

SOUTH AUSTRALIAN RACING APPEALS TRIBUNAL

In the matter of Mr Niki O'Shea and Ms Ashton Downing

Appeal No 14 of 2018

Stay of Proceedings Determination:

The Appellants Mr Niki O'Shea and Ms Ashton Downing are licensed trainers, training in partnership.

The Stewards conducted an Inquiry commencing on 3 May 2018 into the circumstances surrounding the race horses Social Set and Allez Tara, both of which were engaged to race at Strathalbyn Race Course on 2 May 2018.

During May, June and July the Inquiry continued. On 12 July 2018 the Stewards laid several charges against both Appellants under the Australian Rules of Racing. The Appellants were notified of the charges and did not enter a plea.

On 19 July 2018 the Stewards reached a finding of guilt against each Appellant and after consideration, imposed penalties for the breaches of the Rules, such penalties including extended periods of disqualification (Appellant O'Shea – five years – appellant Downing – two years).

Subsequently, the Appellants lodged an appeal with this Tribunal against both the convictions and the penalties imposed.

The penalties of disqualification were to commence on Thursday, 26 July 2018.

The Appellants also applied to this Tribunal for a stay of proceedings pending hearing and determination of the Appeal. The Appellants requested that this Tribunal exercise its discretion pursuant to Rule 13.5 of the Racing Appeals Tribunal Constitution.

The Stewards opposed the granting of a stay.

At the hearing of the application for a stay, each of the Appellants was represented by legal counsel. Written submissions were filed on behalf of the appellants.

In opposition to the application, a detailed submission was filed on behalf of the Stewards.

The Appellants conceded that to succeed on the application for a stay, they must show that:

- The appeal raises serious issues for determination; and
- That the Appellant will suffer prejudice that cannot be redressed by a successful appeal if the stay is not granted; and

- That the balance of convenience, that is the weighing of the respective prejudice is to be suffered by the parties, favours the grant of a stay.

In support of their submission, the Appellants addressed the matters to be raised on the appeal which they argued demonstrated serious issues for determination.

Primarily those issues were:

- A challenge to the right of the Stewards to be on the premises at which the observation and evidence gathering relating to the offences was carried out. The Appellants will argue the Stewards trespassed and in so doing rendered all observations and evidence inadmissible and further that lines of inquiry based thereon will also be found to be inadmissible.
- That in the event that the observations and evidence gathered was admissible, nevertheless it did not establish the occurrence of the breaches of the Rules to the required degree of reasonable satisfaction; and
- In the case of the Appellant Downing, that the offences which might be considered established by the evidence may not give rise to a penalty of disqualification.

The Stewards opposed the application for a stay with a detailed and thorough submission.

The Stewards submission contended that the Appellants had failed to establish that the appeal raised serious issues for determination, pressing that the evidence against the Appellants was overwhelming and referring to certain admissions made by the Appellant O'Shea.

At this stage of the proceedings, the Tribunal's knowledge of the evidence and the arguments is preliminary. However, I am satisfied that the Appellants have established that the appeal will raise serious issues for determination. No more can be said at this stage, and the appeal may ultimately fail, but on the face of the argument put forward by the Appellants at this stage, it cannot be said that there is not an arguable defence.

The Appellants argued that the commencement of the disqualifications now would create extreme hardship. The Appellants would be obliged to divest themselves of their horses, and cease communications with all owners and staff. Their business would come to a halt. It would remain halted for the period until the Appeal is heard and determined. If the appeal is successful the Appellants would then face attempting to re-open a closed business. That position would be devastating for the Appellants.

The Stewards pressed that if a stay was granted, significant harm would occur to the image of racing. The Appellants would seem to be continuing to participate in the industry after having committed serious offences. Public and participants' confidence in the integrity of the industry would be shaken.

Although with some misgiving, I take the view that the prejudice which would be suffered by the Appellants if the stay is not granted would be of such magnitude and cause such lasting harm that the balance of convenience favours the grant of the stay.

In part I reached that view because it is now some 10 weeks since the events occurred and the Appellants have continued to participate in the racing industry during that period. It is likely that the appeal will be heard and determined within a further six to ten weeks which, whilst a significant period of time is not inordinately long.

Further, I am fortified by the fact that the Stewards have been exercising extreme vigilance in oversight of the Appellants' racing operations since these events came to light. Such vigilance renders the occurrence of further unacceptable events extremely unlikely.

While the image of the Racing industry may suffer some harm by the continual involvement of the Appellants, it would also be harmed if the Appellants were forced out of their livelihoods only to be later exonerated.

Pursuant to Rule 13.5 of the Racing Appeals Tribunal Constitution, I make an order that the operation of the Stewards' decision of 19 July 2018 be suspended pending the hearing and determination of the Appellants' appeal.

M J King
Deputy President
25 July 18