

## **APPEAL PANEL OF RACING NEW SOUTH WALES**

### **APPEALS OF ADAM HYERONIMUS AND BLAKE PAINE**

#### **REASONS FOR DECISION: APPLICATION FOR STAY**

**Date of Reasons: 21 August 2020**

**Richard Beasley SC, Principal Member**

1. On 19 August 2020 I gave reasons for then refusing a grant of stay to licensed stable-hand Blake Paine, who has been disqualified for 2 years and 4 months in respect to findings made by the Stewards that he engaged in 30 breaches of AR 236 of the Australian Rules of Racing, and an additional breach of AR 232(i) (giving false evidence at a Stewards' Inquiry). AR 236 makes it an offence for a person to bet with or for a jockey in thoroughbred racing. The jockey that Mr Blake was said to have placed bets for or with was licensed jockey Mr Adam Hyeronimus. Mr Hyeronimus has been found guilty of 2 breaches of AR 115(1)(e) of the Rules, and 28 breaches of AR 115(1)(c), concerning his own related betting activity. He also was found to be in breach of AR 232(i). The total penalty imposed on Mr Hyeronimus was a 3 year disqualification. On 18 August 2020, I gave reasons refusing a stay to Mr Hyeronimus.
2. In addition to refusing to grant a stay to the appellants on 18 and 19 August, I made orders giving them the opportunity to present further evidence and make further submissions. I also said I would hear oral submissions, and today leave was granted to Mr M Barnes (for the appellant Paine) and Mr P O'Sullivan (for Hyeronimus) to make further submissions in relation to the appellants' applications for a stay. The Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards.
3. These reasons should be read together with the reasons I gave on 18 and 19 August. I will not repeat here what I have said about my construction of LR 107(1), which empowers the Panel to grant a stay if it considers a "substantial injustice" might be suffered by an appellant if a stay is not granted.

4. The findings made against the appellants involve serious offending against the Rules. That is clear alone from the mandatory 2 year disqualification period that applies for a breach of AR 115(1)(e). The findings of breach have been made following a lengthy Stewards' Inquiry. The Stewards have documented their findings in detailed and careful written reasons. As Mr Van Gestel pointed out to me in his submission, those findings were based on evidence of (amongst other matters);
  - (a) contemporaneous banking transactions and betting activity (see [14] of the Stewards' Reasons dated 20 July 2020); and
  - (b) text messages exchanged by the appellants that could be interpreted as being consistent with the betting activity alleged against them (see e.g. the SMS messages relating to Charge 2 ([26] Stewards' Reasons), Charge 4 ([28] Stewards' Reasons), Charge 5 ([29] Stewards' Reasons), and Charge 20 ([40] Stewards' Reasons).
5. Mr Van Gestel took me to this evidence in support of a submission that the appellants' prospects of success on appeal were remote or fanciful.
6. For the appellants, Mr O'Sullivan and Mr Barnes said that the appellants deny the offending as alleged, and did so at the Stewards' Inquiry (I have accepted this occurred based on submissions made, as a transcript of the Stewards' Inquiry is not yet available). They said that the appellants will give evidence in relation to the text messages that will be inconsistent with a finding of breach of the Rules. There is I am told no direct evidence of Mr Hyeronimus betting, and the explanation is that any betting activity was solely Mr Paine's.
7. To be satisfied that a "substantial injustice" might be suffered by the appellants' if a stay is not granted, it is not necessary for me to find that they have strong grounds of success on appeal. I need only find that they have an arguable case. An application for stay is not generally the time to be making findings of credit. Further, I need to bear in mind that an appeal to the Panel is "*by way of a new hearing*", and that "*fresh evidence, or evidence in addition to or in substitution for the evidence on which the decision appealed against was made, may be given on the appeal*": Thoroughbred Racing Act 1996, s.43(1). While I understand the force of Mr Van Gestel's submissions about the way the Stewards have construed the text messages and other

evidence, it would not be proper for me on this application to make any definitive findings about them.

8. I am satisfied that the appellants' have arguable appeals. That is not an expression of opinion about prospects. It is merely a finding that the appeals are arguable. Having made that finding, a finding that the appellants may suffer a substantial injustice if a stay is not granted logically follows. If their disqualifications commence, but their appeals are successful in relation to the findings of breach made against them, they will suffer serious prejudice that cannot be remedied.
9. For these reasons, a stay on the penalty imposed on them is granted to both appellants.
10. I consider that these appeals will take two days to hear. I have provided some dates to the parties, and I trust that the appeals can be listed for hearing promptly.
11. The orders I make (in both appeals) are as follows:
  - (1) Application for a stay granted until the appeal is disposed of, or further order.
  - (2) Appeals to be listed together for two days as soon as possible.