

RACING APPEAL PANEL OF NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF LICENSED TRAINER MR CARL POIDEVIN AGAINST DECISION OF THE STEWARDS GIVEN ON TUESDAY 8 MAY 2018

Racing NSW Offices
Sydney

10 Appeal Panel: **Mr T Hale SC (Convenor)**
Mr C Tuck
Mr M Daniels

Date of hearing: **20 July 2018**

Date of decision: **20 July 2018**

20 Appearances: **Mr P O'Sullivan representing licensed trainer**
Mr C Poidevin
Mr M F Van Gestel (Chairman of Stewards)
appeared on behalf of Racing NSW
Stewards

REASONS FOR DECISION

1. Mr Poidevin is a licensed trainer operating out of Kembla Grange. Amongst the horses he is registered as trainer of are *Master Agar*, a gelding, and *Tony's Princess*, a mare. From time to time in this decision they will be referred as horses 1 and 2.
- 30 2. On Saturday, 7 April 2018, *Master Agar* was accepted to race in Race 3 at Kembla Grange. *Tony's Princess* was to race in Race 6.
3. The Stewards conducted an investigation at the stables of the Appellant in the hours of Saturday, 7 April 2018. It seems that they arrived at the stables at approximately 5.40am. They then conducted a number of interviews commencing at 5.46am and the last of the interviews concluded at 8.17am while at the stables.
- 40 4. A further and final interview was conducted with the Appellant concerning *Master Agar* at 8.26am in the tie-up area at Kembla Grange Racecourse. At 8.28am the Stewards' official scratched *Master Agar* from Race 3.

5. At 10.56 am the Stewards conducted a further interview with the Appellant at the Kembla Grange Racecourse. On this occasion the inquiry was into *Tony's Princess*. That horse was not scratched. It ran fifth in Race 6.

6. On 8 May 2018 the Stewards, Mr Van Gestel and Mr Moxon, conducted an inquiry into the events concerning *Master Agar* and *Tony's Princess*, more particularly, into the conduct of Mr Poidevin and whether he had contravened the Rules of Racing prior to the race meeting at Kembla Grange on Saturday, 7 April. I should add a pre-race sample was taken from *Tony's Princess*.

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7. As a result of the inquiry the Appellant was charged and pleaded guilty to three offences.

Charge 1 – Injecting a horse during one clear day

Mr Poidevin pleaded guilty under AR178AB(1)(b) in that he, without the permission of the Stewards, injected the horse Master Agar between approximately 5:00pm and 6:00pm on 6 April 2018, when Master Agar was engaged to run in Race 3 – Benchmark 66 Handicap 1600m conducted at Kembla Grange on Saturday 7 April 2018.

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Charge 2 – Injecting a horse during one clear day

Mr Poidevin pleaded guilty under AR178AB(1)(b) in that he, without the permission of the Stewards, injected the horse Tony's Princess between approximately 5:00pm and 6:00pm on 6 April 2018, when Tony's Princess was engaged to run in Race 6 – Class 1 Handicap 1200m conducted at Kembla Grange on Saturday 7 April 2018.

Charge 3 – False Evidence

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Mr Poidevin pleaded guilty to a charge under AR175(g) in that during an interview and/or investigation conducted by Racing NSW Stewards at his registered stables at 5 Kingston Town Drive Kembla Grange on the morning of Saturday 7 April 2018 and at a Stewards inquiry conducted at the Offices of Racing NSW on 8 May 2018, into whether the racehorse Master Agar was injected or was administered medication in contravention of the Rules of Racing, he gave the false evidence.

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8. In relation to Charge 1, concerning *Master Agar* for an offence pursuant to AR 178AB, the Appellant was disqualified for a period of 12 months, which was reduced to a period of 9 months for his guilty plea. In relation to Charge 2, which concerns *Tony's Princess* and was also for a breach of AR 178AB, the Appellant was disqualified for 18 months, which was reduced to 13 months for a guilty plea. In relation to Charge 3, which was a breach of AR 175(g) concerning the

giving of false evidence, the Appellant was disqualified for a period of 12 months, which penalty was reduced to 9 months for a guilty plea.

9. The penalties for Charges 1 and 2 were to be served concurrently, commencing on 8 May 2018 and expiring on 8 June 2019, that is, 13 months from 8 May 2018. Charge 3 was to be served consecutively, commencing on 8 June 2018 and expiring on 8 March 2018. In summary, the Appellant was disqualified from 8 May 2018 until 8 March 2020.
10. The Appellant has exercised his right to appeal to this Panel pursuant to s 42 of the *Thoroughbred Racing Act 1996*. Although, initially, it seemed he was appealing against both conviction and penalty, it is now clear that he is only appealing on the question of severity. He entered a plea of guilty before this Panel in respect of each of the three charges.
11. The appeal to this Panel is by way of a new hearing. At the hearing before us the Stewards were represented by Mr Van Gestel and the Appellant was represented by Mr O'Sullivan, solicitor.
12. The Panel received into evidence exhibit A, which was the transcript of evidence before the Stewards' inquiry before, together with a number of other exhibits and records of interview. It received as exhibit B Mr Poidevin's disciplinary record and in exhibit C a schedule of the penalties that had previously been imposed in other matters for breaches of AR 175(q). Also before us, the Appellant, Mr Poidevin, gave oral evidence and was cross-examined by Mr Van Gestel.
13. The facts may be summarised in this way. Between 5pm and 5.45pm on Friday, 6 April 2018, the day before the race meeting on 7 April, the Appellant went to his stables and administered by way of injection to *Master Agar* 10mls of Hemoplex, 10mls of B12 folic, 10mls of Cophos B and 10mls Pre-Ferrin. He also injected *Tony's Princess* with the same substances.
14. The Stewards accept that this was the date on which the substances were in fact injected into the two horses. I say that, having regard to the fact that there was

veterinarian evidence based on an observation of a haematoma to the offside jugular vein of *Master Agar* on the Saturday morning, which suggested that the injections might have occurred on that Saturday morning.

15. However, the CCTV film indicates that the Appellant in fact visited his stables between 5pm and 5.45pm on the Friday, which was when he said he injected the substances. At the point he admitted this, he was unaware that the Stewards had the CCTV film and they, as a consequence, do not now suggest that the offences took place on the Saturday morning, even though the CCTV
10 film does indicate that the Appellant was at the stable sometime earlier than 5am on that day.

16. During the interviews between the Stewards and the Appellant between 5.46am and 8.28am on Saturday, 7 April in respect of *Master Agar* and also in the interview about *Tony's Princess*, commencing at 10.46am that day, the Appellant continued to falsely state that the horses had not been treated either that day or on the Friday in breach of the one clear day rule. In short, he lied and repeatedly lied.

20 17. At the inquiry on 8 May 2018, which, as the date demonstrates, was convened quite some time after the original offence, he continued with his false evidence until it became apparent that the Stewards had an array of evidence which indicated or was likely to indicate that what he had previously said was false. At page 15 of the transcript he said, after questioning:

"Can I stop this please? I know what's happened. I've got the days mixed up. We had a sad family death, like funeral, didn't get home until late and I've got my days mixed up. It was a pretty sad funeral and I was just all messed up."

30 He then admitted that he had treated or injected the substances into *Master Agar* on the Friday afternoon between 5pm and 5.45pm, but denied that he had done so on race day.

18. He was also asked this at transcript page 17 at lines 778:

“CHAIRMAN: *And you, in the knowledge that you did treat the horse in contravention of the rules, told lies to the Stewards.*

C POIDEVIN: *I panicked, I’m sorry.”*

Shortly thereafter, he also admitted that he had injected the second horse, *Tony's Princess*, at or about the same time.

19. It is against this background that we come to consider the charges. As I say, the Appellant pleaded guilty to the charges and we are now simply dealing with the issue of penalty. I should say that Mr O’Sullivan, for the Appellant, frankly conceded that, having regard to the gravity of the offences, a disqualification was appropriate. I will come to his submissions in more detail shortly.
20. In relation to the first charge, as I said, the Appellant accepted that he injected these substances and he knew at the time that in injecting the substances he was in breach of the rules. He said that he usually injected on Thursday, it being the closest time to race day he could lawfully inject the horses and he accepted that he did so in order to give the horses an advantage. Therefore, in injecting the horses on Friday in breach of the rules, he did so with the purpose of giving the horses an advantage. We do not accept the submission that his judgement was clouded by the events of Friday, namely the funeral and the wake and the beer that he might have consumed at the wake.
21. Similarly, in relation to Charge 2, also a breach of AR 178AB, despite the interviews in which the Appellant denied injecting the horse on the Friday or on race day, he ultimately conceded that he did but, as Mr Van Gestel points out and we accept, this charge is of greater seriousness than the first charge because, although alerted to the problem by the Stewards and knowing that the horse had in fact been injected by the substance, he did not scratch the horse. He permitted it to run. As Mr Van Gestel said in submissions in relation to Race 6, the Appellant cheated. We accept that description.
22. In relation to Charge 3, it is perhaps useful to restate the actual provision of the rule, which is in these terms:

*The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise -
(g) Any person who gives at any interview, investigation, inquiry, hearing and/or appeal any evidence which is false or misleading in any particular.*

23. As I demonstrated, the Appellant continued to lie and acted with a high level of dishonesty in the way he responded to the questions of the Stewards. He said he panicked. That might well have been the case when the Stewards first arrived in the early hours of the Saturday morning, but during the course of the morning it must have been apparent to him that the Stewards were conducting a detailed and extensive investigation, which could be avoided if he confessed to what he had done. Also, when he came to the inquiry in May, he maintained his lies until such time that it was apparent that the Stewards had sufficient evidence to establish his breach of the rules.
24. It is submitted by Mr O'Sullivan that in relation to Charge 2 the Stewards did not have evidence in order to support that charge other than the Appellant's admissions. That might be the case. However, at the time the Appellant admitted this offence, he did not know what additional material the Stewards had. It should be noted that this act of dishonesty is not isolated. Mr Van Gestel cross examined the Appellant about the circumstances recorded in a decision of this Panel of 25 August 2011 *In the Matter of the Appeal of Diane Poidevin-Laine*. That decision records what the Appellant told investigating stewards in that matter. Today, the Appellant admitted in cross examination that during that investigation in 2011 he lied to the stewards.
25. If I could now come to the relevant principles that apply in relation to penalties, in the matter of *Callow* I said this on behalf of the Panel:
- Deterrence will have a broader application in relation to the rules of racing. The principles will extend not only to the protection of the public but also the promotion of the safety of horses and jockeys as well as the integrity of racing. In determining penalty, consideration may be given to the deterrent effect that the penalty might achieve in deterring a repetition of the offence and in deterring other who might be tempted to fall short of the high standards required of them under the rules of racing. The penalty may also be seen as publicly marking the seriousness of the offence.

26. *In the Matter of Hunter Kilner*, a decision of this Panel of 27 November 2017, Mr Beasley SC, Principal Member, said the following:

In relation to the appeal against severity of penalty, the Panel has taken into account all of the subjective circumstances brought to our attention by Mr Kilner. He has been training horses for nearly 50 years and has a good record. We accept that he has no intent to cheat or to be dishonest.

10 However, as submitted by Mr Marc Van Gestel, the breach of AR178AB(1)(b) is an objectively serious breach of the rules. As has been said in many previous decisions, the principal purpose for penalties imposed for breach of the rules of racing is to protect the image and reputation of Racing. In our view a breach of AR178AB(1)(b) must ordinarily attract a penalty in the nature of a suspension or a disqualification.

27. In relation to matters related to AR 175(g) Mr Van Gestel referred the Panel to the decision of *Robl* of 24 February 2011, in which the Principal Member was Mr Hiatt, in which he said the following:

20 Further those who give false and misleading evidence at Inquiries or Appeals should expect severe sanctions, because such a breach hinders the proper administration of racing.....The betting breaches and the false and misleading evidence breaches go to the fitness of the Appellant to hold a license to cite Judge Perrignon in the Appeal of Cassidy (1995) 12.13: "Disqualification is a well-known and legitimate indeed a necessary safeguard to be adopted to secure the absence from a racecourse of persons who have been found guilty of conduct seriously detrimental to the Rules of Racing is vital to the proper administration of Racing"

28. We were also taken to the decision of the Victorian Racing Appeals Tribunal in the matter of *Leek*. The Chairman, the Honourable Judge Nixon, said in relation to AR 175(g):

30 Racing is major industry in this state, and the racing industry in Victoria, I believe, bears a high reputation throughout the length and breadth of Australia. It is important that reputation of the whole racing industry be maintained in order in turn to maintain public trust and public confidence in that industry. A licensed person, such as Mr Leek, has certain rights and privileges, and those rights and privileges carry with them on the other hand certain obligations. There must be a degree of trust between those who empowered to enforce the rules of racing-and I have in mind, of course, the stipendiary stewards, in particular-and licensed person, otherwise the system which has stood test of time will break down, and public confidence in the racing industry will be eroded.....Licensed persons owe a duty to tell the truth..... Those who lie like this must realise that they will suffer as a trainer, or as a licensed jockey, no doubt, financial detriment, they

should think of that before they engage in this course of deception. It is very easy to lie. It is very difficult to determine when a person is lying; as a Judge of this court one quickly realises that. But here I have no hesitation in saying that the appeal should be dismissed, both as a deterrent to Mr Leek, Junior, and as a deterrent to others who might be minded to engage in similar course of deception.

29. In relation to penalty, as I have previously mentioned, Mr O'Sullivan does not really contest the penalty as such. He accepts that disqualification is the appropriate penalty, having regard to the seriousness of the breaches, and he does not put seriously in dispute the period of the disqualification. His principal submission on penalty is that the orders of this Panel should be moulded to permit the Appellant to continue to practice his trade as a farrier. In making that submission, which I will come to in a little more detail, he accepts the seriousness of the conduct and also accepts the relevance of the prior convictions.
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30. Mr Van Gestel submits that Mr Poidevin, the Appellant, poses a risk to the industry if he continues to be involved in it.
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31. Mr O'Sullivan referred us to a decision of the Queensland Civil and Administrative Tribunal in the matter of *Weeks (Weeks v Queensland Racing Integrity Commission [2017] QCAT 345)*, which was presided over by Member Olding. In that case, the applicant was disqualified, but during the period of disqualification he was permitted to remain living on his property, break in horses for the purposes of harness racing and to undertake farrier work.
32. The principal issue on penalty is whether or not a similar such order should be made in the present case. I should also say that, in giving consideration to the principles of penalty, we were also taken to the schedule of penalties imposed in similar offences which, as I have already earlier mentioned, is exhibit C.
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33. For the purpose of Mr O'Sullivan's submission, it is necessary to address the evidence which was adduced from the Appellant. The Appellant is 50 years of age. He has been a farrier since the age of 17 when he was an apprentice. He has only ever worked in the racing industry, principally as a farrier. He has no

other means of employment and his evidence also is that his son is apprenticed to him. The submission is made by Mr O'Sullivan, based upon the evidence, that to deprive the Appellant of his means of earning a living as a farrier would deprive of him any real employment opportunity. He says that whilst recognising that the principles to which I have referred establish that those who commit such breaches should take the possible consequences into account before carrying out the conduct the subject of the charges.

10 34. Mr O'Sullivan also submitted and stated, on the instruction of the Appellant, that he, that is to say, the Appellant, has no present intention of resuming as a trainer. The only application he would make for a licence, consequent upon the expiry of a disqualification, would be as a farrier and in order to ride track work. This we are asked to take into consideration. I did point out when the matter was raised that, if we were to take those matters into consideration, they would form part of the reasons for the decision and would certainly be relied upon in any further application for a licence after disqualification.

20 35. In relation to this submission, Mr Van Gestel properly points out that the conduct of the Appellant is such that he is a present risk to the industry and a person of dishonest character should not be permitted to have any place in the industry. In this regard we have given consideration to the extent of risk to the industry that would be posed if the Appellant, were be permitted to continue as a farrier, during the period of his disqualification.

30 36. Taking all matters into account, Mr Daniels and myself have formed a view that to some degree Mr O'Sullivan's submission should be accepted. Mr Tuck has a different view, to which I will come. The decision of the Panel is therefore by majority. Mr Daniels and I take the view that the appropriate course is to confirm the penalties of disqualification imposed in respect to Charges 1, 2 and 3 and, pursuant to AR 182, make an order that, notwithstanding order 1, on and from 8 November 2018, the Appellant is permitted to provide services as a farrier and only as a farrier on licensed premises, subject to the following conditions:

(a) He shall not provide such services in respect of any horse or stable in which his wife, Diane Poidevin-Lane, has any interest or trains or works.

(b) He shall not breach any of the Rules of Racing.

(c) He shall at all times be of good behaviour.

10 (d) In the event that he breaches (a), (b) or (c) or carries out services other than as a farrier or otherwise breaches this order, the permission granted is immediately revoked and the disqualification in order 1 applies.

37. In coming to that conclusion, we take into consideration not only the impact that a disqualification would have for the total period in terms of the Appellant's financial position, but we also take into account that any trainer who engages the Appellant will do so knowing that he or she has responsibility for the Appellant's conduct and will have responsibility to ensure that the Appellant complies with the Rules of Racing. That trainer should be aware of the serious findings of dishonesty made against the Appellant and the Appellant's propensity to breach the rules.

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38. In that regard we note that Mr O'Sullivan accepts that it would be appropriate that all trainers in the Illawarra area be made aware of this decision and the serious findings made about the Appellant so that they are fully aware of their obligations if they engage the Appellant as a farrier.

39. As I think I have made plain that this will have the effect that the Appellant will be disqualified from even performing his services as a farrier for a period of 6 months, namely from 8 May this year to 8 November 2018. We take the view that the conditions appropriately manage the potential risk to the industry posed by the Appellant being permitted to continue his trade as a farrier after 8
30 November 2018.

40 Mr Tuck, however, approaches the matter in a somewhat different fashion. He would reduce the penalty in relation to Charge 2 to the same period as the

penalty in Charge 1, namely a period of 9 months. Secondly, he would reduce the penalty in relation to Charge 3 from 9 months to 6 months to be served consecutively with the penalties in Charges 1 and 2. That would mean a total disqualification of 15 months, but he would not make any provision to permit the Appellant to conduct himself as a farrier during that period of disqualification. In short, he would reduce the period of disqualification, whereas Mr Daniels and I would maintain it, but Mr Daniels and I would make the orders to which I have referred.

10 41. The orders, subject to further submissions about the detail, which I will raise in a moment, would be by majority.

(1) We confirm the penalties of disqualification in respect to Charges 1, 2 and 3, namely that in relation to Charges 1 and 2 the Appellant is disqualified, commencing on 8 May 2018 and expiring on 8 June 2019, that in relation to Charge 3 he is disqualified for a period commencing on 8 June 2019 and expiring on 8 March 2020.

20 (2) Notwithstanding order 1, during the period of the disqualification, pursuant to AR 182, on and from 8 November 2018, the Appellant is permitted to provide services as a farrier and only as a farrier on licensed premises and racecourses and otherwise is not permitted on licensed premises or racecourses, subject to the following conditions:

(a) He shall not provide such services in respect of any horse or stable in which his wife, Diane Poidevin-Lane, has any interest or trains or works.

(b) He shall not breach any of the Rules of Racing.

30 (c) He shall at all times be of good behaviour.

(d) In the event that he breaches (a), (b) or (c) or carries out services other than as a farrier otherwise breaches this order, the permission granted is immediately revoked and the disqualification in order 1 applies.

(3) In relation to the appeal deposit we would have thought the appropriate course is that it be forfeited in the circumstances.

42. I am making it very clear that if the Appellant attends a racecourse or licensed premises for purposes other than as a farrier, he is in breach of the terms and conditions and order 2 is immediately revoked.
