

**APPEAL PANEL OF RACING NEW SOUTH WALES**  
**IN THE MATTER OF THE APPEAL OF TRAINER MICHELLE BORSERIO**  
Heard at Racing NSW Offices

Appeal Panel: **Mr L. Vellis - Convenor; Mr A. Leopold SC; Mr J. Murphy**

Representatives: **Appellant - Mr M. Callanan, Solicitor for the Appellant & Director of the NSW Trainer's Association**

**Racing NSW - Mr T. Moxon, Deputy Chairman of Stewards for Racing NSW**

Date of Hearing: **29 November 2023**

Date of Reasons and Orders: **7 December 2023**

**REASONS FOR DECISION**

**Introduction**

1. On 3 October 2023, Racing NSW Stewards commenced an Inquiry into the circumstances surrounding the transfer of two 5% shares of the racehorse, "Exalted Dennis" to Mr Andrew Steiner and Mr Bradie Steiner without their consent, through a Transfer of Ownership Form signed on 26 September 2022. .
2. Stewards further inquired into the subsequent transfer of two 5% shares of the racehorse, "Exalted Dennis" to licensed trainer, Ms Michelle Borserio (**Appellant**) without the consent of outgoing owners, Mr Andrew Steiner and Mr Bradie Steiner, through a Transfer of Ownership Form signed on 31 March 2023.
3. On 16 October 2023, Ms Borserio pleaded guilty to two breaches of AR229(1)(a) of the Australian Rules of Racing (the **Rules**) concerning the initial and subsequent transfers of ownership of the racehorse Exalted Dennis. 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.
4. The particulars of the charges, which the Appellant pleaded guilty to, were as follows:

*Charge 1: Fraudulent Practice*

"Licenced trainer Ms Michelle Borserio was charged under AR229(1)(a), in that she did engage in a dishonest, fraudulent, improper action or practice in connection with racing by reason of one of, or any combination or two or more of the following particulars.

- 1) Ms M Borserio is a licensed trainer with Racing NSW.
- 2) On 26 September 2022, she signed the transfer of ownership document for the racehorse, Exalted Dennis purporting to be Mr Bradie Steiner, and did this without Mr Bradie Steiner's consent.
- 3) On the same date being 26 September 2022, she signed the transfer of ownership document for the racehorse. Exalted Dennis purporting to be Mr Andrew Steiner, and did this without Mr Andrew Steiner's consent.
- 4) She signed this transfer of ownership document to release a 5% share of the racehorse Exalted Dennis to Mr Bradie Steiner and a further 5% share of the racehorse, Exalted Dennis to Mr Andrew Steiner.
- 5) As detailed in particulars 2-3, she did engage in a fraudulent practice in connection with racing."

*Charge 2: Fraudulent Practice*

"Licenced trainer Ms Michelle Borserio was charged under AR229(1)(a), in that she did engage in a dishonest, fraudulent, improper action or practice in connection with racing by reason of one of, or any combination or two or more of the following particulars.

- 1) Ms M Borserio is a licensed trainer with Racing NSW.
  - 2) She signed the transfer of ownership document dated 31 March 2023, far the racehorse, Exalted Dennis purporting to be Mr Bradie Steiner, and did this without Mr Bradie Steiner's consent.
  - 3) She signed this transfer of ownership document to obtain Mr Bradie Stainer's 5% share in the racehorse, Exalted Dennis.
  - 4) She signed the transfer of ownership document dated 31 March 2023, for the racehorse, Exalted Dennis purporting to be Mr Andrew Steiner, and did this without Mr Andrew Steiner's consent.
  - 5) She signed this transfer of ownership document to obtain Mr Andrew Steiner's 5% share in the racehorse, Exalted Dennis.
  - 6) As detailed in particulars 2-5, she did engage in a fraudulent practice in connection with racing."
5. At the conclusion of the Stewards' Inquiry on 16 October 2023, the Stewards disqualified the Appellant's licence to train for a period of four months for charge 1 and a further period of four months for charge 2.
  6. The Stewards considered that an appropriate starting point for the penalty to be imposed on the Appellant for each charge was a six month disqualification, but reduced that penalty to a four month disqualification for each charge, with the penalties to be served concurrently.
  7. The following factors were taken into account by the Stewards in determining the penalties, amongst other matters:
    - (a) Guilty pleas to both charges;
    - (b) Good disciplinary record;

- (c) Personal and professional circumstances;
  - (d) Principle of specific and general deterrence and what message is sent to the industry in respect of such conduct;
  - (e) Purpose of issuing penalties as a protective measure for the image and interests of the thoroughbred industry; and
  - (f) 40 years involvement in the industry, including 16 years as a licensed trainer.
8. Ms Borserio has appealed against the severity of the sentence imposed upon her. She was represented on appeal by her solicitor, Mr Michael Callanan, who is also the Director of the NSW Trainers' Association. The Stewards were represented by the Deputy Chairman of Stewards, Mr Tom Moxon.
9. Admitted into evidence on the appeal was a copy of the Appeal Book, which included the transcript of evidence from the Stewards' Inquiry (the Appeal Book was marked as Exhibit A).
10. Also admitted into evidence were written submissions on penalty from Mr Callanan.

### **Submissions**

11. The dispute in this matter is not as to the underlying facts, but only as to penalty. Mr Moxon supported the penalties imposed by the Stewards after the Inquiry.
12. Mr Moxon submitted that disqualification is the appropriate penalty and consistent with other decisions dealing with AR229(1)(a) (or its previous equivalent rule), such as in the *Appeal of B. Neto* (2020) and the penalty imposed by Stewards in *B. Cleary* (2022), *B. Wilson* (2011) and *M. Cooper* (2008).
13. Mr Callanan submitted that a significantly reduced penalty should instead be imposed. He suggested that Ms Borserio should have her licence suspended (for up to two months for charge 1 and for up to three months for charge 2) rather than disqualified.
14. Mr Callanan referred to other Appeal Panel decisions in making his submissions, such as the *Appeal of S. Allen* (2021), the *Appeal of J. Hardy* (2022) and the *Appeal of T. Martin* (2019).
15. It was noted in response by Mr Moxon that the *Allen*, *Hardy* and *Martin* decisions of the Appeal Panel were not decisions with respect to the fraudulent practice component of AR229(1)(a) and any deviations in penalty therein (in particular in *Martin* in which a suspension was imposed) should be distinguished on this basis.

### **Submissions of Mr Moxon**

16. First, Mr Moxon submitted 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.
17. Where a trainer fraudulently executes ownership documents (whether to assert ownership or remove ownership) it is clearly a fundamental breach of trust and a disincentive to potential participants in the racing industry that this sort of thing can happen.
18. Mr Moxon submitted that it was correct to deal with both charge 1 and charge 2 in the same manner as to penalty as both involved the fraudulent execution of ownership documents by the Appellant, thereby impacting the ownership (or lack thereof) of the intended owners of the horse.
19. While acknowledging Ms Borserio's early plea for both charges and her sound record over an extended period as an industry participant in various capacities, Mr Moxon submitted that the early plea and good record of the Appellant had already been given sufficient weighting by the Stewards when reducing the six month disqualifications which had been imposed as a starting point, and that the reduced four month disqualification ultimately imposed here for each of the charges should not be disturbed.

### **Submissions of Mr Callanan**

20. Mr Callanan submitted that the Panel needed to pay close regard to the nature of the fraudulent conduct here. In essence, he submitted with respect to charge 1 that there was an intention (on the part of each of Ms Borserio, Bradie Steiner and Andrew Steiner) for Bradie Steiner and Andrew Steiner to become part owners (each as to 5%) of Exalted Dennis and that the sole issue was a failure of the Appellant to obtain the wet signatures of the Steiners as transferees on the transfer application (with Ms Borserio herself signing the transfer application in the names of Bradie and Andrew Steiner).
21. With respect to charge 2, Mr Callanan noted that the conduct was more serious than with respect to charge 1 in that it involved a fraudulent transfer of ownership of an aggregate 10% interest in Exalted Dennis *from* Bradie and Andrew Steiner to the Appellant, without the consent of Bradie and Andrew Steiner (each of whom only found out about the transfer after the event), coupled with a false representation being made to Racing NSW. (The Panel understands the submission to be that a false representation was made to Racing NSW in effect that a consensual transfer had been made by Bradie and Andrew Steiner to the Appellant, when in fact it was non-consensual). Mr Callanan submitted that the financial consequences of the Appellant's conduct were nominal, with the result being a financial gain

to the Appellant of \$361.25 from prizemoney earned in races (as compared to a total return of \$493.00 to Bradie and Andrew Steiner during the time that they retained their respective 5% interest in Exalted Dennis).

22. Mr Callanan noted that in the *Appeal of T. Martin* (2019) the amount involved in the trainer's improper conduct was \$60,000 and that (on appeal) a suspension of four months was imposed.
23. Other matters referred to by Mr Callanan were these:
  - (a) Ms Borserio pleaded guilty at the earliest opportunity and was fully cooperative with Stewards.
  - (b) The Appellant has an excellent record - in her time as a trainer (16 years) and as an industry participant generally (40 years), the Appellant has not faced any other charges from the Stewards and is unlikely to reoffend in the future.

## **Decision**

24. The Panel has some sympathy with the argument of Mr Callanan that the conduct of the Appellant in charge 1 is objectively less serious than the conduct contained within charge 2. Where the Panel differs is that we do not view the sole issue in charge 1 to be a failure of the Appellant to obtain the wet signatures of the Steiners as transferees on the transfer application. The Appellant took the additional fraudulent step of executing the transfer applications in the name of Bradie Steiner and Andrew Steiner. Executing ownership documents in the stead of another is not a trivial matter and in the view of the Panel warrants a disqualification even though the transfer of the 10% ownership in the horse to Bradie and Andrew Steiner may have been consensual.
25. Charge 2 undoubtedly involved a serious act of fraud – the forgery of signatures to effect a non-consensual transfer of part ownership in a horse. The lack of financial windfall obtained by the Appellant with respect to charge 2 does not diminish the seriousness of the conduct but is nevertheless a mitigating factor to some extent.
26. Accordingly, the offending here is with respect to both charges, we agree, objectively serious. The image of Racing has suffered damage because of Ms Borserio's fraudulent conduct. The racing industry cannot afford participants such as licensed trainers to execute documents in the name of others and to transfer the ownership of racehorses without the knowledge and consent of the owners.
27. The real issue to be determined here then is whether the penalties should be in the nature of a disqualification or a suspension, and the length of such penalties. Of most significance to

the Panel in determining the penalties in this case 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.

28. In relation to the precedent penalties, the Panel accepts Mr Moxon's submission that previous breaches of AR229(1)(a) dealing with fraudulent practice have resulted in disqualification. The Panel see no reason to deviate from this approach in this case.
29. Bearing all the facts in mind, the Panel is of the view that the conduct of Ms Borserio is objectively serious and it is fraudulent.
30. There are further factors to be taken into account on the question of penalty. A number are set out in paragraph 7 above, but the following are of particular note.
31. First, the Appellant has an exemplary disciplinary record over a long period of participation in the thoroughbred racing industry.
32. Secondly, there is some indication that the Appellant failed, even in the hearing before the Committee of Stewards, frankly to acknowledge her wrongdoing, suggesting, discredibly, at the resumed hearing on 16 October 2023 that it was her word against that of the Steiners as to whether she had their consent to sign their names (see, e.g., line 2940 on page 65 of the transcript of that hearing).
33. Thirdly, it may also be of some (relatively minor) relevance to the appropriate penalty in relation to charge 2 that, well after the event, Bradie and Andrew Steiner were content to transfer their aggregate 10% interest in the horse back to the Appellant, without consideration.
34. The Panel is of the view (and Mr Moxon in effect conceded this at the hearing before the Panel) that the conduct of the Appellant with respect to charge 1 is quite clearly less serious than the conduct with respect to charge 2 in that there does seem to have been a common understanding that Bradie and Andrew Steiner were to each obtain a 5% interest in Exalted Dennis. On that basis, the transfer on which the Appellant fraudulently signed their names could be said to be consensual. It is how the Appellant achieved this that is in issue, whereas with respect to charge 2 the Appellant took steps to insert herself as the owner of the interests in Exalted Dennis previously held by Bradie and Andrew Steiner without their consent.
35. It was a matter of good fortune rather than good management that the financial consequences to the Steiner family caused by the Appellant's conduct with respect to charge 2 were not more material.

36. Having regard to all the matters outlined above, while still bearing in mind the purpose of penalising under the Rules, the Panel allows the appeal against severity of penalty.
37. The Panel considers that, with fraudulent conduct of the kind which was committed, the only appropriate penalty is disqualification rather than suspension.
38. Having regard to all of the above, the Panel considers that the appropriate penalties for the offending here are a disqualification of six weeks with respect to charge 1 and a disqualification of three months for charge 2, with the penalties to be served concurrently.
39. Accordingly, the Panel makes the following orders:
  - (1) Appeal against severity of penalty allowed.
  - (2) In lieu of a four month disqualification for charge 1, the Appellant is disqualified for six weeks.
  - (3) In lieu of a four month disqualification for charge 2, the Appellant is disqualified for three months.
  - (4) The penalties for charge 1 and charge 2 are to be served concurrently such that the total penalty imposed is a three month disqualification. This period of disqualification commenced on 16 October 2023 and expires on 16 January 2024, on which day the Appellant may reapply for her licence.
  - (5) Appeal deposit to be refunded.