

APPEAL COMMITTEE

IN THE MATTER OF MR DENIS SCHWARZ (APPELLANT)

DECISION

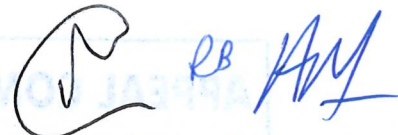
1. The Appellant rode horse Nordic Prince in the first race of the race meeting 5 on Saturday the 6th of September 2025. As soon as the race finished, the Stipendiary Stewards ("the Stewards") opened a preliminary enquiry into the ride of the Appellant. The Stewards asked Jockey Schwarz what his instructions were and engaged with him as the Stewards thought there was an opportunity for him to secure the position in front of horse Short Cut on the rails. Trainer Vincent Allet was present during the preliminary inquiry.
2. In the Interim Report ("Document D") published on the web site of the Gambling Regulatory Authority on Saturday the 6th of September 2025, the Stewards stated that preliminary evidence was taken at an inquiry into the running and riding of Nordic Prince and that the inquiry stood adjourned to Tuesday the 9th of September 2025.
3. On Tuesday the 9th of September 2025, the Stewards inquired into the Appellant's ride. The Appellant was found to have contravened Rule 43.2.1 of the Rules of Racing and was suspended for 6 race meetings and was fined Rs 50,000.
4. The Appellant, dissatisfied with the decision of the Stewards has appealed on his conviction and sentence. The grounds of appeal read as follows:

A. ON CONVICTION

The Board of Racing Stewards was wrong to have found the Appellant guilty as charged since:

- i. *The Board erred in law in sustaining a charge in contravention of Rule 43.2.1 of the Rules of Racing when the facts relied upon did not disclose conduct amounting to the Appellant not taking all reasonable and permissible measures throughout the running of the race in order to ensure that his horse is given a full opportunity to win or obtain the best possible placing in that race.*
- ii. *The conviction of the Appellant in that charge is unsafe in law being given that:*
 - a. *The Chairperson of the Gambling Regulatory Authority apparently sent an email on Monday 8th September 2015 at 15.30 to the Chief Stipendiary Stewards concerning the running of this particular race and asking for an inquiry to be opened.*
 - b. *Trainer Allet raised the issue that there were pressure on the Board into the holding of the said inquiry.*
- iii. *The board erred in that they failed to consider the facts and evidence brought forward by the Appellant and by the witnesses present with regards to the following:*
 - a. *The horse Nordic Prince has a soft and sensitive mouth.*
 - b. *The instructions were clear, not to lead but to be in a handy position.*

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- c. *The previous racing patterns of the horse*
- d. *The Appellant was only riding his fourth race over the 1000m being a young jockey.*

- iv. *The Board failed to give due consideration to the race dynamics and surrounding circumstances, which at most could amount to an error of judgment or a mistake taken in splits of seconds but not contravening Rule 43.2.1 of the Rules of Racing.*

B. ON THE SENTENCE

- v. *The sentence meted out against the Appellant is manifestly harsh and excessive in the circumstances.*

5. The particulars of the charge read:

"You, Jockey Schwarz, whilst riding Nordic Prince in Race 1 of last Saturday's meeting, namely the "The Veejay Kumar Beeharee Memorial Cup". Okay. After having jumped better than Short Cut on your inside, when your horse was racing in its pace and it was reasonable and permissible for you to ask him for an effort in the early stages to secure the position on the rails in front of Short Cut; you failed to do so and instead eased your mount, resulting in you racing further back in the field than expected, thus not giving Nordic Prince the full opportunity to win the race."

6. At the hearing, the Appellant and the Stewards were both represented by counsel. The Stewards was represented by Mr Stéphane de Chalain and Mr Yahia Nazroo.

7. Rule 43.2 and 43.2.1 read:

"43.2 The Jockey of a Horse shall:

43.2.1 Take all reasonable and permissible measures throughout the running of the race in order to ensure that his Horse is given a full opportunity to win or obtain the best possible placing in that Race"

8. Counsel for the Appellant addressed the grounds of appeal A (i) (iii) and (iv) together when addressing us on the Appellant's conviction.

9. The Appeal Committee viewed the film of the race, more specifically where the Appellant is reproached of having rode contrary to Rule 43.2.1 of the Rules of Racing. The Appeal Committee also had the opportunity of having the reading of the race from Mr Stéphane de Chalain and Jockey Schwarz.

10. The concern of the Stewards was in the first 250 to 300 metres of the race. The Stewards reproached the Appellant of having held his horse back at the 900 metre when he could instead have pushed his horse two to four strides and clear horse Short Cut on his inside and get a position on the rails in front of Short Cut. Mr Stéphane de Chalain was of the view that Jockey Schwarz ought to have gone forward, instead of sitting back and grabbing his horse. He lost three lengths and ran further back the field as a result of the manoeuvre. If he had gone forward, the Appellant would have been directly behind the eventual leader and he would have won the race, bearing in mind that the Appellant came second, half a length

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behind the winner. Mr Stéphane de Chalain also stated that the race was a 990 metre one and it is run downhill. Had the Appellant cleared Short Cut, he would have won half the battle by being on the second best position and he would have ridden in the box seat. Turning home at the 400 metres, the Appellant would have had a boulevard in front of him whereas he had to go round horses as a result of his ride.

11. Jockey Schwarz explained that his horse Nordic Prince jumped well. He pushed him forward for a little bit. He could not clear Short Cut because he did not have enough space. He did not have two clear lengths and it would have been dangerous to do so, Short Cut could have clipped heels with his horse. Horse Cloud Seeder, on his outside was putting pressure on him and Jockey Sooful who was riding Short Cut on his inside was shouting a lot behind him and this in a consistent manner.
12. The Appellant also related that when he sat back on his horse, the latter reacted badly (the veterinary report after the race revealed a cut in the left lip commissure) and it responded badly to the correction. He did not encourage his horse to go forward as he could not predict his reaction, taking into account the previous correction. The Jockey was confident sitting back behind Short Cut and that he could catch the winner. His instructions were not to lead. They were "jump, try to ride him handy & ride him from there". ("Document C").
13. After having viewed the film of the race in question, having heard the versions of the Jockey and that of Mr Stéphane de Chalain and the submissions made on their behalf, the Appeal Committee finds that the Stewards rightly questioned the Appellant's ride. The Appeal Committee is of the view that Nordic Prince had jumped well and better than Short Cut, it was ahead of him at the material time and thus Jockey Schwarz could have cleared him. The footage at the camera of the 1850 metres also shows there was space for two horses between Nordic Prince and the horse on his outside, Cloud Seeder and the Appellant was not under pressure from the latter.
14. The Appeal Committee is also not satisfied with the explanations of the Jockey that he could not have anticipated the reaction of the horse if he had encouraged it to go forward, given its bad reaction when previously corrected. The Committee asked Jockey Schwarz that he would not have had to correct his horse if he had simply let him run and the latter agreed. To the question that Jockey Sooful could merely be trying to hold his position when he was shouting and that did not necessarily mean that there was not enough space to clear Short Cut, Jockey Schwarz remained silent. The Appeal Committee is of the view that Short Cut being one the Appellant's main opponent, the best option would have been for the Jockey to go further and clear Short Cut on the inside as he had already beaten him on the jump and had at least a length ahead. The Appeal Committee accepts the reading of Mr de Chalain that by waiting to sit behind Short Cut, Jockey Scharwz has had to bring his mount back and thus broke his stride.
15. The Appellant was correctly charged under Rule 43.2.1 of the Rules of Racing. The Jockey could have cleared Short Cut but failed to avail himself of that opportunity. By so doing, he did not do what was reasonable in the circumstances and he did not exercise his discretion judiciously to do what was permissible to win or to secure the best possible placing in the race. The action of Jockey Schwarz at the start of the race impacted on the outcome of the race, hence why Rule 42.3.1 requires a jockey to take all reasonable and permissible measures throughout the running of the race. Underlining is ours.

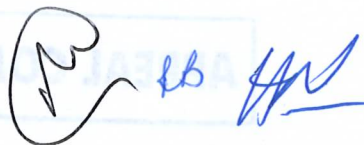
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[Handwritten signature] *RS* *AM*

16. Counsel appearing for the Appellant had initially moved for an adjournment in order to have trainer Allet depone before the Committee on the issue of conviction. He wanted to call Mr Vincent Allet to testify on the instructions given, the sensitive mouth of Nordic Prince, his reading of the race and the fact at pages 15 and 16 of the transcript of the 9th of September 2025, trainer Allet had started to give his views on the Appellant's ride but did not finish doing so.
17. After exchanges between counsel for the Appellant and the Appeal Committee, the former did not insist on calling Mr Allet as (i) the instructions were accepted by the Stewards, (ii) it was not disputed by the Stewards that Nordic Prince had a sensitive mouth and Mr Allet had in fact given his version on the Appellant's ride at page 46 of the transcript of the 9th of September 2025 which was that the Appellant's decision was a judicious one at that split second of time.
18. On the issue of sentencing and ground of appeal B (v), counsel for the Appellant submitted that the Jockey should be given the minimum sentence, should he be found guilty. The Appeal Committee does not find that the sentence meted out is manifestly harsh and excessive. The minimum suspension under Rule 43.2.1 of the Rules of Racing is 4 race meetings. It finds no ground to disturb the sentence of 6 race meetings and Rs 50,000 fine. The Appellant had enumerated his mitigating factors during the inquiry, which were his clean record, his young age and that he qualified only in the year 2020 and is in financial difficulties. The Stewards considered them before applying the sentence.
19. Counsel for the Appellant dropped ground of appeal A (ii) (b). Counsel for the Appellant had moved to be communicated with a copy of an email that the Chairman of the Gambling Regulatory Authority ("GRA") has sent to Mr Stéphane de Chalain on the 8th of September 2025 at 15.30 about the Appellant's ride.
20. Counsel appearing for the Stewards communicated a copy of the email ("Document A") and also the reply of Mr de Chalain of the 11th of September 2025 ("Document B").
21. Counsel for the Appellant questioned Mr Stéphane de Chalain on the two emails. Mr Stéphane de Chalain asserted that it was at face value, improper for the Chairman of the GRA to have written to him and that he was not influenced by the correspondence.
22. The Committee finds that counsel for the Appellant rightly did not insist on the point that the Stewards was prompted to open an inquiry into the Appellant's ride further to Document A. The Stewards had opened a preliminary inquiry just after the race on the 6th of September 2025 and had informed the public later that day that it would continue the inquiry on the 9th of September 2025. Document A only came on the 8th of September 2025.
23. Counsel for the Appellant submitted that it was inappropriate for the Chairperson of the GRA to write to Mr Stéphane de Chalain. The Chairman of the GRA wrote whilst an inquiry was underway and the impression that his email gave is that it could or might influence the decision of the Stewards.

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24. The Chairperson of the GRA wrote to Mr Stéphane de Chalain whilst the Stewards had initiated an inquiry into the ride of Jockey Schwarz speaking *inter alia* of "this has not been the only time that such issues have been occurring", "that from reported concerns and social media, it is apparent that this has been the 2nd or 3rd time that this has been happening" and asking to advise "whether this has been the second or third time that this has been happening to rebut the evidence against this", "whether you have initiated previous actions", "Have any of these been reported to the FCC or Police des Jeux" and "Let's work as a team and resolve these issues and take appropriate action accordingly."

25. The Appeal Committee has set to see whether the email of the 8th of September 2025 could have impacted on the impartiality of the inquiry into how the Appellant rode horse Nordic Prince.

26. The Appeal Committee referred to the test in *Partner v Mayill* [2002 2 AC 357 at para.103] which was adopted in *Baboolall v Farmers Service Corporation & Anor* 2010 SCJ 313 and *Heeralall Bina v The Pharmacy Board & Anor* 2019 SCJ 258 on the question of likelihood of bias. The Committee cites the following passage of *Heeralall Bina v The Pharmacy Board & Anor* 2019 SCJ 258:

The locus classicus on the subject is set out in the following statement by Lord Hope in Partner v Mayill [2002 2 AC 357 at para.103]

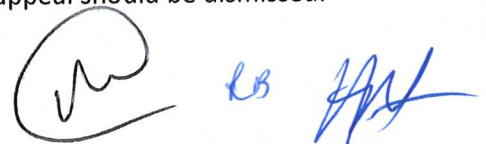
'The question is whether the fair-minded and informed observer, having considered the facts, would conclude there was a real possibility that the tribunal was biased'

27. The Committee has come to the view that the reasonable and well-informed observer who is neither complacent nor unduly sensitive or suspicious would not come to the conclusion that the inquiry had been tainted by the prior correspondence of the Chairperson of the GRA. The transcript of the 9th of September 2025 shows that Jockey Schwarz was given all latitude to explain himself both when he was called to provide his explanations into his ride and after the charge under Rule 43.2.1 was levelled against him. Jockey Schwarz was also able to call his trainer Mr Vincent Allet, the head groom of the Allet Stable, Mr Mike Aglae, the lad of the Allet Stable, Mr Daril Jean who looks after horses and rides during training and the owner of the horse, Mr Damry, who all deponed in his favour. The Jockey presented his case fully before the inquiry and offered his mitigating circumstances on the sentence.

28. This Appeal Committee hears an appeal by way of a rehearing; Regulations 12 (1) of the Gambling Regulatory Authority Appeal Committee Regulations 2022 ("the Regulations"). In the event that one feels that there could have a perception of bias at Inquiry stage, during the course of this appeal, the Committee heard the explanations of the Appellant, listened to his reading of the race and to the submissions of his counsel. The Committee also heard Mr Stéphane de Chalain, who gave his reading of the race and who was cross-examined and submissions made on behalf of the Stewards. Both parties fully advanced their case. The Jockey was afforded with a full opportunity to offer his explanations and has benefitted from a hearing, which the Committee must afford according to the rules of natural justice and procedural fairness, under Regulations 9(2) of the Regulations. The Committee which is in as good a position as the Stewards found no reason to disturb the conviction and sentence which in all circumstances of the case were fully warranted.

29. For the reasons given above, the Committee considers that the appeal should be dismissed.

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This 17th of October 2025

Ravi Bhookhun
Vice-Chairperson

Dr Abdullah Atchia
Member

R.G Hugues Maigrot
Member

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