

RACING NEW SOUTH WALES APPEAL PANEL

**IN THE MATTER OF LICENSED TRAINER MARK OSTINI
APPLICATION FOR TO APPEAL OUT OF TIME
BY REASON OF EXCEPTIONAL CIRCUMSTANCES
PURSUANT TO LR 106(2)(C)**

Appeal Panel: **Mr P F Santucci – Convenor**

Mrs J Foley

Mr J Murphy

Appearances: **Stewards: M Cleaver**

Appellant: M Hourn – Neville Hourn + Borg Legal

Date of Hearing: **On the papers**

Date of Reasons: **16 September 2025**

REASONS FOR DECISION

1. **THE PANEL:** The Panel has before it an application for appeal dated 12 August 2025 in respect of licenced trainer Mark Ostini. The appeal is out of time. The application asks the Panel to exercise its discretion to entertain the appeal out of time on the basis of “*exceptional circumstances*”: LR 106(2)(c)
2. Mr Ostini was charged by the Stewards on 29 November 2024 in respect of two charges relating to race day administration of BLT Lung Airway Clairisol at Armidale races on 10 November 2024 (Charges 1 and 2), fraudulent entry of treatment records by purporting to sign on behalf of a veterinarian (Charge 3), employing an unregistered person in his stable (Charge 4), possession of a medication or substance that was not registered, labelled,

prescribed, dispensed or obtained in accordance with Commonwealth and State legislation (Charge 5). Mr Ostini pleaded guilty to each.

3. A hearing occurred on 19 December 2024 and following the hearing Mr Ostini was found guilty. The Stewards imposed a penalty of 24 months disqualification (making a discount for totality) to commence from 29 November 2024.
4. LR106(2)(b) requires an appeal to be filed within 2 days. The present application for an appeal was filed 8 months and 13 days after the date of the decision.
5. We have received helpful submissions from Mr Hourn on behalf of the appellant. We have also received Reply submissions from Mr Ostini in person. Mr Hourn's submissions set out the unfortunate personal circumstances that befell Mr Ostini in late 2024.. Those facts included the death of a close friend on 1 November 2024, and the death of his mother-in-law on 12 November 2024, and subsequent obsequies on 19 November 2024.
6. There is a further suggestion in the submissions that Mr Ostini had suffered exceptional injuries said to be "*Ongoing-2024*" that "*also impaired his psychological health*". However no evidence was led to substantiate that fact and accordingly, the Panel does not take it into account in assessing the exceptional circumstances.
7. For the purpose of this application the Panel is willing to accept without deciding that Mr Ostini may have been labouring under the exceptional circumstances associated with grief and loss throughout November and December 2024.
8. However, on the facts of the present case, even if the Panel were to accept that the exceptional circumstances were in existence and had a material effect on Mr Ostini's ability to lodge an appeal at the end of December 2024, there still remains no satisfactory explanation in the evidence (let alone evidence as high as exceptional circumstances) as to why the appeal was not brought until August 2025.
9. There is some suggestion in the submissions that Mr Ostini was occupied with the task of dissolving his ownership in horses (pursuant to the terms of his disqualification) throughout January and February 2025. No evidence is led on that point. But the Panel is willing to infer it may have occupied some of his time. However, undertaking the practical steps to comply

with a penalty is not on its own sufficient to amount to an “exceptional circumstance”. To the contrary, the work of having to deal with the practical consequences of the significant penalty imposed would be likely to cause a licenced person to reflect on their wish to appeal the penalty imposed.

10. In the Reply submissions from Mr Ostini there is an unsubstantiated allegation that the “*time lag in pursuing the matter was primarily from RNSW as you indicated I asked for an internal review not aware that there was an exceptional circumstances appeals process but was never given an adequate response only veiled threats about criminal charges. It wasn’t until I engaged legal counsel that RNSW began responding.*” In order to make good that allegation the Panel would have expected some evidence. For example, it was within Mr Ostini’s power to demonstrate if and when such a review was requested, the response from RNSW, or evidence of when legal counsel was first engaged. In the absence of any substantiation, we are unable to weigh the alleged request for an internal review in the assessment of exceptional circumstances.
11. There is also a suggestion in the submissions (but again no evidence has been led) that Mr Ostini’s doctor “*gave me the all clear from cancer and heart disease in May 2025*”. In the absence of evidence we are not willing to speculate on the extent to which Mr Ostini was labouring under the cloud of a prospective cancer diagnosis, and if so, at what particular time.
12. The only other fact that had been led was a medical certificate issued on 30 June 2025 from Dr Angus Webb that stated that Mr Ostini “*was experiencing high levels of stress in November 2024, he was seeking medical attention at this practice in early December 2024*”. There is then a suggestion from Dr Webb that the Mr Ostini’s “*high level of stress at this time would have impacted his ability to lodge an appeal against the allegation within the forty-eight hour time frame required*”. Insofar as that medical certificate could substantiate the existence of exceptional circumstances at the end of December 2024, we are willing to accept it.
13. But we find that there is no other credible evidence (including the Medical Certificate) that explains the delay in progressing an appeal in the period between about February 2025 and August 2025.

14. In those circumstances the Panel declines to exercise its discretion to hear the appeal.

15. Accordingly we make the following orders:

1. The Panel refuses the application dated 12 August 2025 to entertain the appeal out of time.
2. Appeal deposit be forfeited.
