

## **APPEAL PANEL OF RACING NEW SOUTH WALES**

### **APPEAL OF STEVEN ALLEN**

Appeal Panel: Mr R Beasley SC, Principal Member; Mr J Murphy; Mrs J Foley

For the Stewards: Mr T Moxon

For the Appellant: Self

Date of Hearing: 20 January 2021

Date of Reasons: 20 January 2021

### **REASONS FOR DECISION**

#### **The Panel**

##### **Introduction and Charges**

1. This is an appeal against severity of penalty relating to the appellant's plea of guilty to charges brought under LR 51(a)(i) (Charge 1), and AR 229(h) (Charge 2).
2. The particulars of the charge under LR 51(a)(i) were that the appellant failed to notify Racing NSW within 14 days that he had been charged with criminal offences on 3 March 2018. The particulars of those charges were that on 3 March 2018 the appellant was charged with 9 offences relating to domestic assault. He was subsequently found guilty of 3 such offences.
3. The charge under AR 229(h) relates to the appellant making a false declaration on his renewal application for a stablehand licence in that he knowingly made a false declaration that he had not been charged with a criminal offence in the last ten years. The underlying offending here related to 3 offences involving domestic violence,

including assault occasioning actual bodily harm. The appellant received a 7-month custodial sentence for these offences.

4. For the breach of LR 51(a)(i), the Stewards imposed a disqualification of three months, which commenced on 18 December 2020, and that expires on 18 March 2021. For the breach of LR 229(h), a period of disqualification of three months was also imposed, which will commence on 18 March 2021, and will expire on 18 June 2021.
5. The appellant has appealed against the severity of the sentences imposed upon him. He represented himself at the appeal. The Stewards were represented by Senior Stipendiary Steward Mr T Moxon.
6. It is important to note that the two charges relate to different underlying criminal conduct. Charge 1 relates to the appellant not advising Racing NSW about criminal charges brought against him in March 2018. Charge 2 relates to the appellant's conviction for criminal offences in 2020, for which he was refused bail on 1 April 2020, and sentenced to a seven-month prison term on 27 October 2020. With time served he was released from custody on 31 October 2020. He shortly thereafter incorrectly completed his licence application, resulting in Charge 2.

### **Appellant's submissions**

7. The appellant has raised general hardship issues as the basis for the Panel to impose a lesser penalty. He is 34 years of age now, and has no ability, he says, to earn money other than from his work as a stable hand and track rider. He has worked in the racing industry since he was 17.
8. The appellant has a number of serious medical issues, which are outlined in reports he has tendered marked as Exhibit B (which also include some character references). The medical reports relating to the appellant's medical conditions have been treated as confidential exhibits. This includes records from the NSW Health Justice and Forensic Mental Health Network. He suffers from depression and idiopathic hypersomnolence, for which he takes medication, and is under specialist medical care. He has undergone some courses in relation to the matters that saw him convicted for various criminal offences, which are designed to help the appellant avoid the kind of conduct that has resulted in his criminal liability in 2018 and 2020.

9. The appellant has been frank about his offending. He made no innocent error in relation to either charge. He knew he was required to notify Racing NSW about his criminal charges. He deliberately inaccurately completed his licencing form in respect to Charge 2. He did so because he feared he would not be licenced, and hence would have no work.

#### **Stewards' submissions**

10. The Stewards' position as outlined by Mr Moxon is straight forward. The offending in relation to both charges can be linked to ss14AA of the *Thoroughbred Racing Act*, and the need for racing authorities – in this case Racing NSW - to be assured that licensed persons are fit and proper people to hold a licence. This is central to Racing's ability to maintain and ensure the integrity and public standing of the sport and industry. The Panel accepts this.

#### **Panel resolution**

11. While the Panel has taken into account all of the matters raised by the appellant, including his medical conditions, and the hardship he faces from his disqualification, at the forefront of our decision making must be the proper purposes behind the penalty provisions in the Australian Rules of Racing, and the Local Rules.
12. Neither punishment nor hardship are at the forefront of the Panel's consideration in relation to penalty. As has been stated often, disciplinary proceedings for a sport such as racing are protective in nature. They are intended to protect the image and integrity of the racing industry: see *The Appeal of Callow*, RAP, 3/4/17 at [37]-[39].
13. Deterrence is also an important consideration, in that penalties are imposed to deter conduct that might jeopardise either safety or integrity, or that might damage the image of racing. A penalty also sends a message to the racing public and to the public at large that racing treats breaches of its rules with utmost seriousness.
14. It is of course no part of the Panel's role to re-punish the appellant for the various criminal offences for which he has been convicted, and for which he has been sentenced under the provisions of the criminal law. Rather, the Panel has to consider what is the appropriate penalty for the appellant's breaches of the two rules in question

here. However, the criminal convictions of the appellant are relevant background facts to consider. They involve offences of violence, including domestic violence. There is no way of describing other than to say they are extremely serious offences – borne out by the fact that the appellant was imprisoned for 7-months as a result of one of the offences.

15. These breaches of the rules involved here are objectively serious. The local rule clearly reflects a policy decision that Racing NSW requires its licencees persons to promptly notify it of any charges brought against them as a means of regulating whether they are fit and proper persons to be licensees. Similar type rules exist in the rules or regulations relating to professional bodies. Such rules are protective in nature -that is, they are designed to protect the sport or profession they apply to. They rely on the honesty of the participants in order to have efficacy.
16. AR 229(h) is also protective in nature. It places an onus on licenced persons to deal honestly and transparently with racing officials, again in order to protect the sport, and ensure its integrity is not damaged, and to ensure the fitness of persons making licence applications. A criminal charge or conviction is not a bar to a person becoming licenced, or retaining a licence. It is a matter however that, as a matter of obviousness, an authority such as Racing NSW needs to take into account in its decision-making regarding licencing people. This is essential to the integrity of the sport, and its proper functioning. The appellant's conduct in relation to both charges undermined Racing NSW's ability to give proper consideration to whether the appellant should be licenced, and hence undermined its ability to protect the integrity of the sport.
17. Amongst the submissions Mr Moxon made, he drew the Panel's attention to the decisions of the *Appeal of Dean Boal* (RAP, 16/10/20) and *Clint Lundholm* (RAP, 7/8/20), both of which relate to giving false evidence to Stewards, and which resulted in 4-month disqualifications.
18. Taking into account all the evidence and submissions, the Panel is in agreement with the Stewards that the appropriate penalty is a three-month disqualification for both breaches. Where we differ slightly is in relation to the penalty for Charge 2 being entirely cumulative to the penalty imposed for Charge 1. While we appreciate that the

underlying criminal charges in relation to Charge 1 differ to those for which the appellant has been charged and penalised for Charge 2, they both relate to similar criminal type conduct for which the appellant was in a similar way not honest with Racing NSW about. We have also had regard to the principle of totality of sentencing. In our view – which is generous to the appellant and factors in the steps he has taken to improve his conduct - half of the penalty for Charge 2 should be concurrent with the penalty imposed for Charge 1. This would reduce the total penalty from a 6-month disqualification, to a 4-and-a-half-month disqualification.

19. The orders we make are as follows:

1. Appeal in relation to penalty imposed for Charge 1 (LR 51(a)(i)) dismissed.
2. Penalty of a 3-month disqualification for breach of LR 51(a)(i) confirmed.
3. Appeal in relation to the penalty imposed for Charge 2 allowed in part.
4. Penalty of a 3-month disqualification for breach of AR 229(h) confirmed, but half the disqualification period for Charge 2 to be served concurrently with the penalty imposed for Charge 1.
5. The appellant's licence is disqualified from 18 December 2020 until 4 May 2021.
6. Before making any application to reapply for his licence from 4 May 2021, the appellant must appear before the Racing NSW Licencing Committee.
7. Appeal deposit to be refunded.