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