

RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF DANIEL RILEY

REASONS FOR DECISION ON STAY APPLICATION

(Date of Reasons: 13 December 2019)

1. On 11 December 2019, registered owner Mr Daniel Riley (**the Appellant**) was found by Racing NSW Stewards to have breached the following rules of the Australian Rules of Racing:

Charge 1: AR 231(1)(b)(iv) – failing to provide proper nutrition to a horse and directing euthanasia. The penalty imposed by the Stewards was a 12-month disqualification.

Charge 2: AR 231(1)(b)(iii) – Failing to provide vet treatment to a horse and directing euthanasia. The penalty imposed was a 9-month disqualification.

Charge 3: LR 114(4) – Permitting destruction of a horse and failing to seek advice or certification from a registered vet that such action was necessary. The penalty imposed was a 9-month disqualification.

Charge 4: AR 232(b) – failing to attend a Stewards' Inquiry on 28 August 2019 when he was required to. The penalty imposed was a 3-month disqualification.

2. The Appellant pleaded not guilty to charge 1, but guilty to charges 2 to 4.
3. The Appellant has appealed to the Panel, at least against the severity of the penalties imposed. It is not clear from his Notice of Appeal if he challenges the finding of guilt in relation to charge 1, or if he wishes to change his plea in respect to any of the other

charges. He has also sought a stay of the penalties imposed upon him. His application for stay is based on the following set out in the relevant form:

"The facts entered where (sic) one sided and not given the chance to fight charges before decision was made. I would like to call a witness in the next hearing to proclaim my innocence".

4. Based on the above, I have assumed the Appellant may be challenging all findings of guilt.
5. The Stewards oppose the grant of a stay, and have lodged a submission dated 12 December 2019 in support of that stance.
6. To grant a stay under LR 107(1)(a), I need to be satisfied that a *"substantial injustice may be caused to the appellant if the stay were not granted"*.
7. LR 107(1)(a) casts an evidentiary and persuasive onus on an appellant seeking a stay. While an appellant does not have to satisfy the Panel that a "substantial injustice" will be caused absent a stay, there is a requirement to persuade the Panel that there is something beyond a remote possibility of an appellant suffering a real injustice if a stay is not granted. In some cases, that might be achieved by demonstrating that there is a properly arguable case on appeal of having a finding of breach of a Rule overturned. In another appeal, it may be that there is a properly arguable case for a substantial reduction in penalty. There may be other factors of relevance in other appeals and applications for stay.
8. The assertions set out in the Appellant's Application for Stay form are not sufficient to persuade me that he might suffer a "substantial injustice" if a stay is not granted. In those circumstances, no stay can be granted.
9. However, I will allow the Appellant some time to lodge any evidence or submission he wishes to in support of his application for stay. Such submission or evidence should be lodged with the Appeals Coordinator of Racing NSW (Ms Kathy Reece) by

no later than close of business next Friday, 20 December 2019. In the meantime, no stay is granted.

10. I make these directions:

1. Leave is granted to the Appellant to lodge any evidence or submissions in support of his application for stay by 5pm Friday, 20 December 2019.
2. The Stewards may lodge submissions in reply, if they wish, by 5pm Monday 23 December 2019.
3. In the meantime, no stay is granted.

Dated: 13 December 2019

Richard Beasley SC, Presiding Member.