APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF MR JOHN WALTER

Appeal Panel:	**Mr R. Beasley SC, Principal Member; Mr J. T. Murphy; Mr J. Nicholson**
Appearances:	**Appellant: Mr P. O'Sullivan, Solicitor**
	Racing New South Wales: Mr Marc Van Gestel, Chairman of Stewards

REASONS FOR DECISION – 6 July 2021

Mr R Beasley SC, Principal Member

Introduction

1. Mr John Walter, the Appellant in this Appeal, was a licensed rider's agent. Relevantly, he managed the riding affairs of licensed jockey Mr Joshua Parr, and Mr Tim Clark.

2. In the period 27 February to 2 March 2020, and on 14 November 2020, 27 November 2020, and 12 December 2020, the Appellant placed 25 individual bets on five races in which riders he represented were engaged. This was a breach of LR71A which provides as follows:

> "**LR71A** Except with the written permission of Racing New South Wales, any rider's agent who:
>
> (a) bets, has an interest in the bet, or facilitates a bet; or
>
> (b) provides either directly or indirectly to any person for any direct or indirect financial or other benefit (regardless of whether such benefit materialises) any tip, or any other information or advice that may influence any person to bet,
>
> on any New South Wales race which a rider whom the rider's agent represents (in accordance with AR1) is engaged to ride, commits an offence and may be penalised.

3. At a Stewards' Inquiry into his betting activities, the Appellant pleaded guilty to the breaches of LR71A(a). He did so in circumstances where he agreed he had knowledge of the Local Rule, which had been introduced by Racing NSW on 1 August 2019: see Ex 9.

4. The bets placed by the Appellant in breach of the Local Rule are identified in Schedule 1 to the charge brought against him. There is no need to set them out in complete detail here. The total sum invested through the 25 bets was $5,109. They produced a return to the Appellant of $17,940, although the Panel was informed that the TAB, who the bets were placed with, is currently withholding payment of $5,200. No further evidence was tendered in relation to this to enable any finding to be made about it.

5. The only other matter of relevance is that for one of the races the Appellant bet on – the Highway Class 3 handicap run at Newcastle on 14 November 2020 – he placed a bet on Mr Clark's mount (Northern Knight), and in the same race placed a bet on the horse Monica's Star ridden by Louise Day.

6. After considering the Appellant's cooperation, his guilty plea and other matters subjective to the Appellant, the Stewards imposed a penalty of a 6-month disqualification. The Appellant has appealed to the Panel against the severity of that penalty. A stay was granted pending the outcome of the appeal.

Appeal hearing and evidence

7. The Appellant was represented with leave by Mr Paul O'Sullivan, solicitor. The Stewards were represented by the Chairman of Stewards, Mr Marc Van Gestel. An Appeal Book containing the transcript of the Stewards Inquiry was tendered in evidence (Ex A), as well as the exhibits from the Stewards Inquiry which retained the same number they were allocated at that Inquiry. For the Appellant, two medical reports were tendered: a report of Ms Rosslyn Phillips, psychotherapist, dated 29 June 2021, and a report of Dr James Champion, clinical psychologist, provided to the Appellant's solicitor on 30 June 2021. These were marked as Exhibits A1 and A2 respectively.

8. Brief oral evidence was called from licensed jockeys Joshua Parr and Tim Clark, whose agent was formerly the Appellant. Both Mr Parr and Mr Clark gave evidence of a close personal relationship with the Appellant, and of the services he provided as their agent in organising their riding schedule over a number of years. The Appellant's professional relationship has had to end with Mr Parr and Mr Clark because of the introduction of LR71A(b), as explained below. Both riders were engaged to ride in races that the Appellant had bets on that are the subject of the charges and his plea. The evidence of Mr Parr and Mr Clark was that they did have some discussions with the Appellant before riding in the races the subject of the charges. There is, however, no suggestion of any impropriety with respect to those conversations or in the manner that either Mr Parr or Mr Clark rode in those races.

9. Although the Appellant did not give evidence before the Panel, his evidence at the Stewards' Inquiry was that his sole income is derived from the racing industry. While he no longer acts as a rider's agent for Mr Parr, Mr Clark or any other rider, he has for many years derived the rest of his income from what can be conveniently described as a subscription tipping business he owns. The evidence was that, prior to the Appellant relinquishing his role as a rider's agent, his income from his tipping business was significantly depressed as a result of the introduction of LR71A(b) in August 2019.

10. Further, the medical evidence tendered on his behalf suggests that his mental health has suffered over the last 18 months as a result, in part, of the introduction of LR71A and the financial pressures this has placed on him, and on his close relationship with Mr Parr and Mr Clark. The evidence supports a finding of real injury that requires expert care.

Submissions

Mr Van Gestel

11. Mr Van Gestel submitted that the starting point for penalties for a breach of LR71A(a) is a penalty of the kind that has been imposed by the Stewards on the Appellant in this

matter. His principal submission concerning the rule and its introduction was that there was at least a perceived negative integrity issue in circumstances where rider's agents bet in races in which a rider they are the agent of is involved. The likely perception of the public is that a rider's agent may be privy to information akin to "insider information" not necessarily available to the betting public. That negative integrity perception is highlighted further where, as here, a rider's agent places bets in the same race not just on his rider's mount, but on another horse.

12. While emphasising that only a disqualification was an appropriate penalty for breach of LR71A(a), Mr Van Gestel accepted the following:

(a) the Appellant has a clean record;

(b) he cooperated fully with Stewards, and entered a guilty plea at the earliest available opportunity; and

(c) there were no actual integrity issues that emerged from the Stewards investigation. That is, in particular, there is no evidence that either Mr Parr or Mr Clark conducted themselves in the relevant races in any manner that may have been influenced by the bets placed by the Appellant.

13. It is also fair to say that Mr Van Gestel accepted that the disqualification imposed by the Stewards would have a significant financial impact on the Appellant. As a consequence of AR263(o), it is highly unlikely (absent authorisation being given by Racing NSW) that the Appellant could derive any income from his tipping business whilst disqualified. Mr Van Gestel also did not seek to contend against the submission made for the Appellant that he might not only be unable to operate his tipping business whilst disqualified, he may need to return funds paid in advance by subscribers. However, as Mr Van Gestel also pointed out, a suspension in this case would be akin to no penalty at all, given the Appellant is no longer operating as a rider's agent.

14. Finally, Mr Van Gestel submitted that while there are no penalty precedents for a breach of LR71A(a), one reference point for the Panel would be the penalties that are

imposed on riders for placing bets on thoroughbred racing. In respect to a bet placed by a jockey in a race they are riding in, a minimum two-year disqualification applies: see AR115(1)(e) with AR283(6)(e).

Appellant's Submissions

15. Mr O'Sullivan submitted that the Appellant's breach of LR71A(a) should be considered at the lower end of the scale for offending against this rule. He said that while he had the opportunity to breach the rule on thousands of occasions since it was introduced, he had only done so in five races, for a relatively modest outlay of $5,109. Further, Mr O'Sullivan submitted that:

    (a) The breaches were not part of a sophisticated scheme. They were bets placed in pubs.

    (b) There was no dishonest intent between the Appellant and the jockeys he represented as agent.

    (c) The bets had an element of desperation because of financial hardship, which was the motivating factor for the breaches of the rule.

    (d) The Appellant had already suffered financial detriment since the introduction of LR71A(a) and (b), because of the downturn it caused in his tipping business.

    (e) A disqualification of 6 months would have a crippling financial impact on the Appellant, who has a young family (two young children), and debts such as a mortgage.

16. Mr O'Sullivan submitted that no proper analogy could be drawn between a breach by a jockey of AR115(1)(e), and the Appellant's breach of LR71A(a). He said a jockey is controlling the horse he is riding, whereas a rider's agent is not, and that an agent is not necessarily in any different position than, say, a stable foreman.

17. Mr O'Sullivan also drew the Panel's attention to part of some non-determinative observations made by me in the *Appeals of Adam Hyeronimus and Blake Paine* (RAP, 8 April 2021) where I said at [27] of the Reasons for Decision (with Mr Tuck agreeing, and Ms Madsen expressing no view) that:

> "However, a 12-month disqualification is in excess of the kind of penalty that should be imposed for the offending here. Ordinarily – and depending on the extent of the betting activity and individual circumstances – I would impose a suspension of 3-9 months if the circumstances also involve a plea and cooperation with the Stewards."

18. This was said in the context of breaches of AR115(1)(c) involving a jockey having a bet on a thoroughbred race but not one in which they are riding.

Resolution

19. The Panel understands why Racing NSW has introduced LR71A. It seeks to limit any negative perception from the public that certain persons – in this case jockeys' agents – might have something akin to inside information that they can use for their betting activities. In addition to that, it might be perceived that there is the additional risk that this may influence betting markets.

20. It can be noted that LR71A has not been introduced in other racing jurisdictions in Australia, but that is irrelevant to the Panel's consideration. The rule has been introduced in New South Wales.

21. I accept the submission – really made by both Mr Van Gestel and Mr O'Sullivan – that there was no evidence of a matter that might throw doubt on the integrity of the races that the Appellant had a bet on. There is nothing to suggest that his betting activity was in any way relevant to the conduct of Mr Parr and Mr Clark in those races. However, I do not accept that there is no integrity issue raised in this appeal at all.

22. A rule was introduced in August 2019 prohibiting a rider's agent from betting on races in which the riders they represent are engaged in. The Appellant knew this, yet

deliberately breached the rule. The act of knowingly breaching a rule of racing raises in itself a form of integrity issue. It can be accepted that LR71A has had a negative impact on the Appellant's tipping business. It can be accepted that he continued for a time with his professional agent arrangement with Mr Parr and Mr Clark out of loyalty to them and close friendship. Obedience though to the Rules of Racing is not optional. A licensed person cannot decide to deliberately breach important (or any) Rules and expect not to run a real risk, likely to eventuate, of a stern penalty being imposed.

23. As to other matters apart from the subjective circumstances of the Appellant, I accept (although not to the extent that Mr O'Sullivan submitted I should), that the mandatory minimum penalty for a breach of AR115(1)(e) (jockey betting on a race they are riding) should not be a firm marker for a penalty to be imposed on an agent for breach of LR71A. The objective circumstances, however, involving breach of these separate rules are not miles apart. Further, as to the Panel's decision in the appeal of *Hyeronimus*, the statement made by me at [27] referred to above was made without any further context being given, and in any event is of limited utility to the determination of this appeal, given that in this case a suspension would be akin to imposing no penalty at all.

24. Finally, as to the objective circumstances of the offending, I consider that there is some level of aggravation – albeit minor – in respect to the Appellant's bets on the race at Newcastle on 14 November 2020, where he placed a bet both on his own rider's mount, and on another horse. Primarily, however, the objective seriousness of the offending resides with the Appellant's betting activities being deliberate breaches of a rule designed to prevent conduct that can raise negative integrity perceptions about racing.

25. As far as subjective circumstances are concerned – noting that they do not assume any kind of primacy for an administrative sporting appeals panel whose primary task is to impose penalties that seek to protect that sport and uphold its integrity – we have taken into account all the matters raised for the Appellant by Mr O'Sullivan. In particular, I have had regard to:

(a) the Appellant's good record;

(b) his high level of cooperation with the Stewards;

(c) the financial impact the introduction of LR71A had on his business, and the serious impact a disqualification will have on his capacity to generate income;

(d) the matters that are opined on in the medical reports at Ex A1 and A2; and

(e) the relatively small number of bets placed in breach of the rule, and the relatively modest - but not insignificant - sum invested.

26. Having considered all of these matters, I am not of the view that the penalty imposed by the Stewards is either manifestly excessive (which is not the test), or inappropriate. While the Appellant's conduct is of course not at a level that could be considered destructive of the fabric of racing, he has deliberately breached a rule introduced by Racing NSW to meet at least a perceived integrity issue as described above. There was nothing accidental about his conduct. It involved deliberate breaches of a rule introduced to prohibit a licensed person such as the Appellant from placing bets in the circumstances described in the rule.

27. While I am comfortably satisfied that the penalty imposed by the Stewards is not inappropriate, my own view is that a 6-month disqualification is the most appropriate base penalty to be imposed for the offending here, rather than 9 months. Applying a discount for plea and cooperation, I would allow the appeal, and imposed a disqualification of 4 months and two weeks.

Mr J T Murphy

28. I agree with the Principal Member's reasoning set out above. However, we differ as to penalty. In my opinion, the appropriate penalty is that imposed by the Stewards. A 6-month disqualification, taking into account the appellant's plea and cooperation, is in my view the minimum penalty that can be appropriately imposed in light of the offending under the Rules here.

Mr J Nicholson

29. While I agree with the Principal Member's reasoning, I too, like Mr Murphy, take a slightly different view on penalty. In my opinion, the appeal should be dismissed. I am also of the view that a 6-month disqualification (having applied a discount for plea) is the minimum appropriate penalty that can be imposed for the breaches of AR71A(a) involved here.

30. The orders of the Panel (by majority) are:

(1) Appeal against severity of penalty dismissed.

(2) Penalty of a 6-month disqualification for breach of LR71A(a) confirmed. That penalty is to commence forthwith.

(3) Appeal deposit forfeited.