IN THE RACING APPEALS TRIBUNAL

TREVOR RICE
Appellant

GREYHOUND WELFARE AND INTEGRITY COMMISSION
Respondent

APPLICATION PURSUANT TO CLAUSE 14 OF
THE RACING APPEALS TRIBUNAL REGULATION (NSW) 2015

REASONS FOR DETERMINATION

INTRODUCTION

1. On 7 February 2024, the Chief Commissioner (the decision-maker) of the Greyhound Welfare and Integrity Commission (the Respondent) issued a determination in respect of a number of charges brought against Trevor Rice (the Appellant) pursuant to the *Greyhound Racing Rules* (the Rules).

2. In summary, the Appellant was found guilty of:

    (i) 9 offences[1] contrary to r 86(o), and 1 offence contrary to r 106(3)(b) of the Rules, collectively referred to in the determination as the "notification offences";

    (ii) 4 offences[2] contrary to r 86(x) of the Rules, collectively referred to in the determination as the "false statement offences"; and

    (iii) 4 offences[3] contrary to r 86(o) of the Rules, collectively referred to in the determination as the "welfare offences".

[1] Charges 1 to 9; charge 18.
[2] Charges 10 to 13.
[3] Charges 14 to 17.

3. The following penalties were imposed on the Appellant:

    (i) as to each of the notification offences, a fine of $250.00;
    (ii) as to each of the false statement offences, a disqualification of 4 months;
    (iii) as to each of the welfare offences, a disqualification for life.

4. By a Notice dated 11 February 2024, the Appellant seeks to appeal against the Respondent's determination. The Notice of Appeal makes specific reference to the imposition of the lifetime disqualification for the welfare offences, which may suggest that the appeal is confined to the penalty imposed for those matters. However, the Notice also makes reference to the entirety of the remaining offences of which the Appellant was found guilty, which tends to suggest that the proposed appeal is against all of the Respondent's determinations. I will, for present purposes, assume the latter. What is apparent from the Notice, is that the Appellant challenges some or all of the findings of guilt made against him, primarily on the basis that the decision-maker applied an incorrect standard of proof when determining the matter, namely the criminal standard of proof beyond reasonable doubt, as opposed to the civil standard of proof on the balance of probabilities.

5. On 26 February 2024, having filed the Notice of Appeal, the Appellant filed an application for a stay pursuant to cl 14 of the *Racing Appeals Tribunal Regulation 2015* (NSW) (the Regulation). Upon receipt of that Application I made orders requiring the filing of relevant material by both parties.

6. In a document headed "Submission in reply on behalf of the Appellant" which was received by the Appeals Secretary following receipt of the Respondent's submissions, the Appellant raised a number of additional matters. In particular, he appears to agitate a complaint in the nature of an assertion that he was denied natural justice and procedural fairness by the decision-maker as a consequence of not being permitted to call relevant witnesses. It may also be open to infer that a further ground on which the Appellant relies in support of his appeal is that the

findings of the decision-maker were not reasonably open on the evidence. In this regard, the Appellant has made various references to evidence given before the decision-maker by his daughter, Ashley Rice. The Appellant's position, generally speaking, appears to be that such evidence should not have been accepted by the decision-maker. It follows that, as matters presently stand, the ambit of the proposed appeal, and the grounds on which it is to be based, are somewhat unclear.

7. That lack of clarity was not assisted by further submissions which were received by the Appellant on 2 April 2024. As best as I am able to ascertain from those submissions, they appear to be in the nature of an extension of those referred to in [6] above, in which the Appellant seeks to raise further matters regarding the evidence given before the decision-maker. I have construed them as amounting to a submission that the decision-maker's determination was not open on the evidence.

8. It is the application for a stay which is the subject of this determination. Whilst the Appellant sought an oral hearing of the application, I am satisfied that it can be determined, with complete fairness to both parties, on the basis of the written material with which I have been provided, notwithstanding the various uncertainties arising from the material filed by the Appellant.

9. It is noted that an application for a stay is dependent upon an appeal being on foot. The Notice of Appeal was filed by the Appellant within the time prescribed by cl 10 of the Regulation, and the Regulation does not impose any separate limitation period in respect of the filing of an application for a stay. I am therefore satisfied that I have the jurisdiction to determine the present application.

THE DECISION-MAKER'S DETERMINATION

10. It is apparent from the submissions of counsel for the Respondent that the proceedings against the Appellant have a lengthy history. It is not necessary, for present purposes, to recount that history, other than to note the fact that although the various charges against the Appellant were determined to finality on 7

February 2024, the Appellant has in fact been the subject of an interim disqualification since 11 February 2022, a period of more than 2 years. Similarly, it is not necessary, for the purposes of determining the present application, to address the circumstances of the offending of which the Appellant was found guilty, other than to make the obvious observation that the welfare offences are of the utmost seriousness.

11. Given the Appellant's complaint that the incorrect standard of proof was applied by the decision-maker, it is relevant that the determination (which extends over some 26 pages) includes the following:[4]

> *26. In Australia, the common law recognises two standards of proof. The civil standard requires that an allegation must be proven "on the balance of probabilities". The criminal standard of proof requires an allegation to be proven "beyond a reasonable doubt".*
> *27. The Commission has chosen to proceed with charges under its regulatory regime, instead of commencing criminal proceedings against Mr Rice. As the regulator conducting disciplinary proceedings against a participant, the appropriate standard of proof required is the civil standard, meaning that the charges alleged must be proven "on the balance of probabilities", and requires a decision maker to be satisfied that the evidence shows that it is more probable than not, that the offence was committed. Having said that, the strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what is being sought to be proven.*
> *28. I have had significant regard to the principles articulated in Briginshaw. As a decision maker in a matter where serious and grave allegations have been made, I must have an actual persuasion that the allegation has been established. In this matter, there are several critical pieces of evidence which need to be considered in determining whether the burden of proof against Mr Rice has been established.*

12. The decision-maker's reference to *Briginshaw* was a reference to the decision of the High Court of Australia in *Briginshaw v Briginshaw*.[5] That decision is authority for the general proposition that where a case involves the making of a serious allegation, and where the resolution of that allegation may result in significant consequences for the person against whom it is made, the relevant decision-maker must be reasonably satisfied that the allegation is made out. In determining whether such a state of reasonable satisfaction has been reached,

[4] At [27] – [30].
[5] (1938) 60 CLR 336; [1938] HCA 34.

the decision-maker must scrutinise the evidence closely, and must bear in mind that the case brought cannot be established by inexact proof, or the drawing of indirect inferences.[6]

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

13. The Appellant's position on the stay has been outlined above.

Submissions of the Respondent

14. Counsel for the Respondent made reference to the principles applying to an application of this nature and ultimately conceded[7] that there is a serious question to be tried. As I understood it, that concession was made on the basis of evidence given before the decision maker by the Appellant and his daughter. That said, it was counsel's submission that such question, although serious, was also "relatively weak".

15. However, counsel submitted that even though a serious question had been made out, the Appellant had failed to adduce any evidence of any prejudice he would suffer if a stay were not granted, and had therefore failed to establish that the balance of convenience fell in his favour. In this regard, counsel pointed to the fact that the Appellant had been the subject of an interim disqualification since 2022, that he had not sought a stay of that determination, and that he had not pointed to any prejudice to which he had been subject in that intervening 2 year period which might support a conclusion that the balance of convenience favoured a stay. It was submitted that in all of these circumstances, the application for a stay should be refused.

CONSIDERATION

16. The principles which govern an application of this nature have been set out at length in previous determinations.[8] In those circumstances, I do not propose to repeat them, but I record the fact that they have been applied in the present case.

[6] See *Briginshaw* at 360-362 per Dixon J.
[7] At [21].
[8] See for example *Marshall v Greyhound Welfare and Integrity Commission* 21 December 2023 at [16].

17. Put simply, those principles require the Appellant to establish that:

    (i) there is a serious question to be tried; and

    (ii) the balance of convenience favours the grant of a stay.

18. As I have noted, counsel for the Respondent conceded that, bearing in mind some of the evidence given before the decision-maker by the Appellant and his daughter, the first of those requirements had been made out, albeit it to a weak level.

19. Leaving aside those matters which formed the basis of counsel's concession, and whilst there is little evidence to suggest that the decision-maker reached his determination by applying the criminal standard of proof, there may be a serious question to be tried on other bases relating to the manner in which the decision-maker approached that general question.

20. To begin with, it is open to conclude from those passages of the decision extracted above[9] that the decision-maker was properly mindful of the application of the decision in *Briginshaw* to serious allegations of impropriety such as those made in connection with the welfare offences. That said, he appears to have taken the view that the decision in *Briginshaw* required him to form what he described as *"an actual persuasion that the allegation has been established"* in order to find the Appellant guilty.

21. In *Briginshaw,* Dixon J observed that when the law requires proof of ***any*** fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. His Honour concluded that it is sufficient that the affirmative of an allegation is made out to the *reasonable satisfaction* of the tribunal.

22. His Honour then observed that reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequences of the facts to be proved, and that the seriousness of the allegation made, the inherent

[9] At [10].

unlikelihood of an occurrence of a given description, and the gravity of the consequences flowing from a particular finding, are all considerations which will affect the answer to the question whether the issue in question has been proved to the reasonable satisfaction of the tribunal.[10]

23. Whilst there is nothing to suggest that the decision-maker applied the *criminal* standard of proof as the Appellant suggests it may nevertheless be arguable that in expressing the standard of proof in the terms that he did, the decision-maker erred.

24. Further, when determining the welfare offences, the decision-maker said:

> *126 Having regard to the seriousness of the allegation and the principles of the Briginshaw test, I am satisfied on the balance of probabilities that the death of the greyhounds .... occurred at the hands of [the Appellant].*

25. This passage may suggest that the decision-maker used the *Briginshaw* test, and the civil standard of proof on the balance of probabilities, interchangeably. On its face, and leaving aside the fact that for the reasons previously stated the decision-maker may have misstated the *Briginshaw* test, it may be arguable that the terms in which this passage has been phrased have a tendency to conflate the *Briginshaw* test with proof on the balance of probabilities, such that the decision-maker erred.

26. Finally, whilst the welfare offences certainly attracted the application of the *Briginshaw* principle, it is arguable that the notification offences and the false statement offences did not. On a fair reading of the whole of the determination, it may be difficult to ascertain what standard of proof was applied to those other 2 categories of matters.

[10] At 362.

27. I am thus satisfied that in addition to the serious question identified by counsel for the Respondent, a serious question may also arise from one or other of the matters to which I have referred.

28. However, the Appellant has not adduced any evidence at all which goes to the issue of the balance of convenience generally, or the issue of prejudice in particular. For the reasons advanced by counsel for the Respondent, the absence of such evidence is telling. The Appellant has been the subject of an interim disqualification for more than 2 years. He did not seek a stay of that decision, and he has not, on this application, adduced any evidence at all of any prejudice he is said to have suffered as a consequence of being the subject of an interim suspension for that period.

29. It follows that in addressing the balance of convenience, and in the absence of any evidence adduced by the Appellant, I must ascribe primacy to the fundamental necessity to protect the integrity of, and maintain public confidence in, the greyhound racing industry.

30. In all of these circumstances, I am satisfied that the balance of convenience falls firmly against a stay being granted.

31. For all of these reasons, the application for a stay should be refused.

THE CONDUCT OF THE APPEAL

32. On the assumption that, however the appeal is framed, the Appellant proposes to challenge the findings made in relation to the welfare allegations, I propose to direct that the hearing of the appeal proceed **in person**, and not virtually. That course is warranted by the seriousness of those allegations.

33. It will be apparent from the observations I have made that some clarity needs to be brought to bear upon the Appellant's case. To begin with, the Appellant has to make it clear whether he is appealing against all, or only some, of the findings of guilt made against him. The grounds of appeal on which he relies must also be clarified.

34. Further, the appeal will proceed as a hearing *de novo*, in circumstances where it apparent that credit issues are likely to bear upon any factual determinations I am required to make. I invite the Respondent in those circumstances to consider how it proposes to conduct its case on the appeal and, in particular, whether I will be asked to determine the matter on the basis of the transcript of the evidence before the decision-maker, or whether oral evidence will be called from one or more witnesses.

35. For the purposes of discussing all of those issues, and to ensure that the matter proceeds from this point in an orderly way, I propose to convene a directions hearing in the near future, about which the parties will be advised.

ORDERS

36. I make the following orders:

1. The application for a stay is refused.
2. The final hearing of the appeal is to proceed in person.
3. The matter will be listed for a directions hearing at a time and date to be advised.

DATED: 4 April 2024

THE HONOURABLE G J BELLEW SC