

## RACING APPEALS TRIBUNAL

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### IN THE MATTER OF A STAY APPLICATION BY SHAYNE STIFF

18 June 2020

1. Mr Stiff has lodged an appeal against the decision of 9 June 2020, of GWIC under the Greyhound Racing Rules, to suspend him for a total period of 4 months and a fine of \$5000 for breaches of 86(f)(iv), (q) and (f)(i). He has lodged a Stay Application.
2. The Tribunal has read the decision, Application for a Stay together with the submission, the submission of GWIC opposing a stay and the grounds of appeal.
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 Any stay will remain in force until revoked or the appeal is dismissed, determined or withdrawn.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 ("Kailifaif" supra).

8. The appellant has lodged a severity appeal, submits the subjective factors of age, lengthy involvement in the industry, early admissions, no repetition of conduct, the fact his conduct was responsive to welfare concerns, likely irreparable financial damage because of financial impact, parity and likely delay in a hearing.
9. The respondent opposes the application, sets out the rules and charges, relies on the admissions, the law to be applied, consents to the fine being suspended, pleads the seriousness of the conduct, acknowledges there will be an impact on the appellant but notes it is a suspension and not all rights are lost and that others may be the subject of an application to GWIC to lift, the need for protection of the integrity and image of racing and that the appeal can be heard expeditiously.
10. The appellant did not wish to reply.
11. This is a severity appeal for substantial abuse matters involving racial abuse, the present findings, and there is a reputational need for consideration. The parity issues were examined by GWIC in its decision and the matters raised on this application are unconvincing on a substantial reduction in penalty such that the appeal, on that basis, will obviously be abortive. That is not to prejudge a likely penalty but to address the stay submission material. The submission on financial hardship is not so detailed that it alone is sufficient to demonstrate an arguable case. The Tribunal is satisfied that an appeal can be heard very quickly if the parties prepare for it and the respondent indicates it will do so.
12. The appellant fails to demonstrate an arguable case. In any event the balance of convenience would fall in favour of the respondent on integrity issues overcoming the personal factors of the appellant.
13. The stay application on the suspension orders is refused.
14. The stay application on the fine of \$5000 is granted on condition that the appellant prosecutes the appeal expeditiously.