

RACING APPEAL PANEL OF NSW

IN THE MATTER OF THE APPEAL OF RICKY ROHDE

Appeal Panel: **Mr R Beasley SC – Principal Member**
 Mr J Fletcher
 Mr K Langby

Appearances: **Racing NSW: Mr M Van Gestel, Chairman of Stewards**
 Appellant: Mr P Grant, Solicitor

Date of Hearing and **11 May 2017**

Orders:

Date of Reasons **21 June 2017**

REASONS FOR DECISION

Introduction

1. On 3 April 2017, following a Steward’s Inquiry which included evidence on 9 March 2017, licensed trainer Ricky Rohde was charged by the Northern Rivers Racing Stewards with a breach AR175(a). That rule is in the following terms:

“AR175(a) The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

(a) Any person, who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing”.

2. The particulars of the charge were as follows:

“The details of the charge are of improper or/and dishonourable actions in connection with racing being that after being advised by bloodstock agent, Ms Danielle Hamlin via text message Thursday 10 November 2016 that the horse Dreadlock had been sold to a third party you did:

- (a) *After \$3,600 was deposited to your designated bank account by Mr Doug Alderman on Friday 11 November 2016 for a 10% share in the racehorse Dreadlock and confirmed with you by Mr Alderman, fail to advise Mr Alderman that Dreadlock had been sold to a third party and was no longer available.*
 - (b) *In the days following Friday 11 November 2016, inform Mr Alderman you would cease the acquisition of Dreadlock based on a veterinary issue with its knees when you knew the gelding had been sold to a third party and was no longer available.*
 - (c) *In the days following Friday 11 November 2016, retain \$3600 that Mr Alderman paid you for a 10% share in Dreadlock with the intention of using it in a manner to which you had not received it, namely to purchase another racehorse on his behalf.*
 - (d) *In the days following Friday 11 November 2016, inform Mr Alderman that you would return \$3,600 to him when your \$20,000 deposit was returned by the vendors of Dreadlock knowing that you had not made any payment to that party.*
 - (e) *Fail to return \$3,600 to Mr Alderman which he deposited in your designated bank account for a 10% share in Dreadlock which you failed to acquire”.*
3. On the same day Mr Rohde was charged with a AR175(p). That rule is in the following terms:

*“**AR175(p)** The Principal Racing Authority (or the stewards exercising powers delegated to them) may penalise;*

(p) Any person who fails or refuses to comply with any order, direction or requirement of the Stewards or any official”.

4. Particulars of this charge were as follows:

“The details of the charge being you did fail to provide a statement of your bank account for a period of between Friday 11 November 2016 and the accounts closure when directed by Northern Rivers Chief Steward Mr Mark Holloway to do

so verbally during an official Stewards inquiry on Thursday 9 March 2017 and via email on Thursday 9 March 2017 and Friday 24 March 2017”.

5. Mr Rohde pleaded guilty to both charges. In relation to the AR175(a) offence he was penalised by a way of 4-month disqualification. For the AR175(p) offence he received a penalty of 1 month disqualification. The penalties are cumulative, hence the total penalty imposed was a 5-month disqualification.
6. Mr Rohde has appealed against the severity of penalty imposed for both breaches of the rules. He was represented on Appeal by Mr Grant (Solicitor). The Stewards were represented by Mr Van Gestel, the Chairman of Stewards. The Panel is grateful for the assistance provided by both representatives in this appeal.
7. No oral evidence was given on the appeal. The parties were content to rely on the exhibits and the transcript of the Stewards' Inquiry which became Exhibit A on the appeal.
8. The underlining facts are largely not in dispute. They are conveniently contained in exhibit 1 of the Stewards' Inquiry which is an email from Mr Alderman to Mr Holloway (Chief of Northern Rivers Stewards) dated 13 December 2016. In that email Mr Alderman advised the Stewards of matters that make up the particulars of the AR175(a) charge, and do not need to be repeated here. The only disagreement from the appellant was that he denies that he told Mr Alderman he had paid a \$20,000 deposit for the horse, but he agrees he said it was a lesser sum: see T52 L2520, T52 L2530. As conceded by the appellant, he has still not repaid the money to Mr Alderman.

RNSW's Submissions

9. Dealing firstly with the AR175(a) charge, Mr Van Gestel submitted it was objectively serious, and that the appellant's conduct reflected badly on the integrity and the image of racing. Mr Alderman was a person attempting to purchase a share in a racehorse for the first time, but was left with no share in a horse, and has also not had his \$3,600 returned. He was misled by the appellant on several matters. The Panel agrees the breach of this rule is objectively serious for the reasons stated.

10. Mr Van Gestel submitted that there were no directly analogous prior appeal matters determined by the Stewards or the Panel. He submitted that the closest was perhaps the matter where Mr Prior and Mr Calendar pleaded guilty to a breach of AR175(a) relating to dishonestly keeping money said to be the real purchase price of a racehorse.
11. In relation to the AR175(p) offence, Mr Van Gestel submitted this was a serious offence as it goes to the heart of the Stewards' ability to properly police racing, and to investigate compliance with the rules. In this case the direction given was directly related to the Stewards' attempt to determine whether the evidence being given in their inquiry was truthful and accurate.

Appellant's Submissions

12. Mr Grant's first concern was in relation to the reference by the Northern Rivers Stewards to the RAT decision concerning trainer *Darren Smith* (RAT, 15/8/15) when imposing the penalty on Mr Rohde for the AR175(a) offence. Mr Grant was correct when he submitted that the offending by Mr Smith (who injected the prohibited substance cobalt into his horses in large amounts) was far more serious than the appellant's conduct. Fairly read though, the Panel considers that the Northern Rivers Stewards were referring to Smith in terms of the sentencing principles discussed in it, not because there was any proper analogy between the facts of this appeal and that of Smith. In any event, this is a re-hearing, and the Panel must reach its own views on the appropriate penalty.
13. As explained by the Racing Appeals Tribunal in *Smith*, and by the Panel (see for example the recent appeal of Noel Callow, 9/5/17), when imposing a penalty the Panel must keep at the forefront of its determination the requirement for the penalty to protect and promote the interests and integrity of racing. Disciplinary proceedings such as these before an administrative body are viewed as seeking protection of the industry. They are not foremost a means of punishment. While clearly these hearings are not criminal the Panel is of the view it should also take into account the principal of deterrence, as well as the matters of aggravation and mitigation submitted to it, including the appellant's personal circumstances.
14. In penalising Mr Rohde for the AR175(a) offence, Mr Grant asked the Panel to take into account that the appellant had recently suffered a serious injury, which has prevented him from riding. He is able to train (he recently had a winner), but

- his sole source of income is from racing. A disqualification clearly would have dire financial consequences for him. Without going into unnecessary detail he is unable to repay Mr Alderman at the moment because he has no money. He says his wife took money from his bank account. While he has no current means of paying, he will in the future have ongoing financial obligation to his children. He offered to pay \$500 to Mr Alderman, but now can't. He has also been dealing with a serious mental health issue, a matter the Stewards have been advised on.
15. In relation to the AR175(a) charge Mr Grant also submitted that one important consideration was the appellant's clean record. He was also critical that the Northern Rivers Stewards, while indicating that they took into the account the plea of guilty, did not in an express way show how this was taken into account in arriving at the 4-month disqualification. The Panel considers that a fair reading of the Stewards' decision indicates that a discount was given for the plea, although it is true that it is not clear to what extent.
 16. In our view, the breach of AR175(a) here is serious. It does reflect poorly on the image and integrity of racing. The penalty imposed must seek to protect that image and integrity. Even taking into account all personal matters and the fact that this is a first offence, the Panel does not consider that a penalty of a fine or suspension is appropriate. We consider the penalty must be disqualification. We would have imposed a disqualification of 5 months without any discount for the early plea. With a discount, without being precisely mathematical, we would reduce the penalty to a 4-month disqualification – the same that the Stewards imposed.
 17. In relation to the AR175(p) breach, we again agree with Mr Van Gestel that this is a relatively serious breach of that rule. There was no explanation given for it. A fine is not appropriate. The Stewards were seeking evidence directly related to the serious issue of the AR175(a) matter. We agree the penalty should be a disqualification. Taking all the matters into account we have imposed a penalty of a 4 week disqualification
 18. Mr Grant submits the penalties for the AR175(a) and AR175(p) breaches should be served concurrently: see AR196(3).
 19. The Panel does not entirely agree. To do so would be to effectively not penalise Mr Rohde at all for the AR175(p) breach. Further, as indicated above, we agree this is a serious breach of the rule. Had Mr Rohde not pleaded guilty to both

offences the Panel would not have made any part of the penalty for AR175(p) concurrent with the AR175(a) penalty. However, given his plea, and that the offending arises from an investigation into the same general facts, we have determined to make half the AR175(p) disqualification concurrent with the AR175(a) disqualification.

20. The orders of the Panel are:

1. Appeal against penalty imposed for the breach of AR175(a) is dismissed;
2. Penalty imposed for the breach of AR175(a) of a 4-month disqualification confirmed;
3. Appeal in relation to penalty imposed for the breach of AR175(p) is dismissed;
4. Penalty imposed of 4-week disqualification for the breach of AR175(p) confirmed;
5. 2-weeks of the disqualification for the breach of AR175(p) is be served concurrently with the 4-month disqualification from AR175(a), leaving a total penalty of disqualification of 4 months and 2 weeks;
6. Disqualification to commence on 18 May 2017 and to expire on 2 October 2017, at which time the appellant may re-apply for this license;
7. Appeal deposit forfeited.