11 October 2019

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR JAMES HERBERTSON**

**Date of hearing:** 4 October 2019

**Panel:** Judge John Bowman (Chairperson), Judge Graeme Hicks and Ms. Amanda Upton

**Appearances:** Mr Adrian Crowther appeared on behalf of the Stewards.

 Mr Rob O’Connell appeared on behalf of Mr Herbertson.

**Charge:** Australian Harness Racing Rule 155(1) states if a horse breaks gait during a race and the Stewards are of the opinion that the horse thereby gained ground or maintained its ground or caused interference to or obtained an advantage to the detriment of another runner, the Stewards may disqualify the horse from the race or place it in a lower position.

**Particulars of charge:** Stewards inquired into the actions of driver James Herbertson (Sarahleonie Bow) over the concluding stages when his horse had broken gait for a second time and after taking evidence from Mr Herbertson, viewing the official race replays and acting on their own observations were satisfied that a breach of Rule 155(1) had occurred in that Sarahleonie Bow had initially maintained and then improved its position whilst in a break over the concluding stages to then finish in sixth placing. As such the mare was disqualified from the race and the judges placings were amended accordingly. Pursuant to Rule 155(2) Mr Herbertsons licence to drive in races was suspended for three weeks, with a commencement date to be advised. In determining penalty Stewards considered the following,

1.That his drive had firstly maintained and then improved its position whilst in a gallop for some distance approaching the finish.

2.That Mr Herbertson had made no visible, discernable effort to attempt to restrain his drive whilst it was in a break.

3.That Mr Herbertsons failure to act in accordance with the rules had led to his drives’ disqualification from the race.

4.His A grade driver status and offence history.

5.Submissions made by Mr Herbertson.

6.Relevant penalty precedents under the rule.

**Plea:** Not Guilty

**DECISION**

Mr James Herbertson, you have pleaded “not guilty” to the charge of breaching AR 155 (2). The charge is that in race 9 at Maryborough on 9 September 2019 you were driving Sarahleonie Bow. The event was for trotters. Essentially it is alleged that, in approaching the last 100 metres of this 2190 metre event, your horse broke for the second time. It had broken earlier, approximately 200 or more metres out. You had restrained it and taken it to the outside of the track. You did that correctly and efficiently. It resumed trotting and making ground. It then broke again. The Stewards allege that, on this occasion, you made no effort to restrain it and allowed it to gallop along, not restraining it again until after the winning post.

You deny that the horse made up ground whilst galloping and have said to us today that it only maintained its position. The race was effectively all over. You have said to the Stewards, and Mr. Connell has said on your behalf, that this is a difficult horse to restrain.

We have viewed the video several times. In our opinion the charge has been made out. In the last 100 metres or so, you showed no sign of actively restraining the horse whilst it galloped. In our opinion, it clearly gained ground and you could have or should have taken steps to prevent this. In essence, you told us today that it may have maintained its ground and even that would represent a breach of AR 155(1). In any event, we are of the opinion that Sarahleone Bow in fact gained ground whilst galloping over the last 100 metres approximately, passing other horses close to the finishing line.

In summary, we are comfortably satisfied that the charge has been proven. We will now hear from parties on the question of penalty.

**PENALTY**

Mr James Herbertson, we are of the view that a period of suspension is required. We accept what Mr Crowther has said about your record. We accept that you are a very successful, very popular driver, very much in demand. You are only 19 years of age and have already driven many, many winners. However, as we have said, your record does contain some blemishes.

One aspect of what occurred in relation to this is that, whilst you allowed the horse to make ground whilst galloping, this was only in the last 100 metres of the race. The race was effectively all over. It is common ground that your making ground had no effect on the placings and no effect on the distribution of prize money. We would also point out that you do not get the benefit of a guilty plea. Bearing all that in mind, our overall conclusion is that your appeal should be allowed on the question of penalty, but a period of suspension is warranted. You are suspended for a period of 2 weeks.

Mark Howard
Registrar, Victorian Racing Tribunal