

**RACING APPEALS
TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL MR D B ARMATI

EX TEMPORE DECISION

WEDNESDAY 23 DECEMBER 2020

APPELLANT JESS FOTHERGILL

RESPONDENT GWIC

**APPLICATION FOR STAY OF GWIC
DECISION TO IMPOSE DISQUALIFICATION**

DECISIONS:

- 1. Stay granted pending determination of appeal,
upon condition**
- 2. Directions imposed**

1. The appellant, Ms Fothergill, makes application under clause 14 of the Racing Appeals Tribunal Regulation for the stay of the decision of GWIC to impose upon her a period of disqualification of five months.
2. The evidence in this matter has comprised what will be, as compiled to date, the brief of evidence on the hearing, some parity cases, the decision of the Commissioner's officer, and a substantial bundle of material filed by the appellant, which includes matters such as character references, documentation and the like.
3. The issue requires the appellant to satisfy the Tribunal of an arguable case, and if that is established, that the balance of convenience is in her favour.
4. GWIC oppose the application. Written submissions have been made and are relied upon for GWIC. The appellant has addressed the Tribunal.
5. The submissions for the appellant – and no criticism is directed to Mr Ward, who assists her, nor to the appellant – are such that they have not actually grasped with keenness a number of matters which might otherwise have been addressed if they were legally represented. No criticism is made of the efforts. But it is essentially left to the Tribunal to address many of these matters of its own decision-making processes.
6. The key issue is whether, if the stay is not granted, the appeal will be rendered nugatory. And that raises the arguable case on the basis, on a severity appeal, that it will be the argument that a penalty less than five months' disqualification is appropriate and that it not be a disqualification; that if it is, it be less, and that the a suspension and, if necessary, something less; or, indeed, a lesser penalty.
7. This matter can come on for hearing, in all probability, from mid-January 2021 onwards, a delay, allowing for vacation periods, of essentially only a few weeks, in working days, although it is accepted a longer period on a day-by-day basis.
8. It is not for the Tribunal to decide what penalty will be issued, only whether there is something arguable. The Tribunal has read the key factors advanced by the appellant to the Commission in the actual determination through solicitor Mr Horvath, together with a number of supporting documents which accompanied that submission.
9. An explanation is given for the wrongful conduct, which involved the appellant signing a document using another person's name on the basis that it was a regular practice for her to do that for him in other matters. And, secondly, that, in any event, her will was essentially overborne by the nature of his character and actions towards her. The Tribunal notes in the brief of evidence that that person essentially denies any of that type of conduct.

10. Having regard to the weight of evidence given in the appellant's support, it does establish there are some arguable matters that may arise for consideration on the appeal which might go to the gravity of penalty.

11. The appellant is not assisted by parity cases. The appellant is not assisted by her past record. Those matters, in all probability, would lead to the type of penalty which the Commission considered to be appropriate, if the other matters are not found in her favour, to be imposed.

12. Having carefully considered all of those matters, it is a possibility, on balance of probabilities, that at the end of the day some lesser penalty than that which was imposed might be an outcome. Accordingly, an arguable case is established.

13. The balance of convenience is advanced on the basis of hardship, not usually a strong factor because the consequences of wrong conduct and loss of a privilege invariably involve hardship. And, in addition, the fact that there are no actual welfare issues that are identified. This is not a welfare case as such, it is one of, essentially, to paraphrase it entirely, dishonest conduct by the appellant.

14. The respondent opposes, on the basis of integrity of the industry, the necessary requirement for any subsequent message to be given to be one that is salutary.

15. At the end of the day, the Tribunal has determined that the balance of convenience will fall in the appellant's favour, but only on a limited basis. The aspects of integrity are, indeed, imperative.

16. The appellant already has an exemption in relation to her actions as a carer for a named person, which permits her to attend premises where a greyhound is housed. Application is made in the alternative to a disqualification that the provisions of a suspension be put into operation .

17. In essence, it is not for the Tribunal to today re-sentence, as it were, but to find, if appropriate, conditions upon which a stay of the decision should be granted. The Tribunal has determined it is appropriate to do so, although that is opposed by the respondent.

18. Pursuant to clause 14 of the regulation, the Tribunal makes the following orders:

That the decision of the Commission not be carried into effect pending the determination of the appeal on condition that;

1. the appellant is bound by the limitations of a suspension as they are contained in LR99B(3).

2. Liberty to apply.

19. The Tribunal also makes the following directions:

1. The respondent is to file and serve any evidence upon which it relies and notify the appellant in writing when it has completed that service.
2. The appellant is to file and serve grounds of appeal within seven (7) days of receiving the notification referred to in direction 1, and to file and serve any evidence upon which she relies within 14 days of receipt of that notification under direction 1.
3. The respondent to file and serve any evidence in reply within a further period of seven (7) days.
4. The Tribunal will provide a list of available dates for a hearing in the short term upon advice that direction 3 has been finalised.
