RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR DB ARMATI

EX TEMPORE DECISION

MONDAY 17 JUNE 2019

APPELLANT SAM MASRI

APPEAL AGAINST REFUSAL BY GWIC TO GRANT APPELLANT AN OWNER/TRAINER'S LICENCE AND ATTENDANT'S LICENCE

DECISION

1. **Appeal dismissed**
2. **Appeal deposit forfeited**

1. The appellant appeals against a decision of the Commissioners of the Greyhound Welfare Integrity Commission of 21 March 2019 to refuse to grant him his application for a licence as an attendant and as an owner/trainer of greyhounds. The appellant presses for both categories of licence.

2. The evidence has comprised a bundle of documents which contained his application, supporting documents, past history matters and, in addition, he has put in evidence two character references and the appellant has given oral evidence.

3. The facts are that the appellant is some 62 years of age. He has been associated with and registered in this industry since 1986. With the exception of some undefined breach in 1989, for which he was subject to a $250 penalty, there are no other adverse matters against him of a registration or other type in this industry. The appellant, some time in the 1980s, completed a Bachelor of Commerce degree at the University of Sydney. He subsequently worked. At the same time he was working it appears that, whilst holding his licence, he was trainer of a number of greyhounds.

4. In November 1999, the Independent Commission Against Corruption – ICAC – published a report which, amongst other things, was into his conduct as a former purchasing officer for Liverpool City Council. That report is in evidence and comprises 64 pages. The appellant was the subject of adverse findings, with recommendations for criminal prosecution in relation to the adverse findings. The only prosecution to flow from the Commission's hearing was for false evidence to the Commission and the appellant gives evidence that Magistrate O'Shane dismissed that charge against him.

5. The findings of corrupt conduct as a purchasing officer remain undisturbed. There were a number of adverse findings. A number of those matters which were subject to the Commission's investigation were not found established.

6. The appellant was a purchasing officer, then a purchasing manager and became a tendering officer at that Council and held that latter position in 1997. He was in a position where he could manipulate the system to ensure that particular contractors were selected. At times, the Commission found, he attempted to disguise his conduct but when, as was so often the case, the Commission put certain evidence to him, he then commenced to cooperate and make admissions to the Commission.

7. On a number of matters – and they do not need to be read into this decision – in its finding of facts, commencing at page 32 in the report, his conduct, namely, that payments were made to him as an inducement to him to recommend, or reward him for recommending, contracts to various

developers. It was found that the appellant solicited some of those payments, there were inducements given to him, and it was on more than one occasion. Some of the amounts were not large, being in sums such as amounts of $6000 and the like. It is suggested, however, that relevant to that is the amount that was in total paid to him, which was something like $250,000.

8. The relevance of the ICAC findings to this matter is that the appellant engaged in conduct which was corrupt and contrary to the terms of his employment, as well as contrary to the law. The appellant, notwithstanding those findings, maintained his licensed status in this industry. And notwithstanding the fact that he had engaged in that corrupt-type conduct, nothing adverse in respect of his conduct in this industry has come to light. He is entitled to have that taken into account in his favour.

9. The appellant, whilst continuing to be licensed in this industry, for financial gain entered into a joint criminal enterprise. For that joint criminal enterprise he was charged with two serious criminal offences. Having pleaded not guilty through the preliminary stages, he gives evidence to the Tribunal that on advice, immediately prior to or during the course of his trial, he pleaded guilty. On 30 May 2014 he was sentenced for manufacture a prohibited drug greater than large commercial quantity to a term of imprisonment of six years and nine months, to commence on 11 December 2013 and to conclude on 10 September 2020 and to which he was subject to a non-parole period of three years and nine months. His release was to be subject to supervision.

10. On the same date, and for the same sentence, he was dealt with for possess precursor intend to use in manufacture or production. The facts of those matters are not before the Tribunal, merely the National Criminal History Check. The appellant says that in respect of the precursor matter he only pleaded guilty because of legal advice. Whether he committed that offence or not, he pleaded guilty to it and he was sentenced for it. In essence, as it was the same sentence imposed upon him for the manufacture prohibited drug matter, whether he was guilty or innocent in the end makes no difference to the decision that has to be made here.

11. A key and critical fact is that he willingly and knowingly, having been previously found as a corrupt person for financial gain, went into a joint criminal enterprise of substantial seriousness for financial gain.

12. He says he was a model prisoner. That is his evidence; there is nothing to contradict it. He says that whilst serving his sentence at Windsor he was involved in the animal rehabilitation program run by the RSPCA and Corrective Services and did so for a period of 12 months. He gives evidence that that involved him looking after animals that were kept within the prison system and made available to prisoners for that purpose. To

paraphrase his evidence, it appears they were strays and the like. Importantly, it involved dogs, and this is a greyhound industry.

13. Having served his non-parole period, he was discharged and remains on parole. He was originally reporting on a weekly basis and gives evidence now that he is reporting on a monthly basis. He gives evidence that the parole officer refused to provide him with any confirmation in writing of his status, but he said in his application to the Commission for his licences that he has been granted permission from the Parole Board to obtain a trainer's licence. There is no evidence to suggest to the contrary. As the appellant points out, parole is intended to enable him to take his place back in society, for him to learn skills and to become employed.

14. He attended upon psychologist Mr Gorczynski for some 20 sessions which, as the submissed, certainly goes beyond that which might otherwise have been a requirement for him for sentencing purposes. He did so for stress management. It is unclear as to the dates upon which he undertook that from Mr Gorczynski's report to the Tribunal. Mr Gorczynski reported that that stress management was necessary because he was exhibiting difficulty in adjusting to financially supporting himself and he has a strong personality with a determination to overcome obstacles and challenges. He was taught to manage his stress so he could fulfil his goals and targets. Mr Gorczynski reports that he fulfilled all the requirements imposed upon him by Mr Gorczynski. He also reports, as is consistent with the whole nature of the parole system, independently of his attendance upon that psychologist, it was to give him a capacity to be self-sufficient.
He is currently on a social security benefit. He currently resides at a property in which his daughter has an interest. He currently works on that property unremunerated. It is a 70-hectare property which he is required to maintain and to look after anything up to 90 dogs at that property. He therefore relies upon his self-rehabilitation efforts, both by that work and by his undertaking the stress management with the psychologist.

15. When he made his application, it contained information which was the same as that which was provided to the former regulatory body for these matters, as it then had the responsibility, Greyhound Racing NSW. Greyhound Racing NSW, on 3 November 2017, refused his application for an owner/trainer's licence. In essence, the facts that were put to GRNSW then were the same facts as those he relied upon before GWIC now and, with some additional evidence, are the same matters upon which he relied on the application the subject of this appeal.

16. He advised that he does not take drugs, that he in fact did not know how to manufacture the drugs which were the subject of the charge. In addition, it was pointed out that he was previously a trainer of a Group 1 winner and had numerous city winners when he was formerly licensed. In addition, he also provides sponsorship and donations to the greyhound

industry. Importantly, he pointed out, and has repeated on the subject application for GWIC, that he has the ability to train greyhounds and attend to them and that when he had the privilege of a licence in the past he was able to care for his greyhounds and to abide with the rules. He expresses the opinion the industry would benefit from his recent animal welfare activities whilst incarcerated.

17. The appellant today is, as an applicant for a licence, a person who is still, under the criminal law, serving a sentence. He happens to be serving in the community on parole. That parole has a period of time yet to run. He has undertaken various courses as described. He is attempting to obtain employment so he can remove himself from the social security world and to continue to reform itself.

18. Based upon those facts, it is necessary to have regard to the test which the Tribunal must apply to these matters. The starting point is the Greyhound Racing Act 2017 and in particular section 47, which needs to be read in its entirety:

> "47(1) The Commission is to exercise its registration functions under this Division so as to ensure that any person registered by the Commission is a person who, in the opinion of the Commission, is a fit and proper person to be registered (having regard in particular to the need to protect the public interest as it relates to the greyhound racing industry).
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> (2) Without limiting subsection (1), a person is not to be registered if the person has a conviction and the Commission is of the opinion that the circumstances of the offence concerned are such as to render the person unfit to be registered.
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> (3) This section does not limit any provisions of the greyhound racing rules relating to the exercise of the registration functions of the Commission.
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> (4) In this section:
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> ***conviction*** has the same meaning as in the *Criminal Records Act 1991* but does not include a conviction that is spent under that Act."

19. The rules do not need to be examined. Current Greyhound Racing Rule 15 can be summarised to note that an application for a registration such as is before the Tribunal today may be granted, may be granted on conditions, or may be refused. It is noted that under Rule 15(2)(c) the applicant was in fact invited to attend an interview and did so on 20 November 2018. There is no evidence of what was said as there is no transcript of that interview. The evidence of the appellant is that he advanced much the same matters to the Commission as he had to

GRNSW in his October 2017 application and today. Nothing therefore turns on that.

20. Having regard to the critical points that are contained in that legislation, this is a public perception and confidence matter. This Tribunal in recent times has dealt with numerous applications where it was required to consider the fit and proper test. It recently did so in this jurisdiction in the matter of Hand on 22 May 2019. It more recently did so in the harness racing jurisdiction in the matter of Bennett on 21 May 2019.

21. The Tribunal has set out in those decisions and in a considerable number of others the law that is to be applied. It does not propose to do so in this matter. It will summarise but rely upon the details it has set out in numerous cases.

22. In essence, the key factors here are the issue whether this appellant has satisfied this Tribunal that he is a fit and proper person to be licensed as a greyhound owner/trainer or attendant. The question is whether this Tribunal should give him its imprimatur by it finding that it is satisfied that he is a person who can be held out to the industry and the community as a fit and proper person. To do so, it is necessary for the appellant to deal with all of the evidence which is before the Tribunal and have the Tribunal satisfied that, looking to the future, the imprimatur should be given.

23. It is important to recognise that the corrupt conduct referred to by ICAC and the criminal conduct for which he was sentenced – and remains on sentence – did not relate to this industry. The only link – and it is tenuous – is that at the time of that wrong conduct, both the corruption and the criminality, he was a licensed person. But nothing has been put which links any of that conduct to any mischief in the industry for which he seeks licensing.

24. The nature of a licence which he seeks must be considered. The owner/trainer category, which he seeks, is the highest category of licence. It gives him the totality of privileges that flow from registration under the Act and the rules. Should he not be able to establish satisfaction for the appropriate imprimatur for that category of licence, he invites consideration of licensing as an attendant. Essentially, an attendant is a person who will assist at the races and also at the kennels as well.

25. The other aspect of these matters – and it has not been embraced in recent decisions – that does arise for consideration is that which was dealt with in the unreported District Court decision of Ian James Banks v The Council of Auctioneers, 29 June 1971, a decision of Judge Henchman. Judge Henchman gave the decision of Sakellis, which has been referred to in numerous of the Tribunal's recent decisions. And having summarised what he had to say in Sakellis, he said the following in Banks:

> "I take this view with some sympathy and with the reminder that a man once found guilty of a crime involving dishonesty is not necessarily for ever debarred from his chosen profession as the cases of Macaulay, Davis, Lenehan 77 CLR 403 and Clyne (1962) SR 436 show. But I do not think this thought can permit the grant of a licence during the period while the appellant is under a recognizance imposed by a court resulting from a self-confessed crime of stealing."

26. His Honour went on to refuse the application. There, the principle was a person on a bond for an offence of dishonesty could not succeed in establishing that he was fit and proper. That dealt with, obviously, the aspect of honesty. As was said in Hughes & Vale Pty Ltd v NSW (No 2), quoted by the Tribunal on numerous occasions, it is necessary to look to the three tests of honesty, knowledge and ability. And in assessing those matters it is also relevant to what was said in Australian Broadcasting Tribunal v Bond [1990] HCA 33, where Justices Toohey and Gaudron, having set out a number of matters, said this:

> "…The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question."

27. And of course the Tribunal returns again to the issue that it is not considering his fitness or propriety at large but his fitness and propriety for the grant of privilege of a licence in the greyhound industry.

28. A press article, which is contained in the papers and which related to the sentencing of the appellant in the drug-related matters, described the appellant in the following terms:

> "Sam 'Mr 10 percent' Masri is the crooked former Liverpool Council purchasing manager whose last starring role was in the Independent Commission Against Corruption. In 1999 ICAC reported that over five years Masri had made $250,000 out of guaranteeing Council work for 10 percent kickback."

29. The article went on to describe certain matters relating to that for which he has been sentenced. That is an aspect of reputation to which Justices Toohey and Gaudron were referring.

30. As a balancing exercise to that, the appellant has called veterinarian Dr Brian W Daniel, who himself was the regulatory vet for GRNSW for a considerable number of years until he retired in 2013. He is therefore well-placed by reason of that regulatory experience to understand the

importance of a reference and that use which would be made of it in respect of a fitness and propriety issue. He has known the appellant since the 1980s when they were associated with the industry. He is aware of all the findings by ICAC and the sentence and he is aware that the appellant, having worked on his daughter's property, has an intention to exercise the licence correctly if it is granted to him and is something he is looking towards. Dr Daniel assesses him as a person with a future in the industry. That gives an aspect of balance to the issue of reputation. That is the extent of the references that are provided on his behalf.

31. The introduction of the 2017 Act – the Greyhound Racing Act – carried with it specific legislation which in assessing applications such as this emphasised the importance of the protection of the public interest as it relates to this industry. That public interest, as previously assessed, requires consideration of public perception and confidence. In assessing those matters, Parliament has particularly invested a duty in the decision-maker to have regard to criminality, not just criminality by itself but whether it renders a person unfit to be registered.

32. The burden that has followed this appellant through his 2017 application and his rejection in March 2019 by GWIC has flowed from his criminality. This Tribunal itself must make the decision, not decide whether or not GWIC was correct. But the Tribunal cannot lose sight of the fact of the gravity of the drug matters for which he was the subject of sentence and for which a heavy sentence of six years and nine months was in fact imposed. That six years and nine months' sentence continues. Whilst he is released into the community on parole, he is still the subject of that sentence. If it stood alone, and particularly having regard to his long and satisfactory association with the industry in the past, there might be a need for a more careful balancing of those facts against those that stand in his favour.

33. But it was not isolated conduct of acting improperly. Whilst the ICAC findings and the conduct to which it related are over 20 years ago, they provide a foundation against which it would be expected if they stood alone he could argue that he is a changed person. But then those were driven by a desire for financial gain, and he gained a lot. And his criminality in the drug-related matters was financial gain. It was a pattern of behaviour which extended over a substantial period of time. That pattern of behaviour is of such seriousness that, as was said by Judge Henchman in Banks, it is difficult to see how, if a person subject to a recognizance for stealing could not get up on a fit and proper test, how a person the subject of parole – and parole in respect of the conduct just described – could possibly expect that a public perception would be in his favour and that there would be that necessary aspect of confidence that the industry would have the level playing field which is so important to it.

34. The onus is on the appellant to establish the imprimatur that he seeks. He fails to do so.

35. The Tribunal is not satisfied that he has that degree of honesty, knowledge and ability required of him having assessed the facts today and then looking to the future.

36. The Tribunal is of the opinion that the same conclusion is appropriate in respect of both categories of licence, without analysing the difference between the two any further.

37. The application is refused.

38. The appeal is dismissed.

39. As there is no application for a refund of the appeal deposit, the Tribunal orders it forfeited.
