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RACING APPEALS AND
DISCIPLINARY BOARD



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HEARING RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 29 June 2010

SUBJECT: **HEARING RESULT – JOCKEY: DANNY NIKOLIC**

Panel Judge Russell Lewis (Chair), Mr Brian Forrest (Deputy Chair),
Mr Geoff Ellis

Appearances Mr Richard Smith SC, instructed by Mr Paul O'Sullivan, appeared on behalf
of Danny Nikolic.

Mr Paul Holdenson QC with Mr Matthew Stirling, instructed by Mr David
Poulton, appeared on behalf of the RVL Stewards.

Charges Two breaches of AR 175(a), (**charges 1 and 3**) which is in the following
terms:

The Committee of any Club or the Stewards may penalise:

(a) *Any person, who, in their opinion has been guilty of any dishonest,
corrupt, fraudulent, improper or dishonourable action or practice in
connection with racing.*

Two breaches of AR 175A (**charges 2 & 4**) which is in the following terms:

*Any person bound by these Rules who either within a racecourse or
elsewhere in the opinion of the Committee of any Club or the Stewards has
been guilty of conduct prejudicial to the image, or interests, or welfare of
racing may be penalised.*

One breach of AR 175(j) (**charge 5**) which is in the following terms:

The Committee of any Club or the Stewards may penalise:

(j) *Any person guilty of any improper or insulting behaviour at any time
towards the Committee of any Club or Association or any member
thereof, or Stewards, or any official, in relation to their duties.*

Charges (cont) Four breaches of AR 91 (**charges 6 – 9 inclusive**) which is in the following terms:

Any rider who has a riding engagement at any race meeting shall be present in the jockeys room no later than 45 minutes before the advertised starting time for the first race in which he has a riding engagement and, unless otherwise permitted by the Stewards, shall thereafter remain in the jockeys room until he has completed his riding engagement, when he shall seek the permission of the Stewards to leave the jockeys room.

Plea Charges 1 – 4 inclusive: Not Guilty.
Charges 5 – 9 inclusive: Guilty.

Decision In relation to charges 1 – 4 inclusive the Board does not find the charges proved and therefore dismisses the charges.

In relation to charge 5 the Board fines Mr Nikolic the amount of \$2,000.
In relation to charges 6 – 9 inclusive the Board fines Mr Nikolic \$250 for each charge. A total of \$3,000 due on or before 14 July 2010.

Georgie Curtis
Registrar - Racing Appeals and Disciplinary Board

**RACING APPEALS AND DISCIPLINARY BOARD
(Original Jurisdiction)**

***Reasons for Decision
in the matter of jockey Mr Danny Nikolic
as heard on Monday, 21 June to Wednesday, 23 June 2010***

Judge R Lewis	Chair
Mr B Forrest	Deputy Chair
Mr G Ellis	Member

Danny Nikolic, you have pleaded not guilty to:

2 charges (charges 1 and 3) laid under AR 175(a)

2 charges (charges 2 and 4) laid under AR 175A

The onus of proving charges 1-4 inclusive rests on the Stewards represented by Mr Paul Holdenson QC with Mr Matthew Stirling.

Danny Nikolic is represented by Mr Richard Smith SC.

Charges 1-4 inclusive are serious. Accordingly, the standard of proof is that referred to in the well known High Court case of *Briginshaw v Briginshaw* (1938) 60 CLR 336.

The standard is on the balance of probabilities. However, the Board must have a reasonable degree of satisfaction – i.e. be comfortably satisfied – that the charge has been proved.

It is not a matter of mechanical comparison between competing views.

Matters which the Board must take into consideration include the seriousness of the allegations and the gravity of the consequences flowing from a particular finding.

The matters alleged by the Stewards are common to charges 1-4 inclusive save that in relation to charges 1 and 2 it is alleged that as a consequence of the communications it was Clements who placed lay bets on the Betfair betting exchange and in relation to charges 3 and 4 it is alleged that as a consequence of the communications it was McFarland and Alaimo who placed lay bets on the Betfair betting exchange.

The Stewards Case is Circumstantial

The Stewards allege that in the course of his communication with those identified as his associates or some of them, whom he knew or ought to have known made lay bets on the Betfair exchange, Nikolic informed them either directly or indirectly of what he thought of the chances of his mounts.

They further allege that the lay bets made by the associates, having regard to their unusual size and the temporal connection between the lay bets and the communications inevitably leads to the conclusion by way of inference that Nikolic did pass on information of such a kind that the associates confidently laid his mounts.

In the circumstances as described the Stewards allege that Nikolic's conduct was improper under AR 175(a) alternatively was conduct prejudicial to the image or interests or welfare of racing under AR 175A.

The Defence Case

Nikolic denies the Stewards' allegations and in particular denies that during the communications he discussed the chances of his mounts identified by the Stewards and further denies any knowledge, actual or imputed, of the associates having Betfair accounts or that they were likely to lay bets on his mounts.

Amongst other things, Counsel for Nikolic points out that the evidence discloses that for a long time prior to October 2009, Nikolic frequently, sometimes several times daily, communicated with his brother John and with his close friend John O'Neil who did not have a Betfair account. In addition Nikolic often communicated with Clements. Nikolic had known Clements for many years and after Nikolic returned to Victoria in 2009, he utilised the services of Clements and others as form analysts.

Further there was no evidence of any communication from which it could be said that Nikolic indicated or suggested that he would ride his mount to lose. There was no evidence that Nikolic rode his mounts other than in compliance with the Rules.

Since this is a circumstantial case, the Board, before it may convict, must be comfortably satisfied that the inference relied upon by the Stewards should be drawn.

This exercise requires an examination of the relevant facts and circumstances in deciding whether the requisite standard of proof has been met.

The facts and circumstances are as follows:

Nikolic is a licensed jockey. In January 2010 Stewards began an investigation into the rides of Nikolic on *Finishing Card* at Mornington on 8 January 2010 and betting surrounding the race on Betfair. The investigation was later expanded to include Nikolic's mounts between 10 October 2009 and 13 February 2010 and the betting activities on his mount by Neville Clements, Alessandro Alaimo and Kevin McFarland on Betfair.

Clements, a professional punter and former bookmaker is a friend of Nikolic and the Nikolic family. John O'Neill, a racehorse owner and punter is a close friend of Clements and Nikolic. John Nikolic Senior (Nikolic's rider agent) and John Nikolic Junior, until March 2010 a licensed trainer in Queensland and Nikolic have close family ties. Nikolic is in constant telephone contact with his brother John Nikolic Junior.

Alaimo, a resident of Queensland is a long standing friend of John Nikolic Senior and John Nikolic Junior and an acquaintance of Nikolic. McFarland, also a resident of Queensland is not known to Nikolic but is an associate of Alaimo.

Since returning from riding in Mauritius in mid 2009 and through to February 2010, Nikolic has been in regular contact with Clements using Clements and from time to time other persons as a form analyst. It is common practice of senior riders to use the services of form analysts. Apparently some jockeys pay for the service. Nikolic did not.

Stewards initially investigated twenty one of Nikolic's rides and in eleven of those rides identified questionable components. The eleven rides were:

Hot Danish – 3 October 2009 – Flemington

Farasi – 15 October 2009 – Cranbourne

Midnight Wine – 13 November 2009 – Moonee Valley

Rachine – 13 November 2009 – Moonee Valley

Moorunda Lass – 20 November 2009 – Moonee Valley

Buddy Amazing – 18 December 2009 – Moonee Valley

Imprudence – 22 December 2009 – Seymour

Finishing Card – 8 January 2010 – Mornington

Ruby Slippers – 13 January 2010 – Sandown

Summarise – 24 January 2010 – Ballarat

Retrieve – 11 February 2010 – Ballarat

Betfair betting records revealed lay bets on these horses as follows:

A.	<u>Clements</u>	<u>Risk</u>	<u>Profit</u>
	<i>Hot Danish</i>	\$10, 876	\$6, 373
	<i>Farasi</i>	\$1,323	\$700
	<i>Midnight Wine</i>	\$20,152	\$7,822
	<i>Rachine</i>	\$6,316	(\$6,316) - finished 2 nd
	<i>Moorunda Lass</i>	\$1,383	\$276
	<i>Buddy Amazing</i>	\$17,691	\$1,592
		\$9,721	\$3,660
	<i>Ruby Slippers</i>	\$26,965	\$7,304
	<i>Retrieve</i>	\$4,058	\$391
B.	<u>Alaimo</u>	<u>Risk</u>	<u>Profit</u>
	<i>Imprudence</i>	\$2,838	\$169
	<i>Summarise</i>	\$6,112	\$583
C.	<u>McFarland</u>	<u>Risk</u>	<u>Profit</u>
	<i>Finishing Card</i>	\$15,717	\$11,969
	<i>Summarise</i>	\$3,537	\$324

Betfair records also revealed that during the period 10 October 2009 to 13 February 2010 Clements lost on three other lay bets on Nikolic mounts in addition to Rachine referred to above. These were *Midnight Wine* (\$870), *No Jurisdiction* (\$2,312) and *Tennessee Charm* (\$460).

In his evidence to the Stewards Nikolic stated he did not discuss with Clements the chances of his mounts. In evidence to the Board, he acknowledged discussing the chances of two of his mounts, not the subject of the Stewards investigations, which the Board notes Clements referred to, when interviewed by Stewards.

In further evidence to the Board Nikolic said that in discussions with Clements they would usually talk about the form, race tempo, barriers, racing patterns of other horses and the main dangers, in essence Clements' analysis of the race. He denied saying anything to Clements about the chances of the eleven horses referred to above.

The Stewards have not charged Nikolic with any breach of riding Rules arising out of his mounts and do not intend doing so.

RVL Stewards, in conjunction with Queensland Stewards also investigated the betting on *Baby Boom* at the Sunshine Coast on 3 January 2010. That day the mare *Baby Boom* an odds on favourite (SP \$1.30) was unplaced. John Nikolic Junior owned and trained her which he had bought on the recommendation of Nikolic who had ridden *Baby Boom* in Sydney. John Keating was the rider in the race on 3 January 2010. Betfair records show

Clements laid *Baby Boom* at \$1.80 to \$1.89 risking \$56,400 and winning \$45,424 on his outlay.

Nikolic and his brother John spoke to each other on race morning and post race. Both denied to Stewards speaking to Clements beforehand or being aware of anyone who discussed the chances of *Baby Boom* with him. In evidence before the Board Nikolic denied any role in the *Baby Boom* episode. Clements subsequently told him that he (Clements) had laid *Baby Boom*. This, Nikolic said, was after John had informed him Stewards were making inquiries into the race. Clements told Stewards his lay on *Baby Boom* was made on a whim without any form study or other information on the runners.

The Board has reservations as to Nikolic's evidence relating to *Baby Boom*.

I now turn to the Board's findings

In the Board's opinion in order for a charge to be proved, the Board must be satisfied to the requisite standard that Nikolic from his communications informed the other party of the chances of his mounts.

There is clear evidence that Nikolic discussed riding tactics and possible scenarios with some of the associates. If as a result of the exchange of ideas and observations, the other party to the conversation formed a view of what he thought was in Nikolic's mind as to the chances of his mount, and acted upon that view by making lay bets or causing lay bets to be made, the Board would not be satisfied that Nikolic had committed a breach of the Rules.

Further, the Board is not satisfied to the requisite level that it should draw the inference sought by the Stewards, that is that Nikolic informed Clements and/or some of the associates of the chances of his mounts.

The Board has reached this conclusion for the following reasons:

1. There is no direct evidence of Nikolic discussing the chances of his mounts the subject of these charges, with Clements.
2. In spite of being subjected to lengthy and intense cross examination, Nikolic denied that he had discussed the chances of the mounts in question. Although his credibility became an issue following his evidence relating to the *Baby Boom* race, the Board does not reject Nikolic's evidence in relation to discussing the chances of his mounts.

Much has been made by Mr Holdensen of the failure by Nikolic to call witnesses namely, Clements, John Nikolic Junior, Alaimo and O'Neil.

The Board is not prepared to draw the inference sought by Mr Holdensen since it is of the view that it would be unrealistic to expect that Clements, John Nikolic Junior and Alaimo would attend this hearing. In relation to Alaimo the Board's view is reinforced by evidence this morning that Alaimo has been charged with failing to attend a Steward's inquiry in relation to these matters. As for O'Neil his statement has been tendered in evidence.

In the case of Clements, his absence from the hearing is understandable given his present challenge as to whether the Rules of Racing apply to him. His statements to Stewards are in evidence. He described the level of his bets on Nikolic's horses as pure coincidence and the Board is entitled to assume that remains his evidence. As for John Nikolic Junior he has handed in his trainer's licence.

3. In relation to the horses in question there is an absence of any complaint by trainers or Stewards on the day save for questioning by the Stewards relating to *Finishing Card* which was a \$1.60 favourite, which is not unusual when an odds on favourite is beaten. Later two trainers commented that Nikolic had ridden their horses poorly.
4. Four horses laid by Clements and ridden by Nikolic won or placed.
5. The Board recognises the reality that jockeys discuss all aspects of a race with form analysts.
6. Clements did not lay *Finishing Card* on 8 January 2010.
7. Clements' betting activities are not inconsistent with him forming a view as to the chances of a Nikolic mount following a form analysis discussion with Nikolic.
8. Clements did not confine his bets to laying horses, often betting to win or place, nor were his lay bets confined to Nikolic; nor was Nikolic his biggest lay. For example (see Book 2, Tab 19) the entries reveal that lay bets in relation to Craig Newitt exceeded those in relation to Nikolic.
9. Reliance has been placed by the Stewards on the evidence of 'biased betting' by Mr Clark of Betfair and Tab 19A is offered as support for that proposition. Although Mr Smith did not wrestle with this proposition, the Board has considered it and makes the observation that Nikolic only returned to Melbourne in July 2009, took some time to re-establish himself and only from October 2009 began to ride regularly with Clements and Mark Hunter as his form analysts.

10. The evidence of higher than normal betting activity seen in isolation is not in itself a sufficient basis for drawing the inference that Nikolic discussed the chances of his mounts.

The evidence relied upon by the Stewards as a basis for drawing an inference that Nikolic communicated the chances of his mounts raises suspicions about what transpired but harbouring suspicions about his conduct is not sufficient to prove the charges.

Since the Board is not satisfied that Nikolic communicated with the associates or some of them about the chances of his mounts resulting in the associates making lay bets outside their normal betting parameters, charges 1-4 inclusive have not been proved and therefore must be dismissed.

Finally, the Board makes no criticism of the Stewards for bringing these charges nor of the time taken to have them heard since once Betfair had informed them of apparent betting irregularities, they had a duty to investigate fully the circumstances surrounding such apparent irregularities.