APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED RIDER'S AGENT MR MARK VAN TRIET

Appeal Panel:	**Mr R. Beasley SC, Presiding Member; Mr J. Murphy; Mr C. Tuck**
Appearances:	**Racing New South Wales: Mr M. Van Gestel, Chairman of Stewards** **Appellant: Mr P. O'Sullivan, Solicitor**
Date of Hearing and Orders:	1 September 2022
Date of Reasons:	7 September 2022
Rule involved:	**LR71A(a)** – Betting by rider's agent in races where a rider he represents is engaged

REASONS FOR DECISION

The Panel

Introduction

1. Mr Mark Van Triet (the Appellant) is a licensed rider agent. On 19 July 2022, he pleaded guilty to a breach of LR71A(a) which provides as follows:

> "LR71A – Except with the written permission of Racing NSW, any rider's agent who:
>
> (a) bets, has an interest in a bet, or facilitates a bet … on any New South Wales race in which a rider whom the rider's agent represents (in accordance with AR1) is engaged to ride commits an offence and may be penalised. For the purposes of this rule, a bet includes a lay bet."

2. The betting activity the subject of the charge took place over a period of approximately two and a half years. The total amount staked on the bets was just in excess of $52,000. The Appellant from time-to-time placed bets on horses being ridden by riders he represented in breach of the rule. However, there were other occasions where he placed bets in races where riders he represented were riding horses other than the horse he placed a bet on.

3. After hearing submissions in mitigation, the Stewards imposed a disqualification of four and a half months. This had been reduced from a 6-month base disqualification to take into account the Appellant's early plea, his cooperation, and subjective circumstances.

4. The Appellant has appealed to the Panel against the severity of the penalty imposed upon him. He was represented by Mr P. O'Sullivan, solicitor. The Stewards were represented by the Chairman of Stewards, Mr M Van Gestel. No oral evidence was called on the appeal. An Appeal Bundle containing the transcript from the Stewards' Inquiry and various exhibits was tendered. For the Appellant, Mr O'Sullivan tendered 5 character references referred to below.

Findings of Fact

5. There are no disputed facts in this appeal. The following are the most pertinent facts in relation to assessing penalty:

   (a) The Appellant was aware of the introduction of LR71A(a) prior to it coming into effect. He had opposed its introduction.

   (b) Prior to the rule becoming effective, the Appellant contacted the Chairman of Stewards by email dated 28 February 2019 seeking an exemption from it (Ex 2).

   (c) The Appellant was advised that his application for exemption had been denied on 20 June 2019 (see letter from Racing NSW to the Appellant dated 20 June 2019).

   (d) Despite the denial of an exemption, the Appellant commenced breaching the rule in about December 2019. It may have been that his first breach was inadvertent or a mistake. Thereafter, the many bets he placed in breach of the rule were deliberate breaches.

   (e) As stated at the outset, some of the bets placed by the Appellant in breach of the rule were on horses that were being ridden by riders other than those who

he represented who were also engaged in the same race. That is an aggravating factor of the offending here.

(f) While the betting activity extended over a relatively long period of time, and the sum of $52,000 was outlaid, the individual bets themselves were not of vast sums. They generally involved bets of between $100 to $300. Spread over two and a half years, the amount of the betting activity in breach of the rule amounted to just over $400 per week.

6. Beyond the breaches, no other integrity issues were involved in the offending here. There is no evidence that the riders that the Appellant represented were influenced by or even aware of his betting activity. Although of marginal relevance given that there were no other integrity issues involved, the betting activity was not profitable for the Appellant.

7. The Appellant pleaded guilty at the first opportunity and has described his conduct as both "careless" and "idiotic." It is certainly the latter. As to the former, in our view, the totality of the betting activity here in breach of the rule should not be characterised as careless. The conduct involved a number of knowing breaches of the rule. A fair conclusion to reach on the basis of all the evidence is that the Appellant would have continued to breach the rule for as long as he got away with it.

Considerations as to Penalty

8. Beyond the Appellant's early guilty plea, and what we consider to be his clear remorse and contrition, there are a number of matters the Panel has considered in determining penalty that are set out below.

9. The first thing to note is that LR71A was introduced to deal with issues of perception. The perception being that a rider's agent might be privy to certain insider knowledge, perhaps from the riders they represent, which might then influence their betting activity. That seems to be why Racing NSW has introduced the rule prohibiting such betting activity absent an exemption.

10. The Panel notes that it is also an offence under the rules for a rider to have a bet in a race in which they are engaged: see AR115(1)(e). A breach of that rule results in a mandatory two-year disqualification. From a perception point of view, and considering matters of integrity and insider knowledge, a rider's agent such as the Appellant is only one step removed from the position of a rider. We therefore consider we must have some regard to the mandatory penalties for riders who breach betting rules when considering what penalty is appropriate for the Appellant for his breach of LR71A.

11. We also need to give appropriate weight to relevant precedent. The two most relevant precedents brought to our attention are the *Appeal of Mr John Walter* to this Panel (6 July 2021) and his subsequent appeal to the Racing Appeals Tribunal (10 September 2021. Mr Walter pleaded guilty to breaches of LR71A. About twenty-five bets were involved and a total of $5,109 staked. Mr Walter was more successful than the Appellant, and returned a profit of over $12,000. Mr Armati, in the Racing Appeal Tribunal, found that a base penalty of a 9-month disqualification was appropriate, which he reduced to a 5-month disqualification taking into account Mr Walter's plea and various subjective circumstances.

12. Mr O'Sullivan sought to distinguish *Walter* from the facts in the appeal here. He submitted that Mr Walter bet in cash, and at least on one occasion had someone else collect his winnings. The submission made was that this should be contrasted to the conduct of the Appellant who never attempted to bet in secret. That is, his betting activity took place through betting accounts in his own name. We accept that that is a distinguishing feature, but it is not a difference upon which we would place undue weight. Mr Walter's betting activity took place over a shorter period of time than the Appellant, although that might be a function of when he was caught more than anything else. Mr Walter placed less bets that the Appellant, but made more profit. We don't place much weight on any of these differences between the facts in *Walter* and the facts before us in the Appellant's appeal.

13. Ultimately, taking all facts into account, we take the same view as the Stewards. A base penalty of a 6-month disqualification is appropriate. If the base penalty imposed was in any way significantly less than this, it would be wildly disproportionate with

the mandatory minimum penalty that applies when a rider places a bet in a race in which they are engaged.

14. A discount for plea is also obviously appropriate, which reduces the penalty to a four-and-a-half-month disqualification. This is the penalty that was imposed by the Stewards. We consider that penalty to be well within the range of appropriate penalties for the offending here. Where we differ slightly from the Stewards is that we consider it is appropriate to further reduce the penalty for the following reasons.

15. Before setting out those reasons, one thing should be acknowledged. There is no doubt, as has been said many times, that the primary purpose of imposing penalties for breaches of the Australian Rules of Racing is to protect the sport. Penalties must send a message to the public that racing will not condone certain offending, and that it will act to deter offending conduct.

16. While bearing that objective firmly in mind, it is clear that the Appellant has had a long and blemish-free association with Racing. He worked for Racing Victoria for seven and a half years. He has been a rider's agent for 20 years. Many of his clients are leading jockeys, and some are based in Victoria. Victoria has no such similar rule to LR71A, meaning the Appellant is free to place bets in races conducted in Victoria in which riders he represents are engaged. That fact, however, is not in our view relevant to the penalty we should impose. The rule applies in NSW, and was breached.

17. What is relevant is the Appellant's long career without offending. Further, 5 character references have been tendered by Mr O'Sullivan from participants in the racing industry of high repute. Those references paint a picture of the Appellant being a man of high integrity and good character prior to his offending under LR71A(a). It would appear that the offending is very much out of character.

18. We have also had regard to some personal circumstances of the Appellant, in particular his wife's serious illness. There is also, of course, evidence that any form of disqualification will cause severe financial hardship to the Appellant and to his family, although we note that financial hardship is a consequence of every

disqualification. Nevertheless, we feel some of the personal circumstances being faced by the Appellant are more acute than those ordinarily faced. Further, the long blemish-free association the Appellant has had in racing and his good character must count for something in assessing penalty. Taking these circumstances and all other relevant circumstances into account, rather than a 4-and-a-half-month disqualification, we would impose a disqualification of 3 months. Such a penalty in our view is still significant, and still supports the objective of protecting the sport. The orders we make are as follows:

(1) Appeal allowed.

(2) Disqualification of four and a half months set aside.

(3) In lieu of a four-and-a-half-month disqualification, the Appellant is disqualified for 3 months.

(4) The disqualification is to commence on 1 September 2022 and expires on 1 December 2022, on which day the Appellant may reapply for his licence.

(5) Appeal deposit to be refunded.