**RACING APPEAL PANEL OF NEW SOUTH WALES**

**APPLICATION FOR STAY BY KYM HEALY**

**REASONS FOR DECISION – 19 JUNE 2018**

Mr R Beasley SC, Principal Member

1. In a previous decision relating to the appellant's stay application, I indicated I was not presently satisfied that a stay should be granted. However, as I had only received submissions from the Stewards, I granted leave to the appellant to file his own submissions, and any evidence he wished to rely on before determining the matter further.

2. Since then I have been supplied with a letter dated 8 June 2018 from Damien O'Dea, the solicitor for the appellant, addressed to Mr M Van Gestel, the Chairman of Stewards. In that letter, Mr O'Dea asserts that the appellant was denied procedural fairness at a Stewards' Inquiry, at which he pleaded guilty to a charge of breach of AR 175(l) of the Australian Rules of Racing ('the Rules'), relating to an agreement he made with another person to stomach tube the horse 'Aussie Jack' on a day it was engaged to race. At the same inquiry, the Stewards found him guilty of breaches of AR 178E(1) and 178AB(1)(a), relating to the administration of medication and the injection of a substance on the day the horse was engaged to race.

3. Mr O'Dea has referred me to the High Court in the case of; ***Heatley v Tasmanian Racing*** **and Gaming Commission -** [1977] HCA 39; (1977) 137 CLR 487**.** He also raised the following matters as relevant in relation to the conduct of the Stewards' Inquiry:

a. The appellant was not advised how the Stewards obtained "information" against him
b. He has been racing since 16th March without incident, was in Alice Springs for 1 month and probably had 30 races for that month
c. He has been subjected to at least 10 swabs and nothing has come back

d. He will incur a huge loss of income if suspended from racing - for example, he will lose $20,000 a month in training fees, and his racing income is $30,000 - $40,000 since March16th.
e. He was not advised of being able to have representation at the Stewards' Inquiry, and he had to fly to Sydney to go before the panel of Stewards and he was only told to take his stable hand Shane Stuttley with him. This is contrary to the rulings made in "Heatley"
f. He was not given details of charges beforehand
g. He was not able to call a witness
h. He appeared in person.
i. He has no other income source, he pays $1500 - $2000 a week in mortgage fees plus keeping his horses. Mr Healy has 4 young daughters, a wife and mother and father dependent upon his income. This suspension would probably see him lose his $1million property at Echuca.
j. Mr Healy has not been given time to seek representation and review this matter properly.

4. Only some of these matters need to be responded to. All are addressed in a submission in reply provided by the Stewards.

5. First, the appellant was sufficiently advised by Stewards concerning why they were conducting an inquiry. See [2] to [4] of the Stewards' reply submissions. In stating this, I am not suggesting that this was necessarily a requirement of procedural fairness. I am only finding that factually he was not left in any real doubt as to why an inquiry was being conducted.

6. I accept the appellant was not told he could not call a witness, had he wished to.

7. It is a matter for the appellant as to whether he sought the opportunity to be legally represented. There is no evidence before me that the fact that he was not represented caused him any particular disadvantage, or that it caused him to plead guilty to a breach of the rule when a defence was available.

8. I fully accept that the penalty of disqualification imposed on the appellant will cause him significant hardship. Disqualification of licensed persons almost always causes financial and other hardship. While I certainly give consideration to that matter, that alone does not satisfy me that the appellant will suffer a "substantial injustice" if a stay is not granted.

9. The facts relating to this appeal are very different to those in *Heatley*. In *Heatley*, the appellant was warned off without any form of hearing at all. That was the crucial denial of procedural fairness that the majority in the High Court relied up in allowing the appeal.

10. I remain unsatisfied that a stay should be granted. I am not presently satisfied that the appellant has been deprived of procedural fairness. I am not sufficiently informed as to what his defence is to the breach of the rule he pleaded guilty to, or to any defence he might have to the breaches he was found guilty of. Considerations of those matters are relevant to a state of satisfaction of "substantial injustice", at least in circumstances of such serious charges as the breach of the rule the appellant pleaded guilty to, and the others he was found to be in breach of.

11. A stay is refused. This matter should be listed for hearing as soon as practicable. I should say however that, within reason, I do not consider a finding that the requirement for a stay is not satisfied at a particular time forever shuts out an appellant from another application. There will be limits within reason, but if between now and the date of any appeal in this matter, the appellant is able to produce evidence that satisfies me that he will suffer a "substantial injustice" if a stay is not granted, it is open to him to renew his application or make a fresh one. For now however I remain short of being satisfied that a substantial injustice will be suffered by the appellant (as distinct from the hardship he will suffer in any event from the penalty imposed) if a stay is not granted.

12. The only order I need make is that the stay application is refused. The appeal should now be listed for hearing.

**19 June 2018**