

**IN THE RACING APPEALS TRIBUNAL**

**JUSTIN KING**

**Appellant**

**v**

**GREYHOUND WELFARE AND INTEGRITY COMMISSION**

**Respondent**

**REASONS FOR DETERMINATION OF APPLICATION FOR AN ORDER UNDER  
CLAUSE 14 OF THE RACING APPEALS TRIBUNAL REGULATION 2015**

**INTRODUCTION**

1. On 22 December 2022, I determined that an application for a stay which had been made by the Appellant in this matter should be refused, and indicated that my reasons for coming to that conclusion would be published in due course.
2. Those reasons now follow.

**FACTUAL BACKGROUND**

3. Justin King (the Appellant) is a participant in the greyhound racing industry. He is registered with the Respondent as a Public Trainer and Breeder.
4. On or about 12 December 2023, the Respondent received information that the Appellant was the subject of an investigation being conducted by NSW Police. This caused the Respondent to conduct its own investigation into whether the Appellant was a fit and proper person to be a registered participant in the industry.
5. The Respondent caused a notice to be issued to the Appellant on 12 December 2023 advising him that it was considering the imposition of an interim

suspension pursuant to r 169(5)(c) of the *Greyhound Racing Rules*. The notice invited the Appellant to attend a hearing on 15 December 2023.

6. Part of the material before me is a transcript of that hearing, at which the Appellant was present along with Mr Birch, the Chief Operating Officer of the Respondent, and Mr Van Gestel, a Steward. Mr Birch explained to the Appellant that it had come to the notice of the Respondent that the Appellant was the subject of an application for an order pursuant to the *Crimes (Domestic and Personal Violence) Act 2017* (NSW) (the CDVA). Police had previously declined to provide the Respondent with any particulars in relation to the basis of the application. The Appellant told Mr Birch that he too was unaware of the basis of it. He also told Mr Birch that he had no source of income other than from his work as a Trainer.
7. The submissions of the Respondent on the present application suggested that the allegations in support of the order sought under the CDVA arose out of “*the Appellant’s conduct in relation to a minor*” who is “*also a greyhound racing industry participant*”. Whilst I accept that this may well be the Respondent’s understanding, it should be emphasised that there is not a scintilla of evidence to support it.
8. At the conclusion of the hearing, Mr Birch informed the Appellant that he had determined that the Appellant’s registrations should be suspended. That determination was confirmed by the Respondent in correspondence forwarded to the Appellant on 15 December 2023.
9. The proceedings under the CDVA are next before the Local Court on 16 January 2024.
10. By Notice of Appeal dated 15 December 2023, the Appellant appealed against the Respondent’s determination. He also sought a stay, which was opposed by the Respondent.
11. In support of the application for a stay, the Appellant filed three testimonials attesting to his good character, which I have taken into account.

## **REGULATORY PROVISIONS GOVERNING THE PRESENT APPLICATION**

12. Clause 14 of the *Racing Appeals Tribunal Regulation 2015* (the Regulation) confers a discretionary power on the Tribunal to grant a stay. That discretionary power is in the following terms:

### **14 Suspension or variation of decision pending determination**

- (1) *The Tribunal may, on written application by an appellant being lodged with the Secretary, order that the decision appealed against-*
  - (a) *is not to be carried into effect, or*
  - (b) *is to be carried into effect to the extent specified in the order, pending the determination of the appeal.*
- (2) *The Tribunal may, in making any such order, impose conditions. The order is taken not to be in force for any period during which any such condition is not complied with.*
- (3) *An order remains in force until it is revoked by further order by the Tribunal or the appeal to which it relates is dismissed, determined or withdrawn (whichever happens first).*

13. Cl 14 is silent on the factors which are to be taken into account in the exercise of the discretion. Accordingly, the discretion falls to be exercised by reference to well-established common law principles which may be summarised as follows:

- (i) the mere fact of bringing an appeal does not, of itself, lead to the conclusion that a stay should be granted;
- (ii) the discretion to grant a stay is a wide one, free of rigidity, in the exercise of which the individual circumstances of the case are to be taken into account: *Maund v Racing Victoria Limited* [2015] VSCA 276 at [33] citing *Cellante v G Kallis Industries Pty Limited* [1991] 2 VR 653 at 657; *Patrick Stevedores Operations No. 2 Pty Limited v Maritime Union of Australia (No. 3)* (1998) 72 ALJR 869; [1998] HCA 32 at [2] and following;
- (iii) as a general proposition, an application for a stay (permanent or otherwise) should be brought promptly. In some circumstances, delay in bringing an application may jeopardise an appellant's prospects of success on the application: *Moubarak by his Tutor Coorey v Holt (No. 2)* [2019] NSWCA 188 per Bell P (as his Honour then was) at [13] – [15]

- citing *Devenish v Jewel Food Stores Pty Limited* [1990] HCA 35; (1990) 64 ALJR 533 at 534 per Mason CJ;
- (iv) an applicant for a stay does not have to demonstrate special or exceptional circumstances: *Alexander v Cambridge Credit Corporation Limited* (1985) 2 NSWLR 685 at 694-695 (*Alexander*);
  - (v) an applicant must demonstrate that the appeal raises serious issues for determination, and that there is a real risk that he or she will suffer damage or prejudice if a stay is not granted which will not be redressed by a successful appeal: *Kalifair Pty Limited v Digi-Tech (Australia) Limited* (2002) 55 NSWLR 737; [2002] NSWCA 383 at [17]-[20] (*Kalifair*);
  - (vi) an application for a stay involves two broad considerations. The first is whether the proposed appeal raises a serious question to be tried (in the sense of arguable grounds), and the second (assuming the first is made out) is where the balance of convenience lies: *Alexander* at 694; *Kalifair* at [18]; *Brown v AEP Belgium SA* [2004] VSC 255; *Vaughan v Dawson* [2008] NSWCA 169 at [17]; *Beecham Group Limited v Bristol Laboratories Pty Limited* (1968) 118 CLR 618; *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57; [2006] HCA 46;
  - (vii) the applicant must demonstrate a proper basis for a stay which will be fair as between the respective interests of the parties: *Alexander* at 694; *Adeels Palace v Mubarak* [2009] NSWCA 130 at [5]; *Bar Association of New South Wales v Stevens* [2003] NSWCA 95 at [83];
  - (viii) a relevant consideration in the exercise of the discretion is whether an appeal, if successful, will be rendered nugatory if a stay is not granted: *TCN Channel 9 Pty Limited v Antoniadis [No. 2]* (1999) 48 NSWLR 381; *Newcrest Mining v Industrial Relations Commission* [2005] NSWCA 91; *Maund v Racing Victoria Limited and anor.* [2015] VSCA 276 at [33].

## **SUBMISSIONS OF THE PARTIES**

### **Submissions of the Appellant**

14. The Appellant submitted that it was appropriate to grant a stay in circumstances where the allegations which formed the basis of the application before the Local Court were uncorroborated, untested, and would be defended. He also pointed

out that his income was derived solely from training greyhounds, and that his weekly overheads were approximately \$2,000.00. In these circumstances he submitted that if a stay were not granted he would be subject to a significant and ongoing financial penalty.

### **Submissions of the Respondent**

15. The Respondent did not submit that there was not a serious question to be tried. It was the Respondent's position that the balance of convenience favoured the refusal of a stay. In support of that position, it was submitted that:

- (i) the allegations against the Appellant "*involve a minor and are, by virtue of that fact, serious*";
- (ii) the Respondent had a duty to protect, and a statutory duty to maintain, public confidence in the greyhound racing industry;
- (iii) the Appellant's continued involvement in the industry at a time when proceedings were pending against him had the clear capacity to erode public confidence; and
- (iv) the financial hardship that the Appellant would suffer was not sufficient to weigh the balance of convenience in his favour.

16. I have already noted that the proposition in (i) above is unsupported by any evidence.

17. In advancing these submissions, the Respondent relied upon two previous determinations of the Tribunal which I have discussed further below.

### **CONSIDERATION**

#### **Is there a serious question to be tried?**

18. There is undoubtedly a serious question to be tried. The Respondent made no submission to the contrary. Simply put, the Respondent's decision is based upon an unproven allegation which the Appellant has made clear will be defended. That, without more, establishes the existence of a serious question to be tried.

## **Balance of convenience**

19. The Respondent relied upon two prior determinations of the Authority in support of its position.
  
20. The first was a decision in *Wright* which was handed down on 11 October 2022. In that case, the Appellant had been committed for trial to the Supreme Court of the Australian Capital Territory in respect of serious criminal charges of (inter alia) drug trafficking, some of which carried maximum terms of imprisonment of 25 years. In those circumstances, the Tribunal dismissed an appeal by the Appellant against an order for his interim suspension, such order having been based upon the charges against him.
  
21. Leaving aside statements made by the Tribunal regarding the necessity to protect the integrity of the greyhound industry, the decision in *Wright* provides little assistance on the present application for three reasons.
  
22. The first, is that the Appellant in that case faced serious allegations which amounted to indictable offences, the maximum penalties for which were substantial terms of full time imprisonment. There is no suggestion that the allegations made in support of an order against the present Appellant under the CDVA are to underpin any criminal charge at all, although I accept that some analogy with criminal proceedings can be drawn.
  
23. Secondly, the Appellant in *Wright* had been committed to stand trial. That means that there must have been a committal process in which some assessment of the evidence had been undertaken, and a view reached that it was sufficient to allow a properly instructed jury to return verdicts of guilty. In the present case, there is no indication of the nature and extent of the evidence against the Applicant at all, much less evidence of an assessment of it.
  
24. Thirdly, as a consequence of the second matter, the Tribunal in *Wright* had the benefit of at least being appraised of the nature of the allegations which were made, and the level of criminality in which that Applicant was said to have engaged. I do not have that benefit.

25. The second decision to which I was referred was that of *Smyth* which was handed down on 27 February 2020. As I read that decision, the factual background was far removed from that of the present case, although I acknowledge that the Tribunal made a number of observations regarding the integrity of the greyhound industry being of paramount importance in cases involving the imposition of interim suspensions. I respectfully agree with those observations, which have some force in the circumstances of the present case.
26. There is a further factor which looms large in this case but which has not been addressed by the parties. It arises from the fact that at present, there are concurrent civil and quasi-criminal proceedings on foot which arise out of the same allegations.
27. There is an established line of authority in support of the proposition that in such circumstances, a defendant may be granted a stay of the civil proceedings so as to avoid the risk of injustice, and any impingement upon his or her right to a fair trial: see *McMahon v Gould* (2002) 7 ACLR 202; *Yuill v Spedley Securities Limited (In liq.)* (1992) ACSR 272; *Niven v SS* [2006] NSWCA 347. Although the Appellant does not presently face criminal proceedings there is a clear analogy to be drawn between proceedings alleging the commission of a criminal offence, and proceedings brought under the CDVA. The latter. Might reasonably be described as quasi-criminal.
28. The authorities do not go so far as to establish a fixed principle that a person in the position of the Appellant, facing concurrent proceedings, is entitled to a stay as of right. Whether a stay is granted always remains a matter of discretion. However, the Appellant could not, consistent with those authorities I have cited, be placed in the position of having to say or do anything in defence of these proceedings which could give rise to a risk of injustice in the proceedings under the CDVA. At this stage that position has not arisen. Whether it does so, remains to be seen. If it did arise, the Appellant's position on an application for a stay would conceivably be stronger.
29. The issue of where the balance of convenience lies in this case is a difficult one to resolve. No one factor is determinative. Whilst I accept that the Appellant

will suffer some financial hardship as a consequence of the imposition of a stay, I have come to the view that such a factor is outweighed by the necessity to preserve the integrity of the greyhound racing industry. I have also taken into account that the proceedings under the CDVA are again before the Local Court in less than 4 weeks. It may be that there is some clarification of the position at that time. It is also expected that in the intervening period, the Respondent will pursue its investigation with appropriate diligence.

30. It is for those reasons that I have determined that a stay should not be granted. However, I should make it clear that it is open to the Appellant to renew his application for a stay at any time. I am particularly mindful of the delays which are currently experienced in the Local Court, and which could result in the proceedings under the CDVA being adjourned for a long period of time. If that proved to be the case, the present circumstances would be materially changed.

31. In these circumstances I consider it appropriate that the Respondent be directed to provide an update to the Tribunal, by 18 January 2024, as to the status of:

- (i) the Local Court proceedings; and
- (ii) the ongoing enquiry which is being conducted by the Respondent.

32. In doing so, the Respondent is at liberty to file and serve any evidence which may come into its possession regarding the allegations in CDVA proceedings.

33. Following that, I will hear the parties as to what course the matter should take from that point.

**DATED: 22 December 2023**

**THE HONOURABLE G J BELLEW SC**