27 November 2020

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**ALEX ASHWOOD**

**Date of hearing:** 27 November 2020

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Mr Robert Abrahams.

**Appearances:** Mr Shane Larkins appeared on behalf of the Stewards.

Mr Damian Sheales appeared on behalf of Mr Ashwood.

**Charge:** Australian Harness Racing Rule 149(2) states “A person shall not drive in a manner which in the opinion of the stewards is unacceptable”.

**Particulars of charge:** The particulars of the charge being, in that after racing four wide into the first turn, you elected to remain in that position for such distance until leaving the 1200m mark in a first quarter which was recorded in 27.5 seconds. As a consequence, Heaven Attracts then raced without cover until the 800m when Kissmelvis improved in advance of that runner. Heaven Attracts then tired badly to be beaten 104m at the conclusion of the race.

**Plea:** Not Guilty

**DECISION**

1. On 22 July 2020, Mr Ashwood was the driver of the horse “Heaven Attracts” in race 7 at the Shepparton harness racing meeting.
2. The Stewards conducted an inquiry into the drive of Mr Ashwood. At the conclusion of the inquiry they charged him with a breach of Rule 149(2) of the Rules of harness racing. Mr Ashwood pleaded not guilty. The Stewards found him guilty and suspended his licence for 3 weeks. He now appeals to the Tribunal against the finding of guilt and against the severity of the penalty.
3. Rule 149(2) provides that “A person shall not drive in a manner which in the opinion of the Stewards is unacceptable”.
4. In order for an appeal against a decision made under Rule 149(2) to succeed it must be shown that the decision of the Stewards was not reasonably open to them. The professional assessment of the Stewards must be open to serious challenge for the appeal to succeed. It is not for the Tribunal merely to substitute its view of how a horse was driven for that of the Stewards. For the appeal to succeed the Tribunal is required on the evidence before it to find that the decision of the Stewards was not one which was reasonably available to them.
5. In written submissions filed on behalf of the Stewards it was stated that:

“The essence of the Stewards case is that Mr Ashwood adopted tactics throughout the course of the race which did not allow his horse to continue to compete throughout, by running fast times when very wide for the first 600 (metres), which simply was beyond the reasonably exposed capabilities of his drive”.

1. From the replay of the race the following can be seen:
2. Heaven Attracts started from barrier 7.
3. The horse raced wide into the first turn.
4. The horse remained four wide at a fast tempo for several hundred metres.
5. At the 1400 metre mark Mr Ashwood had the opportunity to ease back with cover rather than to press forward four wide.
6. Having chosen not to restrain the horse Mr Ashwood was trapped four wide by the aggressive driving of other drivers seeking to hold their positions.
7. Heaven Attracts dropped out of the race alarmingly at the 600 metre mark and was beaten by 104 metres.
8. Stewards submit that Mr Ashwood had a choice to make at the 1400 metre mark, either to come back and allow his horse to compete during the whole race or to drive aggressively forward. He choose to drive aggressively from the 1400 metre mark to the 1200 metre mark.
9. Counsel for Mr Ashwood contended that the trainer of the horse and Mr Ashwood had a plan to drive the horse aggressively and considered that the horse performed better when that happened.
10. Mr Ashwood believed that the ultimate winner (Didn’t I) would lead and that Heaven Attracts would come across with him. However, two horses kicked up on Mr Ashwood’s inside forcing him four wide. This resulted in the horse travelling wider than expected for up to 150 metres.
11. Mr Ashwood enacted plan B and pushed forward into the death seat and still considered the horse to be “thereabouts” and racing aggressively “under its own steam”.
12. Counsel contended that the early speed for the race was not objectively fast.
13. On the day after the race the horse was examined by a veterinarian who diagnosed an “inflammatory airway disease” and said that the disease was “the likely cause for poor performance”.
14. Counsel also referred to the fact that horse had performed well when driven aggressively at its subsequent 3 starts.
15. The Stewards contend that the recorded sectional time for the first quarter of the race was objectively fast and indeed 1.4 second faster than the 5 year average.
16. The Stewards submit that as Heaven Attracts raced 4 wide for 500 metres, a reasonably minded harness racing observer would question what the driver was doing.
17. The Stewards observed that Heaven Attracts recent runs have been in significantly lesser grades and the horse made slower times.
18. The Steward’s veterinarian did not detect any illness in the horse in the aftermath of the event. They say that there is no evidence that inflammatory airway disease was present on the day of the event. They argue that Mr Ashwood made a deliberate effort to race forward and failed to adopt tactics which would have assisted the horse by taking cover.
19. In our opinion the decision of the Stewards was reasonably open to them. Mr Ashwood pushed forward for 500 metres longer than necessary at a relatively fast pace. It was no surprise that the horse was spent by the time it reached the 600 metre mark. The drive would look questionable from the viewpoint of an independent observer.
20. Counsel for Mr Ashwood contended that Heaven Attracts was not well on the night and that affected its performance. The horse was examined by a veterinarian on the night after the race and no abnormality was discovered. A subsequent examination by another veterinarian disclosed an illness affecting the horse’s airways. This evidence does not contradict the evidence that on the night no abnormality was discovered.
21. We also reject the submission on behalf of Mr Ashwood that Heaven Attracts was capable of working hard from the start in order to perform well. The evidence concerning other performances of the horse does not conclusively support that conclusion.
22. We dismiss the appeal. Nothing was put to us to take issue with the penalty imposed by the Stewards. The three week penalty stands. The penalty shall start at midnight on 6 December 2020.

Mark Howard
Registrar, Victorian Racing Tribunal