

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED TRAINER WANDA INGS

Appeal Panel: **Mr R. Beasley SC, Presiding Member; Mr J. T. Murphy; Ms S. Skeggs**

Appearances: **Racing New South Wales: Mr M. Van Gestel, Chairman of Stewards**
Appellant: Ms V. Heath, Barrister, instructed by HNT Legal

Date of Hearing: **28 June 2022**

Date of Decision: **7 September 2022**

Rule involved: **AR229(1) – Improper Conduct**

Outcome: **Appeal allowed**

REASONS FOR DECISION

Mr R Beasley SC, Presiding Member

Introduction

1. Following an investigation commenced on about 20 April 2022, and a Stewards' Inquiry held on 6 May 2022, licensed trainer Ms Wanda Ings (the Appellant) pleaded guilty to a charge brought under AR229(1)(a) which was particularised as follows:

AR 229 Corruption, dishonesty and misleading behaviour

(1) A person must not:

- (a) engage in any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing;

The details of the charge being that Ms Ings did engage in an improper practice in connection with racing due to the following matters.

1. On 7 March 2022 Ms Wharekura was issued with a conditional trainer's licence.

2. From on or around 23 December 2021 Ms Ings was the trainer of the racehorse Island Legend and the registered trainer from 3 January 2022.
 3. Between the period 18 March 2022 and 6 April 2022 Island Legend was being trained by Ms Wharekura at her Hawkesbury stables in breach of a condition (a) of her trainer's licence terms and conditions, in that it had previously been trained by Ms Ings.
 4. Between 18 March 2022 and 6 April 2022 Ms Ings improperly remained as the registered trainer of Island Legend recorded with Racing Australia as detailed in the stable return history when Island Legend was being trained by Ms Wharekura.
 5. On 3 April 2022 Island Legend competed in and won a barrier trial conducted at the Mudgee racecourse whilst Ms Ings improperly remained as the registered trainer of Island Legend recorded with Racing Australia as detailed in the stable return history when Ms Wharekura was the trainer of the gelding.
 6. Such practice detailed above improperly resulting in the trainer of Island Legend being misrepresented during the period 18 March 2022 and 6 April 2022, including when Island Legend competed in and won a barrier trial at the Mudgee racecourse on 3 April 2022.
2. The Appellant further pleaded guilty to a breach of AR296(2)(d)(ii) for failing to lodge an amendment to the stable return for Island Legend disclosing that the gelding had left her stable and moved to the stable premises of Ms Wharekura on 18 March 2022.
 3. In respect to the breach of AR229(1)(a), the Stewards imposed a disqualification of 3 months (reduced from 4 months because of her guilty plea). A fine of \$1,000 was imposed in respect to the breach of AR296(2)(d)(ii).
 4. The Ms Wharekura referred to in the particulars of the charge is the Appellant's daughter. Also on 6 May 2022, Ms Wharekura (who without disrespect will be referred to as Lindy in the balance of these Reasons) pleaded guilty to a breach of AR229(1)(a) based on similar facts to those particularised in the improper practice charge brought against the Appellant.

5. The Appellant has appealed to the Panel against the finding of breach of AR229(1)(a) and the severity of the penalty imposed upon her. There is no appeal in relation to the penalty imposed for her plea in respect to a breach of AR296(2)(d)(ii).
6. The appeal against breach involved a request for leave to be granted to the Appellant to change her plea. Such leave was granted at the appeal hearing. At that hearing, the Appellant was represented with leave by Ms V. Heath of Counsel. The Stewards were represented by Mr M. Van Gestel, the Chairman of Stewards. An Appeal Book was tendered, containing the exhibits from the Stewards Inquiry. The Appellant also gave oral evidence at the appeal hearing, and a Statement of Evidence was tendered on her behalf. Other documents tendered by the Appellant will be referred to where relevant below.

Facts not in dispute

7. On about 16 November 2021, the Appellant was found to have breached AR255(1)(b)(ii). The Stewards imposed a penalty of a 9-month disqualification. The Appellant appealed the penalty imposed, and was granted a stay pending the outcome of her appeal.
8. During the period of the stay, on or about 23 November 2021 the Appellant commenced to train Island Legend. Island Legend had been purchased by Lindy at about the same time. Coincidental with this purchase, it was Lindy's intention to apply for a trainer's licence. She sat her licence examination at Racing NSW on 3 December 2021. She was interviewed by the Licensing Committee on 9 December 2021. She was granted a conditional trainer's licence on 1 March 2022. The details of the licence conditions imposed on Lindy included the following:
 - (a) You are not permitted to train horses previously or currently trained by Ms Wanda Ings.
 - (b) You are not permitted to train horses for owners Ms Wanda Ings has previously trained for within the last 12 months or is currently training for (effective approval date).
 - (c) You are not permitted to communicate with Ms Wanda Ings in respect to the training of any horses in your care.

- (d) Should Ms Ings' appeal be successful the conditions above no longer apply.
 - (e) Should Ms Ings be subject to a period of disqualification the conditions above do not apply at the conclusion of the period of disqualification.
9. After she had purchased Island Legend, Lindy sold shares in the horse to a number of purchasers who were people known to her and the Appellant. The intent appears to have always been that once Lindy was granted a trainer's licence, she would train Island Legend. Of course, the conditions of her licence prevented this as long as the Appellant remained subject to disqualification. As a consequence of this, the CEO of the NSW Trainers Association (Mr R. Callandar) was asked from about early March 2022 to make representations to Racing NSW to have the conditions of Lindy's trainer's licence altered so she could train Island Legend. Those attempts came to no avail.
10. However, on 18 March 2022 Island Legend was transported by the Appellant to Lindy's stables. The horse remained there until 6 April 2022, when he returned to the Appellant's stables. During the time the horse was at Lindy's stables it was seen by a vet, and underwent an endoscopy on 29 March 2022.
11. Also during this period, on 3 April 2022, Island Legend started in a barrier trial at Mudgee. It was entered in that trial by the Appellant, who saddled the horse before the trial. She arranged for her daughter Chelsea Ings to ride the horse in the trial. Island Legend returned to Lindy's stables on 3 April 2022, but then was returned to the Appellant's stables on 6 April 2022.
12. Shortly before this, the Appellant's appeal in relation to the penalty imposed upon her for her breach of AR255(1)(b)(ii) was determined by this Panel (Mr P Santucci, Acting Presiding Member; Mr Tuck; Ms Skeggs). Her 9-month disqualification was reduced to 3 months. Orders were made to this effect on 24 March 2022. However, on 2 May 2022 the Racing Appeal Tribunal restored the 9-month disqualification. A Supreme Court judicial review challenge to that determination was subsequently dismissed on 27 August 2022.

Stewards' Submissions

13. The Panel has had the benefit of receiving written submissions from the Stewards both in chief and in reply. In their submissions in chief, the Stewards submit that in order to determine this appeal, the Panel must answer the following three questions:
- (a) Was Ms Ings aware of the conditional licence issued to Ms Wharekura?
 - (b) Was Ms Wharekura training Island Legend during the period 18 March 2022 and 6 April 2022?
 - (c) If so, did Ms Ings commit an “improper practice” in connection with racing by remaining as the registered trainer of Island Legend when being trained by Ms Wharekura during that period?
14. As to question (a), the Stewards have directed the Panel to parts of the transcript of the Stewards' Inquiry held on 6 May 2022 where Ms Ings clearly indicates an understanding of the conditions attaching to Lindy's licence. I am comfortably satisfied that the Appellant was at all relevant times aware of the conditions attaching to Lindy's trainer's licence referred to at [8] above.
15. As to question (b), the Stewards have again pointed to certain admissions made by both Lindy and the Appellant at the Stewards' Inquiry of 6 May 2022. Parts of the transcript contain acknowledgments by Lindy that between the period 18 March 2022 and 6 April 2022 she was the trainer of Island Legend. She acknowledges that she “jumped the gun,” got “carried away” and that the horse was brought to her “before we had approval,” and it was “a mistake.” She acknowledged caring for the horse, as well as determining what work the horse did. Ms Williams, who floated the horse to the Mudgee barrier trial, also had an understanding that Lindy was training the horse: T10 L.427-430.
16. For her part, the Appellant acknowledged that she took Island Legend to Lindy's stables “*on the proviso that Richard [Mr Callandar] was going to be able to do something, so the 18th I dropped him down to their stables*”. At that time the

Appellant said that they were “waiting with bated breath,” no doubt for a favourable decision in terms of the licence conditions from Racing NSW. When asked whether Lindy was training the horse, the Appellant said, “well I was requesting that certain things were done with the horse, but yeah, she had him in her care and stabled the horse down at Hawkesbury.” She also described the circumstances as a “mistake.”

17. There are two other parts of the evidence from the Stewards’ Inquiry that are important. When it was put to Lindy that Island Legend was “obviously then being trained by you” after 18 March, Lindy’s evidence was as follows: “*Between the two of us, we communicated about the horse and we talked about what we were going to do with him*” (T6.246-.247) (emphasis added). In a similar vein, when the Chairman asked the Appellant “Did you nominate [Island Legend] in the knowledge that you weren’t training it at the time?” the Appellant answered:

“Well, both Lindy and I were – the horse only – we spoke about, you know, what we were doing, what he was doing, what he was up to. I had originally nominated him for a barrier trial at Hawkesbury and it was washed out with all the floods or whatever that was going on. Yes, I did nominate the horse for the Mudjee trials.” (T18.764-.771) (emphasis added).

18. In relation to the answer to question (c) (was the conduct improper practice?), having referred to the Panel’s decision in *Karakatsanis and Vasili v Racing NSW*, the Stewards submitted that during the period 18 March 2022 and 6 April 2022 (and particularly at the barrier trials on 3 April 2022), the trainer of Island Legend was misrepresented in that during that period the horse was in fact trained by Lindy when it was represented as being trained by the Appellant: see generally the Stewards’ written submissions at [22]-[25]. This, the Stewards submit, should be considered conduct falling within the definition of “improper practice” in the rule.

Appellant’s Submissions

19. The general thrust of the Appellant’s submissions is that Lindy had not become a “dummy” trainer for the Appellant and that in truth, even during the period 18 March 2022 to 6 April 2022, the Appellant remained the trainer of Island Legend, albeit with some assistance being provided by Lindy. The submission made was that the conditions imposed on Lindy’s licence did not “restrict [Lindy] at any time from

assisting [the Appellant], providing services to [the Appellant] or communicating with [the Appellant] about horses currently being trained by [the Appellant]”: Appellant’s submissions at [33]. That submission seems against at least the spirit of condition (c) referred to in [8] above, but it was a condition placed on Lindy, not the appellant directly.

20. The Appellant’s submissions also advance the evidence given by the Appellant in her witness statement (Ex 5) that the principal reason for taking Island Legend to Lindy’s stables on 18 March 2022 related to the horse receiving veterinary care which was not available from the Appellant’s vet: see Appellant’s written submissions at [55]-[57].
21. It is submitted that the Appellant intended to take the horse back from Lindy’s stables after it had received the necessary veterinary care but delayed this to a degree pending the outcome of Mr Callandar’s representations on Lindy’s behalf to have the conditions of her trainer’s licence altered.
22. In support of the submission that the Appellant always remained the trainer of Island Legend, the submission is made that although during the period 18 March to 6 April the horse was stabled with Lindy, on every day the Appellant was in contact with Lindy concerning the horse, and sometimes more than once. The Appellant claims to have continued to set the work for Island Legend, including giving specific instructions regarding the pace of the work: see Appellant’s written submissions at [70] and [71]. The Appellant also says that she provided the feeding instructions for Island Legend (Appellant’s written submissions at [72]) and the maintenance of a daily dose of Gastrozol paste. The Appellant also maintained communication with the owners of the horse as to how it was doing.
23. The Appellant asserted that there was nothing unusual in the fact that Lindy billed the owners of the horse for his keep, food, and riding expenses, given these expenses were being incurred and paid by Lindy: Appellant’s submissions at [75].
24. Detailed submissions were then made in support of the proposition that at all times the Appellant remained the trainer of Island Legend: see Appellant’s submissions at [86]-[106]. Some of these submissions are dealt with later in these Reasons.

25. The Appellant also makes criticism of the particulars of the charge brought against her. Having submitted that the questions posed by the Stewards to be answered by the Panel are the “wrong questions,” criticism is made of the particulars of the charge in that nowhere is to be found the allegation that the Appellant was aware of the conditions attaching to Lindy’s licence. That is not an unfair criticism in some respects, however, as I have already found, it is clear on the evidence that the Appellant was aware of the conditions attaching to Lindy’s licence. Further, the improper conduct particularised relates more to particulars 4, 5 and 6 than 1 to 3.
26. The submission is then made that on 24 March 2022, when the Panel reduced the Appellant’s disqualification for the breach of AR255 from 9 months to a 3-month disqualification, conditions (a), (b) and (c) of Lindy’s licence ended by dint of condition (d). For the reasons addressed by the Stewards in their submissions in reply, I do not consider that this is a proper reading of the conditions. The conditions need to be read in totality and include condition (e). It may have been that on 24 March 2022 the Appellant’s appeal was successful in that a disqualification was reduced, but she was still subject to a period of disqualification which obviously had not concluded. To that extent, condition (e) of Lindy’s licence qualifies condition (d).
27. Ultimately, I agree with the essence of both the submissions of the Stewards and the Appellant on the key question of fact that the Panel has to determine: that is, during the period 18 March to 6 April 2022, was Lindy the trainer of the horse, or did the Appellant remain the horse’s trainer? Once that question is resolved, if the finding was made that Lindy was the trainer during that period and not the Appellant, it would then be necessary to decide whether the conduct involved was “improper practice,” within the meaning of AR229(1)(a).

Findings on disputed facts

28. There is no doubt in my view that the Appellant was aware of the conditional nature of Lindy’s licence. That is why attempts were being made through Mr Callandar to persuade Racing NSW to change those conditions so that Lindy could train Island Legend. That finding is of course not decisive of the appeal. The main factual issue to determine is who was training the horse between 18 March and 6 April 2022.

29. I accept that the Appellant wanted Island Legend seen by a vet because of its perceived breathing difficulties. I accept that the horse underwent an endoscopy on 29 March 2022 while the horse was stabled with Lindy, and that the Appellant was the instigator of this veterinary care. I do not accept, however, that it was the main reason why the horse was transported from the Appellant's stables to Lindy's stables on 18 March 2022. It is clear from the evidence given at the Stewards' Inquiry on 6 May 2022, in my view, that the horse was transported to Lindy's stables on 18 March 2022 on the expectation of both Lindy and the Appellant that Mr Callandar would be successful in persuading Racing NSW to alter the conditions of Lindy's licence. That was why the horse went to Lindy's stables. The expectation at the time was that the licence conditions would be altered, and Lindy would be able to train the horse. It was only when it became clear that Mr Callandar was not going to be able to persuade Racing NSW to amend the conditions attaching to Lindy's licence that the horse was then returned to the Appellant's stables on 6 April 2022. However, while this finding is in some respects adverse to the Appellant, it is not decisive of the appeal on its own. There still remains this question: who was the trainer of the horse between 18 March 2022 and 6 April 2022?
30. At [99] of the Appellant's submissions, 19 reasons are provided as to why the Panel should find that the Appellant remained the trainer of the horse during the 18-day period from 18 March 2022 to 6 April 2022. I will deal with each one in turn:
- (i) *"1. Maintained control and management of the horse."* This is a very broad assertion and it is better to address the more particular matters raised below.
 - (ii) *"2. Devised and supervised the work program for the horse."* This claim is at least not consistent with the evidence given by Lindy to Ms Jacqueline Johnston from Racing NSW Investigation & Surveillance Unit in a record of interview of 20 April 2022. In that record of interview the following exchange took place:

J. Johnston: And who was caring for the horse when it was at 107 Racecourse road?

L. Wharekura: Myself. I was caring for the horse.

J. Johnston: Was the horse worked?

L. Wharekura: Yes, he was.

J. Johnston: And who was riding?

L. Wharekura: Licensed trackwork rider Jess Green was riding the horse.

J. Johnston: Jessica Green, okay and what sort of work was the horse doing?

L. Wharekura: He was just – I think he galloped once. He had two bits of pacework and he swam a few times and trot and cantered on the track.

J. Johnston: And who determined the work that was prescribed for the horse?

L. Wharekura: I did.”

Left on its own, the conclusion could be drawn that Lindy was setting the work for the horse, which would be a strong indication that she had taken over training duties. However, the following was also said:

J. Johnston: Was that done in consultation with Ms Ings or just you made that decision?

L. Wharekura: We talked about the work for the horse.

J. Johnston: The horse remained in the stable from 18 March until when?

L. Wharekura: I’ll just check for you. The horse left on 8 April sorry 6 April. ...

J. Johnston: And how did it leave the stable?

L. Wharekura: Oh, when we realised that the transfer was going to be more difficult and it wasn’t – it was, you know, pretty clear to us that he wasn’t going to be able, transfer, Wanda came and picked him up.

J. Johnston: And where did the horse go after that?

L. Wharekura: Wanda Ings' property.

J. Johnston: And what was the arrangement from that point forward?

L. Wharekura: That she would continue the training of the horse until, you know, the end of her disqualification, if she gets disqualified, or until her appeal is heard.

J. Johnston: Now, when you say continue training the horse, was that done in consultation with yourself?

L. Wharekura: I have since the horse returned to Wanda I haven't had input. A few times we talked about it, but she has been training the horse."

Also referred to above, at the Stewards' Inquiry on 6 May 2022, Lindy gave evidence that the horse was being trained "*between the two of us, we communicated about the horse and we talked about what we were going to do with him*" (T6.247-.248). There was similar evidence from the Appellant at T18.767-.771. There is therefore evidence that the Appellant did not entirely relinquish setting the work program for Island Legend to Lindy. I would accept that they were communicating about the work the horse would do on the phone during the period 18 March to 6 April 2022.

- (iii) "3. *Devised and supervised his feeding regime including instructing Ms Wharekura as to the feed to be given during the contested period and giving approval of the source of the food stuff.*" There is not much, if any, evidence of this prior to the provision by the Appellant of her witness statement dated 27 June 2022 made for the purpose of the appeal hearing. That of course does not mean of itself that the evidence that the Appellant gave concerning her role in setting a feeding regime (see Appeal Transcript p.30.1435-.1439) is fabricated. At this point it is convenient to make an observation about some aspects of this appeal hearing. When speaking to the investigator, and at the Stewards' Inquiry on 6 May 2022, the Appellant had no legal or other representation. Nor did Lindy. At the Stewards' Inquiry (and in Lindy's interview with the Racing NSW investigator) certain matters were admitted, but there were aspects of those admissions that were not fully explored. In particular, the details of the communications between Lindy and the Appellant

during the period 18 March to 6 April 2022 were not fully explored. That is no one's fault. However, there was no particular attention given to what responsibility each of them were taking for the horse during this period. Having had the benefit of advice, the appellant clearly focused on the issue of whether she had relinquished training the horse to Lindy during the contested period, or in fact remained the trainer. More evidence has come forward in relation to that matter at the appeal hearing than was given at the Stewards' Inquiry. I do not consider that has happened because the Appellant is now making things up. There may be a degree of reconstruction on some matters, particularly the reason for originally dropping the horse to Lindy's stables on 18 March 2022, but the absence of evidence concerning who was training the horse at the Stewards' Inquiry, and the greater detail on that issue in the evidence before the Appeal Panel, relates more to proper attention being given to that issue rather than it being evidence of late invention or fabrication. That is how I view most of this evidence concerning who was or was not training Island Legend during the period 18 March to 6 April 2022. Having said that, while I accept that the Appellant may have made suggestions about Island Legend's feeding regime, I consider that Lindy probably played a role in this as well.

- (iv) *"4. Controlled the stabling of the horse including by attending and knowing the circumstances and facilities of the barn where he was stabled during the contested period (it was not material that she did not select the particular stall for the horse)."* I am not convinced that this submission advances the matter one way or the other very far.

- (v) *"5. Knew the riders of the horse and the circumstances in which they were being ridden for work – at Bathurst, Ms Ings engaged the riders whereas at Hawkesbury Ms Wharekura did so but Ms Ings had specific knowledge of who was riding at Hawkesbury and the company in which the horse was being worked."* I accept that the Appellant was in communication with Lindy during the contested period and had input into when the horse worked and what kind of work it did.

- (vi) “6. *Nominated the horse and paid the nomination fees.*” If this relates to the barrier trial, then it is accepted.
- (vii) “7. *Assessed the fitness of the horse and his suitability to trial or race in different conditions.*” I accept that the Appellant would have assessed the fitness of the horse and the suitability for it to undertake the barrier trial it did in Mudgee on 3 April 2022, although I consider Lindy would have done the same thing.
- (viii) “8. *Decided when the horse would not trial due to unsuitable conditions.*” I accept that both the Appellant and Lindy would have made decisions of this nature.
- (ix) “9. *Engaged the jockey for the horse.*” I accept that the Appellant engaged her daughter Chelsea to ride Island Legend at the barrier trial at Mudgee on 3 April 2022.
- (x) “10. *Accepted responsibility for presentation of the horse at the racecourse.*” It is not disputed that the Appellant saddled Island Legend at the Mudgee barrier trial on 3 April 2022.
- (xi) “11. *Attended the horse at the racecourse, was responsible for saddling the horse and giving the jockey riding instructions.*” I accept this occurred for the barrier trial.
- (xii) “12. *Met the managing owner of the horse at the racecourse.*” I accept this happened for the barrier trial.
- (xiii) “13. *Directed the chiropractic and veterinary attendances to be arranged for the horse.*” I accept that the Appellant was mainly responsible for the veterinary care the horse received whilst stabling at Lindy’s stables.
- (xiv) “14. *Spoke directly with the vet regarding the outcome of the scope and received the vet clearance certificate, which was addressed to her.*” As

outlined at [86] of the Appellant's statement of 27 June 2022, I accept that Dr Graham called her about the endoscopy of Island Legend on 29 March 2022.

- (xv) *"15. Directed and provided the medication to be given to the horse and recorded the medication and veterinary treatment of the horse in her trainer's logbook."* I accept that the Appellant did this, although some or all of the entries give the appearance of having been made at the one time.
- (xvi) *"16. Corresponded with all owners periodically by email and directly with the managing owner by electronic message and in person – in the circumstances that the owners were all good friends of Ms Wharekura's it was also in order that communication was also had by Ms Ings with the owners directly via Ms Wharekura."* I accept that both Lindy and Ms Ings had communications with owners concerning Island Legend.
- (xvii) *"17. Published periodic reports about the horse on her training website, including during the contested period."* I accept this happened.
- (xviii) *"18. Personally transported the horse except when her float was out of commission."* I accept that the Appellant delivered the horse to Lindy's stables on 18 March 2022, and then collected the horse to take back to her stables on 6 April 2022. This does not really address who was training the horse during this period.
- (xix) *"19. Decided when and where the horse was to be transported."* This also does not directly address the issue of who was training.

Resolution

- 31. I have considered the findings made in the paragraph above against the following background.
- 32. First, as found above, I am comfortably satisfied that the Appellant transported Island Legend to Lindy's stables on 18 March 2022 not for it to obtain veterinary care (although that was a consideration) but because the Appellant felt it likely that Mr

Callandar would succeed in persuading Racing NSW to change the conditions of Lindy's licence. In saying that, I make no criticism of Mr Callandar. It is possible he may have expressed a degree of confidence about the outcome, but based on the evidence I would find that at no stage did he ever give a guarantee as to the outcome, and as a matter of obviousness he was not the decision-maker.

33. As to the balance of the evidence, in my view, the admissions made by Lindy that she was training and working the horse should properly be considered qualified admissions. She gave this evidence in the context of also giving evidence that she was in regular communication with the Appellant concerning aspects of the horse's care and work. The Appellant gave similar evidence at the Stewards' Inquiry, and of course, with the benefit of representation, far more expansive evidence in her statement tendered to the Panel and in her evidence before the Panel. She has now set out in far more detail an account as to what happened between 18 March to 6 April 2022 with Island Legend and her involvement with that horse. In summary, I would accept the following:

- (a) she had communications with Lindy during this period as to what work the horse would do and when it would work;
- (b) they had some discussions concerning the feeding of the horse;
- (c) the Appellant was the instigator of the veterinary care for the horse and had discussions with Dr Graham concerning the endoscopy;
- (d) it was the Appellant who saddled the horse to the Mudgee trial on 3 April 2022, and performed the normal duties of the trainer at those barrier trials.

34. As to Lindy, I have no doubt she played a role in deciding when to work the horse and what work it should do, what the horse should be fed, and what, if any, medication should be given to the horse also in consultation with the Appellant.

35. Having considered the totality of the evidence (much of which was not available to the Stewards at the Stewards' Inquiry), I am comfortably satisfied that during the

period 18 March 2022 to 6 April 2022 the Appellant maintained a role in training the horse. I am also of the view that Lindy played a role and undertook tasks and duties and made decision that were also consistent with being the trainer of Island Legend. During this relatively short period (18 days) the totality of the evidence is probably best described as a situation of co-training Island Legend. I do not consider on the totality of all the facts as I have found them that the Appellant ever ceased to be the trainer of Island Legend – it is simply that Lindy during this period also took over some of the duties and responsibilities as trainer. Further, there was never any aspect of there being a “dummy” trainer which I would consider to be at least, in part, the vice that Racing NSW wanted to avoid. I do not consider that Lindy took over, in secret, the sole training of Island Legend with the Appellant still being the trainer in name.

36. Examining the particulars of the charge, the improper conduct alleged in particular 4 is that the Appellant “improperly remained as the registered trainer of Island Legend” when in fact the horse was being “trained by Ms Wharekura”. These facts have not been made out, for the reasons set out above. In my view, the Appellant did not stop performing duties and taking on responsibility consistent with remaining the trainer of Island Legend even if Lindy also performed some of those duties and undertook some of those responsibilities, even to the extent that she might be considered in the position of a co-trainer. The improper conduct alleged in particular 5 again alleges that “Ms Ings improperly remained as the registered trainer ... when Ms Wharekura was the trainer of the gelding”. Again, this particular is not made out by the facts as I have found them.
37. In particular 6 it is alleged that these practices “improperly result[ed] in the trainer of the Island Legend being misrepresented during the period 18 March 2022 and 6 April 2022 including when Island Legend competed in and won a barrier trial at the Mudgee Racecourse on 3 April 2022”. On the facts as I have found, there was no misrepresentation precisely of this kind.
38. Had I found that the Appellant ceased to be the trainer of the horse between 18 March and 6 April 2022, but nevertheless held herself out as the trainer of the horse, it is highly likely that I would have found that to be “improper practice” in breach of the

rule. Had the charge been that a form of co-training was also an improper practice, it would be a more difficult question to address as to whether that should be considered “improper practice” under the rule, given the relatively short timeframe here, and the fact that during that period the horse was only entered in a barrier trial. It is, however, not necessary to decide that. I am not satisfied that the facts pleaded in the particulars of the charge have been made out, and in those circumstances the appeal must be allowed, and the penalty imposed set aside.

Mr J. Murphy and Ms S. Skeggs

39. We agree with the reasonings and findings made by the Presiding Member, and with the orders set out below.

Orders

- (1) Appeal allowed.
- (2) Finding of breach of AR229(1)(a) set aside.
- (3) Penalty of a 3-month disqualification set aside.
- (4) Appeal deposit to be refunded.