

RACING APPEAL PANEL OF NSW
SECOND APPLICATION FOR STAY BY KYM HEALY
REASONS FOR DECISION- 13 July 2018

Mr T Hale SC: Convenor

1. Mr Healy is a licensed trainer. On 4 June 2018 the Stewards found Mr Healy guilty of three charges:
 - Charge 1 – a breach of AR178E(1), which may be summarised as administering medication on race day to the horse *Aussie Jack* on 17 March 2018;
 - Charge 2 – a breach of AR178AB(1)(a) which may be summarised as injecting a horse on race day, again *Aussie Jack*;
 - Charge 3 – AR175(l), which may be summarised as conspiring to commit a breach of the Rules of Racing by entering into an arrangement with a Mr Michael Honson to stomach tube *Aussie Jack* and another horse *Alitaka* on 17 March 2018 prior to their respective engagements on 17 March 2018.
2. The Stewards, having found Mr Healy guilty of charges 1 and 2, imposed a penalty of six months disqualification in respect of both offences, to be served concurrently, commencing on 4 June 2018 and expiring on 4 December 2018. In respect of charge 3, to which Mr Healy pleaded guilty, the Stewards imposed a penalty of 4 months disqualification commencing on 4 December 2018 and expiring on 4 April 2019.
3. Mr Healy has exercised his right of appeal pursuant to s.42 of the *Thoroughbred Racing Act, 1996*, to appeal to the Appeal Panel against the decision of the Stewards. He appeals both against conviction and penalty in respect of all three charges. As he is entitled to do, Mr Healy has changed his plea in respect of Charge 3 from guilty to not guilty. The appeal is listed for hearing on Tuesday 31 July 2018. I had been appointed Convenor of the Appeal Panel for the hearing of the appeal.
4. Mr Healy previously sought a stay of proceedings, more particularly the disqualification, pursuant to *Racing NSW Local Rule: LR107(1)(a)*. After receiving written submissions on behalf of Mr Healy and the Stewards, the Principal Member, Mr Beasley SC refused the stay application on 19 June 2018. In doing so he said:

I remain unsatisfied that a stay should be granted. I am not presently satisfied that the appellant has been deprived of procedural fairness. I am not sufficiently informed as to what his defence is to the breach of the rule he pleaded guilty to, or to any defence he might have to the breaches he was found guilty of. Considerations of those matters are relevant to a state of satisfaction of “substantial injustice”, at least in circumstances of such serious charges as the breach of the rule the appellant pleaded guilty to, and the others he was found to be in breach of.

5. He also said:

I do not consider a finding that the requirement for a stay is not satisfied at a particular time forever shuts out an appellant from another application. There will be limits within reason, but if between now and the date of any appeal in this matter, the appellant is able to produce evidence that satisfies me that he will suffer a “substantial injustice” if a stay is not granted, it is open to him to renew his application or make a fresh one.

6. Mr Healy has now renewed his application for a stay. The application was made by letter dated 6 July 2018 from his solicitor Mr Damien O’Dea of O’Dea Lawyers. That application is to be determined by me as the Convenor of the Appeal Panel, pursuant to LR107(1). I now also have submissions in reply dated 11 July 2018 from Mr Van Gestel on behalf of the Stewards.
7. Under *LR107(1)(a)* I have power to grant a stay if I consider that a substantial injustice may be caused to Mr Healy if the stay were not granted.
8. In the circumstances, I do not see that a stay should be granted because on the material presently before me I do not see that a substantial injustice would be caused to Mr Healy as appellant if the stay were not granted. For present purposes I need only address the Charge 3, which is the charge of breaching AR175(l), by conspiring to commit a breach of the Rules. At the Inquiry before the Stewards on 4 June 2018 Mr Healy pleaded guilty to this offence, and as a consequence of which what would otherwise have been six months disqualification was reduced to four months for the guilty plea. The transcript of the 4 June 2018 Steward’s Inquiry records the following:

CHAIRMAN: *You understand the charge that has been issued against you, Mr Healy?*

K HEALY: *No, not really.*

CHAIRMAN: *You don't understand it?*

K HEALY: *No.*

CHAIRMAN: *What would you like me to explain to you? It's about conspiring, enter into an arrangement with Mr Honson. Mr Schembri spoke to Mr Honson. It was agreed that Mr Honson was going to stomach-tube the horses on race morning. You agreed to that arrangement with Mr Schembri.*

K HEALY: *And it didn't happen.*

CHAIRMAN: *And it didn't happen, but there was an arrangement put in place whereby you conspired with Mr Honson to do so. That's the first charge. How do you wish to plea to that charge, Mr Healy?*

K HEALY: *I'm guilty of that.*

CHAIRMAN: *Guilty?"*

9. As I have mentioned, Mr Healy is entitled to change his plea to not guilty. He may wish to give evidence to explain or qualify the admissions which he made to the Stewards, which I have set out above. Mr O'Dea submits that "the plea of guilty was given in haste and without proper reflection and that (Mr Healy) was unaware of the significance of the plea." That may well prove to be the case. However, that submission does not amount to evidence. At the moment there appears to be no evidence that qualifies the admissions that Mr Healy has made.
10. On the information I presently have before me it is difficult, therefore, to conclude that on material before me the appeal against conviction raises serious issues for determination.¹
11. The appeal is for hearing on 31 July 2018 less than two months after the determination of the Stewards that Mr Healy should be disqualified for a period of six months. On the face of it, and without yet having received any evidence in relation to the mitigation of penalty, it does not seem likely that a period of suspension or

¹ *Kalifair Pty Ltd v Digi-Tech (Aust)* (2002) 55 NSWLR 737 at [18], insofar as the principles relating to a stay pending appeal to the Court of Appeal of NSW is relevant.

disqualification would be substantially less than two months. I therefore do not consider that a substantial injustice would be caused to Mr Healy if the stay were not granted

12. This, however, does not preclude Mr Healy making any further application for a stay, supported by evidence.
13. For the foregoing reasons the stay application is refused.