

RACING APPEALS TRIBUNAL

ANTHONY THOMAS JOHN DUGGAN

Appellant

GREYHOUND WELFARE AND INTEGRITY COMMISSION

Respondent

DETERMINATION

In the matter of a Stay Application by the Appellant

6 June 2023

Introduction

1. The Appellant, Anthony Thomas John Duggan (**Mr Duggan**) is a registered Public Trainer and Breeder with the Respondent, Greyhound Welfare and Integrity Commission (**GWIC**).
2. On 11 October 2022 and 2 December 2022, Mr Duggan presented the greyhound “Caen” for the purposes of competing in races in circumstances where the GWIC contend that post-event swabs revealed the presence of cobalt in concentrations at or in excess of the permitted thresholds in breach of Rule 137 of the NSW Greyhound Racing Rules (**Rules**).
3. On 22 May 2023, Mr Duggan was issued with a notice of charge and proposed disciplinary action (**Notice**). Mr Duggan was charged with an offence under Rule 141(1)(a) of Rules. The Notice proposed a penalty of a four-month suspension for each of two charges.
4. Mr Duggan pleaded not guilty to each charge.
5. Following a hearing conducted via AVL on 30 May 2023, the GWIC found each of the charges proven and determined to suspend Mr Duggan’s registration for a period of 10 weeks in respect of each charge, but with both suspensions to be served concurrently commencing midnight Wednesday, 31 May 2023 and expiring midnight Tuesday, 9 August 2023 (**Decision**).
6. By notice of appeal dated 1 June 2023 but lodged with the Tribunal Secretary on 5 June 2023, Mr Duggan appeals the Decision. The appeal is both as to breach and penalty.
6. Mr Duggan has also made an application for a stay which is not opposed by GWIC.

Principles applicable to a stay

7. Regulation 14 of the Racing Appeals Tribunal Regulation 2015 (NSW) (**Regulations**) provides, inter alia, that the Tribunal may, on written application by an appellant, order that

the decision appealed against is not to be carried into effect, or is to be carried into effect only to the extent specified in the order pending the determination of the appeal. The Regulation is otherwise silent as to the test to be applied for the consideration of a stay application.

8. The manner in which the Tribunal should exercise its discretion to order a stay has been the subject of prior determinations by the Tribunal and is derived from well-established authorities. Those principles may be conveniently summarised as follows:
- (a) it is not necessary to make out special or exceptional circumstances for a stay: *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694-5;
 - (b) an applicant must show that the appeal raises serious issues for determination and that there is a real risk that they will suffer damage or prejudice if a stay is not granted and will not be redressed by a successful appeal: *Kalifair Pty Ltd v Digi-Tech (Australia) Ltd* (2002) 55 NSWLR 737 at [17]-[20];
 - (c) consideration should be given first, as to whether the appeal raises a serious question to be tried, in the sense of arguable grounds, and if so, where the balance of convenience lies: *Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694; *Kalifair Pty Ltd v Digi-Tech (Australia) Ltd* (2002) 55 NSWLR 737 at [18]; *Vaughan v Dawson* [2008] NSWCA 169 at [17];
 - (d) the applicant must demonstrate a proper basis for a stay which will be fair as between the respective interests of the parties (*Alexander v Cambridge Credit Corp Ltd* (1985) 2 NSWLR 685 at 694; *Adeels Palace Pty Ltd v Moubarak* [2009] NSWCA 130 at [5]; *Bar Association of NSW v Stevens* [2003] NSWCA 95 at [83]);
 - (e) whether an appeal, if successful, will be rendered nugatory if a stay is not granted (*TCN Channel 9 Pty Ltd v Antoniadis [No. 2]* (1999) 48 NSWLR 381; *Newcrest Mining v Industrial Relations Commission* [2005] NSWCA 91); and
 - (f) the mere filing of an appeal does not demonstrate an appropriate case or discharge the onus.

The submissions

9. In support of his application for a stay, Mr Duggan submits, in summary, that:
- (a) he believes that the Decision is incorrect based on the evidence presented to the GWIC, including expert evidence. He contends that cobalt is a naturally occurring substance, and that the levels of cobalt found in “Caen” to be the result of environmental contamination;
 - (b) he has 15 dogs under his care at a cost of \$5,000 to \$6,000 per week;
 - (c) he has young dogs that are “not far off racing” and whilst under suspension he cannot trial or work them; and
 - (d) the mental and financial strain of the suspension is “very telling” especially in circumstances where the matter has “dragged on for six months plus”.

10. GWIC does not oppose the stay. Notwithstanding that GWIC does not oppose the stay, the Tribunal must be satisfied that a stay is warranted in all the circumstances.

Consideration

As to whether there is an arguable case

11. Mr Duggan suggests that there are good arguable reasons to question either the breach or the suspension or both. In the absence of any submissions from GWIC to the contrary, the Tribunal is satisfied that the appeal raises a serious question to be tried, that is, in the sense of arguable grounds.

As to the balance of convenience

12. The Tribunal is satisfied that the balance of convenience favours Mr Duggan not only because the period of suspension will likely impose a financial burden upon him and otherwise impact his ability to undertake his functions as a trainer but additionally because if a stay is not ordered then it is likely that by the time that the appeal is heard it will be rendered nugatory as the period of suspension will have been served or substantially served. GWIC made no submissions to the contrary.

Determination

13. The application for a stay is granted.

Orders

14. Pursuant to Regulation 14, the Tribunal orders that the decision of the GWIC the subject of the appeal not be carried into effect pending the determination of the appeal or other order on condition that Mr Duggan prosecutes the appeal with expedition.

A.P. Lo Surdo SC
Acting Racing Appeals Tribunal