

## RACING APPEALS TRIBUNAL

### IN THE MATTER OF A STAY APPLICATION BY AMANDA BRUNTON

1. Ms Brunton has lodged an appeal against the decision of Greyhound Racing NSW (“GR”) of 9 October 2018 to suspend her for 26 weeks for a breach of GRR 83(2) under The Greyhound Racing Rules. She has lodged a further Stay Application.
2. The Tribunal has received The Notice of Appeal and the first Application for a Stay, the second Application for a Stay and the supporting evidence and has read the stewards’ decision. The reply submission of GRNSw has been read.
3. The Tribunal has power to suspend (ie stay) or vary the decision under cl 14 of the Racing Appeals Tribunal Regulation by ordering that the decision not be carried into effect, or be carried into effect to the extent specified and conditions may be imposed. The appellant has lodged the appropriate written application to vest the Tribunal with jurisdiction. Any stay will remain in force until revoked or the appeal is dismissed, determined or withdrawn.
4. The Regulation is otherwise silent as to the tests to be applied for consideration of a stay application.
5. In accordance with established practice this decision is made in the absence of the parties, but after consideration of the documents listed in paragraph 2.
6. The relevant test therefore is that the Tribunal exercise a discretion having regard to the scope and purpose of the legislation and rules of racing considering the material before the Tribunal.
- 7 The principles that apply therefore are:
  - (a) It is sufficient that the applicant for the stay demonstrate a reason or an appropriate case to warrant favourable exercise of the discretion: *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694.
  - (b) The onus is upon the applicant to demonstrate a proper basis for a stay which will be fair to all parties.
  - (c) The mere filing of an appeal does not demonstrate an appropriate case or discharge the onus.
  - (d) The Tribunal has a discretion involving the weighing of considerations such as balance of convenience and the competing rights of the parties.
  - (e) Where there is a risk that the appeal will prove abortive if the appellant succeeds and a stay is not granted, the Tribunal should normally exercise its discretion in favour of granting a stay. It was otherwise expressed in *Kalifaif Pty Ltd v Digi-Tech (Australia Ltd)* (2002) 55 NSWLR 737 at 17 “that there is a real risk that he will suffer prejudice or damage, if a stay is not granted, which will not be redressed by a successful appeal”.

(f) The Tribunal will not generally speculate upon the appellant's prospect of success, but may make some preliminary assessment about whether the appellant has an arguable case, in order to exclude an appeal lodged without any real prospect of success simply to gain time.

(g) Therefore if the applicant establishes that the appeal raises real issues and there is a risk of prejudice or damage which will not be redressed then the Tribunal will then consider the balance of convenience ("Kailifair" supra).

8. On 11 October 2018 the appellant lodged an appeal and stay application and without giving detailed reasons the Tribunal refused that stay application that day.

Subsequently grounds of appeal were lodged and directions for the preparation of evidence were given with a timetable to expire and 21 December 2018.

9. On 13 November 2018 the appellant lodged a further stay application with a detailed supporting report of Dr Major. The respondent has now filed a submission opposing the stay application.

10. The submissions for the appellant rely upon a denial of the breach of the rule because there was no administration and that the greyhound ingested soil which was contaminated with cobalt. It is submitted that the appeal will be rendered nugatory because the suspension will have been served before a hearing can take place. It is submitted that the penalty was wrongly calculated. It is submitted that the appellant has reasonable prospects of success because there is no scientific literature to support the conclusions reached by the regulatory veterinarian. A brief summary of a report of Dr Major is said to support the ingestion of soil which was contaminated. That report raises a fundamental question as to whether cobalt is a prohibited substance. The regulatory vet has made only brief remarks on this subject at the inquiry and has not yet provided a report in reply to that of Dr Major. On the balance of convenience it is submitted there is no threat to the industry as the conduct cannot be repeated. On personal circumstances the need for the appellant to remove herself from her premises and numerous impacts of that removal are set out. It is acknowledged that the appellant has a prior prohibited substance matter.

11. The respondent's submissions oppose the stay. It is pointed out that the breach is a presentation and not an administration matter. The likely penalties for a presentation matter being a disqualification are relied upon. Legal submissions are made on the tests to be applied. It is submitted that the appellant is merely repeating the issues considered by the stewards. It is said therefore no arguable case is advanced. On the balance of convenience the need for the protection of the public interest is advanced and that if the scales are evenly balanced the status quo should be maintained. It is said that the respondent has been successful and that should not be disturbed. It is submitted that the appellant fails to produce evidence to support the subjective factors and that the appellant can nevertheless carry out many of the functions she says are denied to her.

12. The Tribunal has determined not to call on the appellant to reply.

13. The Tribunal is satisfied that on the evidence presently available to it there may possibly be an argument as to whether cobalt is a prohibited substance within the

rules. This finding is made as no submission in reply to the report of Dr Major is yet required to be filed. As this is a presentation case the how, why, wherefore etc as to the presence of the drug in the greyhound does not have to be determined on the issue whether the rule was breached. Such matters are only relevant to penalty. The possibility of the appeal being rendered nugatory also arises for consideration as the hearing will not take place before the suspension expires. A substantial period of that suspension has already been served. The appellant satisfies the arguable case test.

14. On the balance of convenience test the fact that the appellant has already served such a large part of her suspension is a relevant factor. That addresses in a large part the need for the maintenance of the integrity of the industry on the balance of convenience test. The subjective factors are otherwise not persuasive.
15. The Tribunal is satisfied that an arguable case is demonstrated and that the balance of convenience stands in favour of the appellant.
16. The application for a stay is granted.
17. The Tribunal orders that the decision of the stewards of 9 October 2018 not be carried into effect pending finalisation of the appeal on condition that the appellant prosecute the appeal expeditiously.

D B Armati  
Racing Appeals Tribunal  
23 November 2018