

RACING NEW SOUTH WALES

APPEAL PANEL

18 November 2014

MR R CLUGSTON — Chairman
MR K LANGBY
MR T CARLTON

IN THE MATTER OF THE APPEAL OF
PADRAIG BEGGY

REASONS FOR DECISION

CHAIRMAN: This is an appeal by licensed jockey Pdraig Beggy (hereinafter referred to as “the Appellant”) against the penalties imposed by Stewards at the Racing NSW Offices in Sydney on 7 October 2014 in respect of five (5) separate breaches of the Australian Rules of Racing.

The first charge (Charge 1) was in respect of a breach of AR 81A(1). The particulars of that charge were that the Appellant did provide a sample of urine as directed by Stewards after riding in barrier trials at Kembla Grange Racecourse on the morning of 3 September 2014 which was found on analysis to contain a substance banned by AR 81B namely a metabolite of cocaine.

The second charge of “make false statement in respect of a matter in connection with the administration of racing” (Charge 2) alleged a breach of AR 175(gg). The particulars of that charge were that on Saturday 20 September 2014 the Appellant did, after receiving a directive from Mr M Van Gestel, Deputy Chairman of Stewards – Operations, to present himself to Stewards at the Hawkesbury race meeting at 11am on 21 September 2014 for the purpose of providing a sample of his urine, falsely state to Mr Van Gestel in a telephone conversation at or around 11am on 20 September 2014 that he was not in a position to comply with that direction as he had left Sydney and was in Cairns, knowing such statement was false.

The third charge of “give false evidence during a Stewards’ investigation” (Charge 3) alleged breach of AR 175(g). The particulars of that charge were that the Appellant did during the currency of a Stewards’ investigation on two occasions viz. in a telephone conversation with Mr Van Gestel on 15 September 2014 and in a telephone conversation with Mr Van Gestel on 19 September 2014 give false evidence in that he provided to Mr Van Gestel two possible explanations for an irregularity to the banned substance cocaine in a urine sample provided by him at Kembla Grange Racecourse on 3 September 2014, knowing that both of those explanations were false.

The fourth charge of “give false evidence during a Stewards’ inquiry” (Charge 4) alleged breach of AR 175(g). The particulars of that charge were that on 23 September 2014 the Appellant gave evidence to a Stewards’ inquiry that he was unable to comply with a direction given by Mr Van Gestel at or around 11am on 20 September 2014 to provide a urine sample to Stewards at the Hawkesbury Racecourse on 21 September 2014 as he was then at Mascot Airport waiting to board a flight to Cairns, knowing that such evidence was false.

The fifth charge of “give false evidence during a Stewards’ inquiry” (Charge 5) alleged breach of AR 175(g). The particulars of that charge were that on 23 September 2014 the Appellant gave evidence to a Stewards’ inquiry that the likely source of the banned substance cocaine found in the urine sample provided by him at Kembla Grange Racecourse on 3 September 2014 was coca leaves given to him by a friend, knowing that such evidence was false.

The Appellant pleaded guilty to each charge before the Stewards. In respect of charge 1 the Stewards suspended the Appellant’s jockey licence in full for a period of nine (9) months commencing on 19 September 2014 and expiring on 19 June 2015 but acting under the provisions of AR 81D the final three (3) months of that penalty were stayed upon the Appellant providing satisfactory evidence of having completed professional counselling. In respect of charges 2, 3, 4 and 5 the Stewards imposed concurrent penalties of six (6) months suspension to be served cumulatively to the nine (9) months suspension imposed in respect of charge 1. As a result, the Appellant’s licence was suspended in full for the period commencing 19 September 2014 and expiring on 19 December 2015 however, should he provide satisfactory evidence of completing professional counselling for his breach of AR 81A(1)(a), he will be eligible to resume riding on 19 September 2015.

This Appeal is a rehearing on the question of penalty. The Stewards were represented in the proceedings before the Panel by Mr M Van Gestel, Deputy Chairman of Stewards – Operations, and Mr W Pasterfield, Solicitor, appeared for and with the Appellant by leave. The transcript of the Stewards' Inquiry conducted at the Racing NSW Offices in Sydney on 23 September 2014 and 7 October 2014 and the exhibits received in those proceedings have been admitted into evidence in the proceedings before the Panel.

The essential facts are that barrier trials were conducted at the Kembla Grange Racecourse on the morning of 3 September 2014 during which the Appellant rode a horse(s) for licensed trainer Scott Singleton. At the conclusion of those trials the Stewards requested the Appellant to provide a urine sample for analysis. The Appellant complied with that request. The sample was submitted to the Australian Racing Forensic Laboratory ("the ARFL") for analysis. By email dated 15 September 2014 the General Manager of the ARFL, Mr J Keledjian, advised the Chairman of Stewards, Mr R Murrphy, that a screening irregularity had been detected in the urine sample given by the Appellant on 3 September 2014. Mr Van Gestel phoned the Appellant on 15 September 2014 and in that conversation the Appellant was informed that screening of his urine sample had detected the presence of a metabolite of cocaine. The Appellant indicated to Mr Van Gestel that the anaesthetic used by his dentist may have contained cocaine. Mr Van Gestel had a further conversation with the Appellant on 20 September 2014 during which the Appellant said that the positive screening result may be attributable to the ingestion of coca leaves provided to him by a friend. In that conversation Mr Van Gestel directed the Appellant to attend the Hawkesbury Racecourse on the following day for the purpose of providing a further urine sample to Stewards. The Appellant informed Mr Van Gestel that he was unable to comply with that direction as he was at Mascot Airport waiting to board a flight to Cairns (on his version) or in Cairns (on Mr Van Gestel's version). The Appellant travelled by air from Sydney to Cairns on 21 September 2014 returning by air to Sydney on 22 September 2014.

A Stewards' inquiry was convened on 23 September 2014 for the purpose of the Stewards considering whether the Appellant should be stood down from riding pending a further inquiry once the final analysis results were available from the ARFL. The Appellant attended the inquiry on that day and gave evidence that he booked the return flight to Cairns after he had spoken to Mr Van Gestel on 20

September 2014 when he was directed to attend the Hawkesbury Racecourse on 21 September 2014 as he was afraid that cocaine may have been in his urine if he had given a further sample on 21 September 2014. He also gave evidence that he had ingested cocaine at a barbecue on the evening of 31 August 2014.

The Stewards' inquiry continued on 7 October 2014 in the presence of the Appellant. A number of exhibits were tendered on that day including a Jockey Testing Certificate dated 2 October 2014. That certificate indicated that Benzoyllecgonine had been detected in the Appellant's urine analysis at a level above the permissible 100 micrograms per litre. Mr Keledjian gave evidence that the level of Benzoyllecgonine was estimated to be around 1000 micrograms per litre.

The Panel has considered the evidence and the submissions made to it on the question of penalty. The Panel considers the offending behaviour of the Appellant as a serious breach(es) of the obligations of a licensed jockey in the thoroughbred racing industry in this State. The Panel refers with approval to the decision of an Appeal Panel differently constituted in the Appeal of Aaron Morris delivered on 10 August 2010. In that case the Panel said "The riding of horses after the ingestion of banned substances is not tolerated having regard to safety and integrity in the industry." Further, the Panel takes the view that the Appellant's actions in providing false information to Stewards and then giving knowingly false evidence to Stewards at an inquiry strikes at the very heart of the administration of racing by Stewards. Consequently, the Panel considers that it is necessary to impose substantial penalties to reflect the objective seriousness of the Appellant's offending behaviour and to satisfy the elements of punishment, personal deterrence and general deterrence. For those reasons the Panel considers that it is necessary to impose penalties of suspension in respect of each of the five (5) charges.

In assessing the appropriate term of those suspensions the Panel takes into account the pleas of guilty entered by the Appellant at the first available opportunity. The Panel also takes into account the Appellant's unchallenged evidence that he has been a licensed jockey for a period of twelve (12) years riding in England, Ireland, Malaysia and New South Wales and that he has not incurred any previous prohibited substance breaches or dishonesty breaches.

The Panel agrees with the approach taken by the Stewards to impose concurrent periods of suspension in respect of each of the four (4) dishonesty offences and that there be an accumulation of those penalties and the period of

suspension to be imposed in respect of the prohibited substance breach. However, the Panel considers that on the grounds of certainty the concurrent suspension periods should be the lead sentence and that the suspension imposed for the prohibited substance breach should be accumulated on those concurrent penalties. The Panel considers that the penalties imposed by Stewards were in line with the precedent penalties referred to in evidence and in submissions.

The orders of the Panel are as follows:

1. Appeal against penalty dismissed;
2. Penalty of six (6) months suspension imposed by Stewards in respect of each of charges 2, 3, 4 and 5 confirmed each such suspension to commence on 19 September 2014 and to expire on 18 March 2015;
3. Penalty of nine (9) months suspension imposed by Stewards in respect of charge 1 confirmed such suspension to commence on 19 March 2015 and to expire on 19 December 2015 provided however that should the Appellant provide to the Chairman of Stewards satisfactory evidence of completing professional counselling that portion of such suspension period commencing on 19 September 2015 and expiring on 18 December 2015 is stayed pursuant to the provisions of AR 81D;
4. Appeal deposit of \$200 is forfeited.