

APPEAL PANEL OF RACING NEW SOUTH WALES

THE APPEAL OF TIM MARTIN

Appeal Panel: **Mr R. Beasley SC – Principal Member; Mr J. Murphy; Mr L. Vellis**

Representatives: **Appellant – Mr H. Esplin, Solicitor**
Racing NSW – Mr Marc Van Gestel, Chairman of Stewards

Date of Hearing: **26 September 2019**

Date of Reasons and Orders: **16 October 2019**

REASONS FOR DECISION

Introduction

1. On 28 May 2019, Racing NSW Stewards commenced an Inquiry into the purchase by licenced trainer Mr Tim Martin of a 2015 High Chaparral x Eileen Filly from New Zealand Bloodstock Pty Ltd in January 2017 for NZ\$150,000. The Stewards Inquiry took place following a complaint from Mr Allan Chrara.
2. On 9 August 2019, Mr Martin pleaded guilty to a breach of AR229(1)(a) of the Australian Rules of Racing (“the Rules”) concerning the purchase of that filly. That rule is in the following terms:

AR229 Corruption, dishonesty and misleading behaviour

- (1) A person must not:
 - (a) engage in any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.
3. The particulars of the charge, which were accepted by Mr Martin, were as follows:

“...that you licensed trainer Mr Tim Martin:

1. purchased the 2015 High Chaparral x Eileen Filly (“the filly”) from New Zealand Bloodstock Pty Ltd in January 2017 for NZ\$150,000;
2. sold 70% of the filly for AU\$114,434.50 (as detailed in Schedule 1);
3. having received the amount of \$93,472 (as detailed in Schedule 1) in payment for 55% of the filly (with Mr Allan Chrara having paid New Zealand Bloodstock Pty Ltd directly), you improperly failed to pay those funds to New Zealand Bloodstock Pty Ltd in that you only deposited \$30,000 of those funds into the New Zealand Bloodstock bank account;
4. having improperly failed to pay the funds detailed in Schedule 1 to New Zealand Bloodstock Pty Ltd, you also failed to make any payment to New Zealand Bloodstock Pty Ltd in respect of your 30% share of the filly;
5. the consequences of the failures detailed in particulars 3 and 4 is that the breeder of the filly, Mr Gerry Harvey, refused to convey ownership in the filly and provide the Foal Identity Card, meaning that the filly is not able to be registered and race or barrier trial by the persons detailed in Schedule 1;
6. from June 2017 (when payment was received by you as detailed in Schedule 1) until early 2019 (when Mr Allen Chrara collected the filly to transfer it to the stables of licensed trainer Mr Gerald Ryan), you improperly:
 - (a) failed to inform the persons in Schedule 1 that you had not paid New Zealand Bloodstock Pty Ltd for the filly;
 - (b) failed to account to the persons in Schedule 1 for the payments that they had made for the purchase of the filly; and
 - (c) charged those persons training fees and disbursements in respect of the filly:

Schedule 1

Ownership interests in 2015 High Chaparral x Eileen Filly (filly)

Purchaser	Share	Purchase price for share
Allan Chrara	15%	\$20,962.50
Joanne Stone	25%	\$42,500
Wayne Chin Nam	15%	\$25,486

Carmello (Charlie) Celea	15%	\$25,486
Total	70%	\$114,434.50

Payments for ownership interests in 2015 High Chaparral x Eileen Filly (filly)

Purchaser	Share	Date and method of payment	Amount paid to Mr Martin for share
Joanne Stone	25%	Cash (May or June 2017)	\$42,500
Wayne Chin Nam	15%	Bank deposits (15, 16 and 18 June 2017)	\$25,486
Carmello (Charlie) Celea	15%	Bank deposit (7 June 2017)	\$25,486
Total			\$93,472

4. At the conclusion of the Stewards' Inquiry on 9 August 2019, following the making of submissions, the Stewards disqualified Mr Martin's licence to train for a period of 6 months. They considered that an appropriate starting point for the penalty to be imposed on him was a 9-month disqualification, but reduced that penalty to a 6-month disqualification having taken into account, amongst other matters:
- (a) Mr Martin's early guilty plea and cooperation, and good record;
 - (b) the seriousness of the offence;
 - (c) the impact the penalty would have on Mr Martin's business and staff;
 - (d) precedent penalties; and
 - (e) deterrence, and the message to be sent by the penalty not only to Mr Martin as an individual, but to the wider community to demonstrate Racing's response to integrity issues.
5. Mr Martin has appealed against the severity of the sentence imposed upon him. He was represented on appeal by his solicitor, Mr Hamish Esplin. The Stewards were represented by the Chairman of Stewards, Mr Marc Van Gestel.

6. Admitted into evidence on the appeal was a copy of the Appeal Book, which included the transcript of evidence from the Stewards' Inquiry, and the various exhibits from that Inquiry (the Appeal Book was marked as Exhibit A but exhibits at the Inquiry retain their exhibit number).
7. Also admitted into evidence was a statement of Mr Martin (Exhibit A1) which outlined, in the main, his personal and financial circumstances. Mr Esplin also lodged a written submission, attached to which were various character references tendered on Mr Martin's behalf, which also form part of Exhibit A1.

Background Facts

8. The exhibits tendered in the Appeal Book make good the particulars of the charge, in relation to which there is in any event no dispute. Where necessary, they will be referred to in discussing the parties' submissions.
9. The dispute in this matter is not as to the underlying facts, but as to penalty. Mr Van Gestel, naturally enough, supports the penalty the Stewards imposed after the Inquiry and following Mr Martin entering a plea of guilty. He says the 6-month disqualification is consistent with a decision of the Appeal Panel in *The Appeal of Ricky Rohde* (21 June 2017) and the penalty imposed by Stewards on Richard Callandar, Liam Prior and Glyn Schofield for breaches of the same rule on 10 March 2016 (*Callandar and Ors*).
10. Mr Esplin submitted that a significantly reduced penalty should instead be imposed. He contends that Mr Martin should have his licence suspended rather than disqualified, and that the starting point for the penalty should be a two-month suspension. Further, taking into account various mitigating factors, his submission was that this penalty should be wholly suspended for a period of 12 months, provided Mr Martin does not breach any similar provisions of the Rules for that period.

Submissions of Mr Van Gestel

11. First, Mr Van Gestel submitted, correctly, that the offending here is objectively serious. Bearing in mind that the primary purpose of the Rules, including their penalty provisions, is the protection of the image and integrity of Racing, the offending here clearly is damaging to the interests of Racing. As a matter of obviousness, where a trainer accepts funds from a prospective owner, and fails to pass on those funds to the vendor of the horse, that is damaging to the industry. It is clearly a disincentive to potential participants in the racing industry that this sort of thing can happen. Further, while no doubt it is a matter that can be resolved in a civil court, the Panel is concerned that a significant sum of money is still owed to the vendor, and the prospective owners have not had a horse to race.
12. As to precedent, Mr Van Gestel submitted that there is very little to distinguish the offending of Mr Martin to that of licensed trainer Ricky Rohde, who received a 4-month disqualification of his licence to train for a breach of the same rule.
13. In *Rohde*, as Mr Van Gestel pointed out, the appellant accepted a sum of money from a potential owner (\$3,600, a significantly lesser sum than that involved here) in circumstances that involved no dishonesty. It was only after this sum was deposited in Mr Rohde's bank account that he failed to advise prospective purchasers that the share of a horse they wished to buy was no longer available. Mr Rohde thereafter provided misleading information to the prospective purchasers, and improperly retained the money that had been given to him. Mr Rohde's offending under AR175(a) (which has now become AR229(1)(a)) was aggravated by his failure to comply with directions of the Stewards to provide his bank account details, for which he was found to be in breach of AR175(p).
14. Mr Van Gestel also drew the Panel's attention to the penalties imposed by Stewards in *Callandar and Ors*. The persons involved in that matter were also charged with breaches of AR175(a), although it should be noted that the particulars against Mr Callandar and Mr Prior alleged both dishonest and fraudulent conduct. Indeed, in that case, Mr Callandar and Mr Pryor were involved in the sale of a racehorse where they told the vendors of the horse that it had been sold for \$60,000 less than it had

been sold for, and retained the balance in the manner of a dishonest secret commission. The Panel will turn to this matter in due course.

15. While acknowledging Mr Martin's early plea in this appeal, and the lack of dishonesty or fraud in his offending, Mr Van Gestel submitted that the objective seriousness of the breach of the rule, and the continued non-payment, and consistency in penalising, required the imposition of the 6-month disqualification ultimately imposed here.

Mr Esplin's submissions

16. First, Mr Esplin noted that the breach of the rule here related to "improper" conduct, not dishonest, corrupt or fraudulent conduct. This, the Panel agrees, is an important distinction between Mr Martin's conduct, and that involved in *Callandar and Ors*.
17. Secondly, Mr Esplin said the Panel needed to pay close regard to the nature of the improper conduct here. In essence, he submitted, Mr Martin had failed to ensure that his running account was properly managed (see Exhibit 23, pages 146-148), and that he had left that bank account under the care of a former employee (Mr Justin Webb), who had admitted to the Stewards that he had mismanaged the account. He also stated that he had total control over the account, and that he failed to advise the Appellant at the relevant time as to the non-payment of moneys: see Exhibit 24, page 150 of the Appeal Book.
18. Other matters referred to by Mr Esplin were these:
 - (a) Mr Martin pleaded guilty at the earliest opportunity and was fully cooperative with Stewards.
 - (b) As evidenced by character references provided, the Appellant is a well-respected trainer with a good record.
 - (c) As noted in the document prepared by Knigghts, Thoroughbred Training Management Services, dated 25 September 2019, and from Mr Martin's own statement, he is currently involved in litigation in which he is asserting that

the particular enterprise owes him more than \$1.2 million in outstanding training and agistment fees.

19. Mr Esplin also pressed upon the Panel Mr Martin's difficult current financial and personal circumstances outlined in his statement, and the fact that any penalty imposed on him, particularly in the nature of a disqualification, would obviously have an impact on persons employed by Mr Martin. We note that he currently employs around 10 people, trains 18 horses at his Rosehill stables and agists 30-35 horses on his farm.
20. Mr Esplin also placed reliance on the Stewards decision in *Callandar and Ors*, and sought to distinguish parts of the Panel's decision in *Rohde*.
21. As to *Callandar and Ors*, Mr Esplin submitted that the offending in that matter was more objectively serious than the offending by Mr Martin. The offending in *Callandar and Ors*, Mr Esplin submitted, was deliberate, dishonest and contained aspects of fraudulent conduct.
22. As to *Rohde*, while acknowledging that less money was involved, Mr Esplin suggested that Mr Rohde also engaged in more outright dishonesty than Mr Martin, which was compounded by a lack of cooperation with the Stewards.

Decision

23. The Panel has found this appeal a difficult one to resolve. However, from the outset, some matters are beyond dispute. The offending here is, we agree, objectively serious. The image of Racing has suffered damage because of Mr Martin's improper conduct. The racing industry cannot afford participants such as licensed trainers to fail to manage their finances to the extent that potential owners and vendors are placed in the position that they have been by Mr Martin in this case. A wholly suspended penalty such as that sought by the Appellant here would send the wrong message to the public concerning the industry's determination to uphold its image and integrity. It would serve as a deterrent to people wishing to participate in the racing industry as owners.

24. The real issue to be determined here then is whether the penalty should be in the nature of a disqualification or a suspension, and the length of such penalty.
25. In relation to the precedent penalties, there is force in Mr Van Gestel's submission that – leaving aside the sums of money involved – there is not much to distinguish the offending in *Rohde* to that of Mr Martin. It is certainly true the Mr Rohde's conduct did not involve dishonesty or improper conduct at the time he received the funds. However, once he received the funds into his bank account, there were aspects of Mr Rohde's conduct that were at best improper, involved misleading conduct, and an element of dishonesty. We consider that element of dishonesty to be a distinguishing feature to that of Mr Martin's conduct, which more involves improper supervision of his own bank accounts, and then finding himself in a position where he has an incapacity to pay. We do note, however, that the sum involved here is about \$60,000, whereas the sum of money involved in *The Appeal of Rohde* is much less. However, it is the aspect of dishonesty that is a more important factor, in our view, than the differing sums.
26. As to the Stewards' determination of penalty in *Callandar and Ors*, we are firmly of the view that the conduct of the persons in that matter was more objectively serious than Mr Martin's conduct. Mr Callandar and Mr Prior were involved in conduct that was appropriately described as dishonest and fraudulent. We note, however, that in the matter of *Calendar and Ors*, the owners had been recompensed by the time the Stewards determined penalty.
27. Bearing all the facts in mind, the Panel is of the view that the conduct of Mr Martin is objectively serious. It is improper, but not dishonest. Nor is it fraudulent.
28. We have also considered Mr Martin's strained financial circumstances, and the impact that any penalty will have on him, his family and his staff. These matters, however, are not at the forefront of our determination on penalty. Nor is punishment. Of most significance is the message to be sent to the public by the penalty: it should demonstrate a determination by Racing regulators to uphold the integrity and image of the sport.

29. The matter that has most occupied the Panel's deliberation is whether Mr Martin should be penalised by way of a disqualification or a suspension of his licence to train. A disqualification is, of course, a far more drastic penalty. AR263 sets out the prohibitions imposed upon a person whose licence has been disqualified. They would place prohibitions on Mr Martin way beyond suspending him from entering horses trained by him in races.
30. Although we do not consider that the Stewards' decision here to disqualify Mr Martin was unreasonable, our own view is that Mr Martin's licence should be suspended rather than disqualified. We do so largely because his offending did not involve dishonest or fraudulent conduct, because we consider the conduct of Mr Rohde marginally more serious, and that of *Callandar and Ors* significantly more serious.
31. As to the length of the suspension, we consider that the starting point should be a 6-month suspension. That period should be reduced by 25% for Mr Martin's early plea and his cooperation with Stewards.
32. Further, having regard to all the matters outlined above, while still bearing in mind the purpose of penalising under the Rules, we consider that the appropriate penalty for the offending here is a suspension of Mr Martin's licence to train for four (4) months.
33. Accordingly, the Panel makes the following orders:
 - (1) Appeal against severity of penalty allowed.
 - (2) In lieu of a 6-month disqualification, Mr Martin's licence to train is suspended for 4 months.
 - (3) Such suspension is to commence on 17 October 2019 and will expire on 17 February 2020, on which day Mr Martin may train.
 - (4) Appeal deposit to be refunded.