

IN THE RACING APPEALS TRIBUNAL

JIMMY MAGNISALIS
Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

**REASONS FOR DETERMINATION OF AN APPLICATION MADE BY THE APPELLANT
PURSUANT TO CL 20 (1) OF THE RACING APPEALS TRIBUNAL REGULATION 2024**

Date of Determination: 21 October 2024

ORDERS

- 1. The application is refused.**
- 2. The parties are to provide to the Appeals Secretary, by 5.00 pm on 24 October 2024, a draft timetable for the prosecution of the appeal.**

INTRODUCTION

1. By a Notice of Appeal filed with the Appeals Secretary on 1 October 2024, Jimmy Magnisalis (the Appellant) has appealed against a determination made by the Greyhound Welfare and Integrity Commission (the Respondent) on 27 September 2024, imposing a disqualification of 16 months for an offence contrary to r 141(1)(a) of the *Greyhound Racing Rules* (the Rules).
2. The Notice of Appeal was accompanied by an application for a stay, which is opposed by the Respondent. This determination relates to that application, and not to the substantive appeal.

THE FACTS

3. In circumstances where the primary facts of the matter are not in dispute, I draw the following summary from the submissions of the Respondent.
4. The Appellant is a greyhound industry participant, having been first registered in 1989.
5. On 28 May 2024 the Appellant presented "*Remission*" (the greyhound) to compete in a race at a meeting held at the Gosford racetrack. The greyhound placed first.
6. A post-race urine sample was collected from the greyhound for analysis. On 2 July 2024 the Respondent was advised that that sample had tested positive for amphetamine, along with hydroxyamphetamine, methamphetamine and hydroxymethamphetamine, all of which are permanently banned prohibited substances under r139(1)(g) of the Rules. On 9 August 2024 the analysis of a "B" sample confirmed the presence of those substances.
7. On 13 September 2024, the Respondent charged the Appellant with an offence contrary to r 141(1)(a) of the Rules which is in the following terms:

141(1) The owner, trainer or other person in charge of a greyhound:

(a) nominated to compete in an event;

...

must present the greyhound free of any prohibited substance.

....

(3) The owner, trainer or person in charge of a greyhound presented contrary to subrule (1) of this rule shall be guilty of an offence.

8. That charge was particularised as follows:

1. *That Mr Jimmy Magnisalis, as a registered Owner Trainer, while in charge of the greyhound Remission (“Greyhound”) presented the Greyhound for the purpose of competing in race 3 at the Gosford meeting on 28 May 2024 (“Event”) in circumstances where the Greyhound was not free of any prohibited substances;*
2. *The prohibited substances detected in the sample of urine taken from the Greyhound following the Event was amphetamine, hydroxyamphetamine, methamphetamine and hydroxymethamphetamine.*
3. *Amphetamine, hydroxyamphetamine, methamphetamine and hydroxymethamphetamine are permanently banned prohibited substances under Rule 139(1)(g) of the Rules.*

9. The Appellant pleaded guilty to the charge contrary to r 141(1)(a). The Respondent imposed a disqualification of 16 months. It is that determination which is the subject of the appeal. A further charge was laid against the Appellant contrary to r 148(2) of the Rules. That charge arose out of an inspection of the Appellant’s premises on 4 July 2024, and resulted in the imposition of a fine. It is not material for present purposes.

THE APPELLANT’S POSITION ON THE PROPOSED APPEAL

10. The position taken by the Appellant as to the issues on the appeal is not at all clear, in light of the following:

- (i) at first instance, the Appellant pleaded guilty to the offence contrary to r 141(1)(a) of the Rules;
- (ii) notwithstanding that plea, the Notice of Appeal states that both guilt **and** penalty are in issue (recognising, of course, that it open

to the Appellant to take that position given that an appeal proceeds as a hearing *de novo*);

- (iii) the report of Dr Major, on which the Appellant relies in support of the present application as well as in support of his appeal, asserts that there is no basis on which to conclude that the offence is made out, which suggests that guilt remains in issue;
- (iv) the submissions filed on behalf of the Appellant make reference to the “*McDonough principles*”, and suggest that the issue for determination on the appeal is not the Appellant’s guilt, but rather his culpability, and thus the appropriate penalty.

11. At this stage, I simply note these matters, which will need to be clarified before any final hearing.

THE REPORT OF DR MAJOR

12. For the purposes of the present application, the Appellant places considerable significance on a report of Dr Derek Major. The opinions expressed by Dr Major in that report include that:

- (i) there is no basis upon which to conclude that the greyhound presented with a prohibited substance in its system, and therefore the offence contrary to r 141(1)(a) is not made out;
- (ii) the reported level of amphetamine, namely 8 nanograms per litre, is an inconsequential finding;
- (iii) there are two hypotheses available as to how the greyhound came to have the prohibited substance in its system, namely:
 - (a) the greyhound was exposed, by some (unidentified) route, to a very small quantity of the prohibited substance; or
 - (b) a small quantity of body fluid, such as saliva, contaminated skin, sweat, or urine, from a person or animal exposed to a high level of amphetamine, has

contaminated the collection vessel directly or from the environment.

13. I will return these opinions in my consideration of the present application.

THE PRINCIPLES APPLICABLE TO THE PRESENT APPLICATION

14. The principles which apply to the determination of the present application have been set out at length in previous decisions,¹ and in those circumstances there is no need to repeat them. In short, what the Appellant must establish is that:

- (i) there is a serious question to be tried; and
- (ii) the balance of convenience favours the making of the order sought.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

15. The Appellant relied substantially on the report of Dr Major in support of the proposition that there is a serious question to be tried. It was submitted that there was some uncertainty as to the circumstances in which the substance entered the greyhound's system, although it was clear that the evidence did not support any allegation of deliberate administration on the part of the Appellant. It was further submitted that on the whole of the evidence, but principally on the basis of the opinions of Dr Major, it would be open to conclude that the Appellant's level of culpability fell within the third category of *McDonough*. Although not expressly stated, the import of that submission was that if such a finding was made, any penalty should be less than that imposed at first instance.

16. In terms of the balance of convenience, it was submitted that the Appellant earned a "*significant portion*" of his income from participating in the greyhound racing industry, and that he devotes some 30 hours per week to working at a

¹ See *Marshall v Greyhound Welfare and Integrity Commission*, 21 December 2023; *Kennedy v Greyhound Welfare and Integrity Commission*, 19 March 2024.

trailing track in the Hunter Valley. In this latter respect, it was submitted that a refusal to grant a stay would cause significant disadvantage to other trainers in that area, and may result in the closure of the track itself.

Submissions of the Respondent

17. The Respondent took fundamental issue with the report of Dr Major. Specifically, the Respondent submitted that for varying reasons, Dr Major's opinions were

- (i) factually flawed; and/or
- (ii) beyond his area expertise; and/or
- (iii) generally speculative; and/or
- (iv) unsupported by the exposition of any reasoning process.

18. In terms of the balance of convenience, the Respondent submitted that:

- (i) the extent to which the Appellant would suffer financial hardship if a stay were not granted was unsupported by any evidence;
- (ii) there was similarly no evidence to support the proposition that the refusal of a stay would have a deleterious effect upon trainers in the Hunter Valley, be it as a consequence of the closure of the training track or otherwise;
- (iii) this was, in any event, a case in which the integrity of the greyhound racing industry was a paramount consideration, and the Appellant had been found guilty of a serious offence after a proper disciplinary process, all of which tended to support the proposition that the balance of convenience weighed against the granting of a stay.

CONSIDERATION

19. As I have indicated, the Appellant places significant reliance on the report of Dr Major in support of the present application. The Respondent takes issue with the entirety of Dr Major's opinions.

20. An application of this nature is not the occasion on which to engage in a detailed assessment of the evidence. Whether there is a serious question to be tried must necessarily be determined at a threshold level. For that reason, I do not propose to engage in an analysis of Dr Major's opinions, or the issues raised by the Respondent in respect of them. It is sufficient if I make three observations.
21. First, even at a threshold level, it is arguable that there is something of a displacement in Dr Major's opinions. For example, in an Executive Summary set out at the commencement of his report, Dr Major expressed the view that there was no basis on which to conclude that the greyhound presented with a prohibited substance present in its system. Notwithstanding that opinion, Dr Major proceeded to advance two hypotheses to explain the presence of the prohibited substance in the greyhound's system.
22. Secondly, I repeat my recent observations concerning the assessment of expert evidence in proceedings before the Tribunal:²

[45] It will be evident from the submissions of each party that the expert evidence in the present case assumes considerable significance. Indeed, the submissions in reply filed by counsel for the Appellant made clear that the Appellant relies solely on that evidence to support his case. It is therefore appropriate that this evidence be addressed at the outset, as its evaluation will necessarily have a direct effect on my ultimate conclusions.

[46] Sitting as the Tribunal, I am not bound by rules of evidence. I may inquire into, or inform myself in respect of, a matter, in any way I think fit, subject to rules of natural justice.³ It follows that in terms of expert opinion evidence, the provisions of s 79 of the Evidence Act 1995 (NSW) have no application. Similarly, the authorities which, by reference to s 79, set out preconditions to the admissibility of expert opinion evidence, do not apply.⁴

[47] The evaluation of all of the evidence remains a matter for me. It follows that it is for me to determine what evidence to accept, what evidence to reject, and what weight should be attached to the evidence I do accept. In terms of the evaluation of expert evidence, and even though the rules of evidence do not apply, a relevant consideration will necessarily be the extent to which, and the terms in which, an

² *Goadsby v Harness Racing New South Wales*, 8 October 2024 at [45] – [47].

³ *Racing Appeals Tribunal Regulation 2024* (NSW) cl 17(1) (the Regulation).

⁴ See for example *Makita (Australia) Pty Limited v Sprowles* [2001] NSWCA 305; (2001) 52 NSWLR 705; *Dasreef Pty Limited v Hawchar* [2011] HCA 21; (2011) 243 CLR 588.

expert explains the path of reasoning which resulted in the opinion expressed. As a matter of common sense, the expression of an opinion without an underlying explanation for its basis is likely to be afforded less weight than an opinion which is supported by the exposition of the reasoning process which led to it.

23. Thirdly, bearing in mind those observations, it may be open to conclude that at least some of the opinions of Dr Major, but particularly those set out in [13](iii)(a) and (b) above, are largely, if not wholly, bereft of any reasoning process which might provide some proper foundation for them. That conclusion, if reached, would necessarily affect the weight to be given to those opinions.

24. Bearing these matters in mind, and again emphasising that on an application of this nature evidence must be assessed at a threshold level, I am not satisfied that the opinions of Dr Major support a conclusion that there is a serious question to be tried, such that a stay should be granted. There may well be a serious question as to the acceptance or rejection of, and/or the weight to be attached to, the opinions of Dr Major, but the existence of that question does not support the present application, and is a matter to be determined after a full hearing.

25. Having reached that conclusion, the application must be refused. It is not necessary to address the question of where the balance of convenience might lie.

ORDERS

26. For the reasons given, I make the following orders:

1. The application is refused.
2. The parties are to provide to the Appeals Secretary, by 5.00 pm on 24 October 2024, a draft timetable for the prosecution of the appeal.

THE HONOURABLE G J BELLEW SC

21 October 2024