

**RACING APPEALS  
TRIBUNAL  
NEW SOUTH WALES**

**TRIBUNAL MR D B ARMATI**

**EX TEMPORE DECISION**

**MONDAY 14 MARCH 2022**

**IN THE MATTER OF A STAY APPLICATION AND  
SUBSEQUENT APPLICATION TO WITHDRAW  
APPEAL BY STEPHEN FRANCIS**

**RESPONDENT GWIC**

**GREYHOUNDS AUSTRALASIA RULE 92(5)(c)**

**DECISION:**

- 1. Application dismissed**
- 2. Leave to withdraw appeal**
- 3. Appeal deposit forfeited**

1. The matter before the Tribunal is a stay application by registered participant Stephen Francis in respect of a decision of 9 March 2022 of GWIC to suspend his licence pending the determination of an inquiry. That decision of 9 March 2022 was taken under Rule 95(2)(c), which relevantly provides that pending a decision or outcome of an inquiry the licence of a participant may be suspended.
2. This is a stay application. The Tribunal will not set out the detailed principles which are required to be applied. It has done so on many occasions, one of which was in *Gillespie v Harness Racing New South Wales*, and it adopts those principles.
3. There are two tests upon which the applicant, the appellant, carries the burden of proof and that is to establish an arguable case and, if that is established, that the balance of convenience is in his favour.
4. The appeal has proceeded on the basis of the written submissions in support of the stay by the appellant. The evidence has comprised the outline of submissions in reply by the respondent, together with an exhibit, being the actual licence application to which the proceedings relate, and, in addition, both the appellant and the respondent have made oral submissions.
5. The gravamen of the case is that the appellant has recently been licensed as of 18 January 2022 as a breeder and public trainer.
6. It is the case for the respondent that in his application he provided evidence of his residential address and, as required by the application, his kennel address. And, in addition, as required by the application, he produced a series of photographs.
7. The case for the respondent, upon whom no burden lies, is that what was given to the respondent was misleading information in two fields. Firstly, the statement that the kennel address would be the residential address and that the photographs, which were of other premises, were supposedly those of the kennel address at Raymond Terrace. That, as the respondent points out, is misleading information.
8. As the respondent also points out, the industry and its regulator depend very much upon the actions of applicants and subsequent licensees to provide to the regulator full and frank and accurate evidence because if that is not done, then the industry could not operate effectively and, secondly, if it is done incorrectly, the misleading nature of that material can have severe integrity and welfare concerns. So essentially there is a very strong argument that the appellant has intentionally misled the regulator.

9. It is the appellant's submission today that it was not a deliberate action. There has not been a satisfactory explanation of what the reason for that error was; that may be a matter for future hearing on the appeal itself.

10. In addition, the regulator relies upon welfare concerns in that the other premises were not subject to its assessment so far as suitability for this appellant was concerned, and at those premises a person whose licence has been conditioned is operating and that person is a person of concern to the regulator. In addition, at those premises there has now been a litter produced and that is very recent. It is, therefore, that there are welfare concerns for greyhounds in that litter and generally.

11. There are two, therefore, very key issues of concern to the regulator. They are both integrity and welfare.

12. What then is the arguable case upon which the Tribunal can assess this stay application?

13. Certain matters are set out by the appellant. Firstly, that he has entered a lease agreement. That does not touch upon welfare and integrity. That he will provide other photographs. They are not currently before the Tribunal, so nothing can turn on that. And also he will suffer prejudice or damage, and that is a matter for balance of convenience, not arguable case. And also that he has submitted that he is not inexperienced and therefore issues of welfare are being addressed and will be addressed.

14. The welfare consideration slightly diminishes by reason of that submission on that evidence of experience. And there is also the fact that he has not been the subject of prior investigations.

15. So far as the subject licence is concerned, of course, he has only just got it, he can call on no industry history in his favour there.

16. Simply put, there is nothing of an arguable nature as to why the suspension should not be put in place for the integrity and the remaining welfare concerns to which the respondent has referred and the Tribunal has touched upon which would cause the necessity for considering balance of convenience.

17. On the balance of convenience he has set out the substantial costs that will be occasioned in respect of the recent litter and that is accepted.

18. But as there is no arguable case, the balance of convenience does not have to be weighed up. If it had to be weighed up, the Tribunal would consider that the integrity and welfare concerns assessed by the respondent outweigh the convenience factors advanced by the appellant.

19. Accordingly, the appellant fails to establish an arguable case and, in any event, fails to establish the balance of convenience is in his favour.

20. Those determinations require that the stay application be dismissed.

#### APPLICATION TO WITHDRAW APPEAL

21. There is now an application before the Tribunal for the withdrawal of the appeal. That is the actual appeal against the 92(5)(c) suspension.

22. It is not opposed. There is essentially nothing for the Tribunal to weigh up, having regard to the material before the Tribunal.

23. The Tribunal grants leave to the appellant to withdraw the appeal.

#### APPEAL DEPOSIT

24. There is no application for a refund of the appeal deposit.

25. The Tribunal orders the appeal deposit forfeited.

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