

Harness
Racing Appeals & Disciplinary Board

Media Release

Racing Appeals & Disciplinary Board

Result of the stay application determined by the HRV Racing Appeals and Disciplinary Board on 15 October 2018.

Nathan Jack

Application for stay granted until HRV RAD Board Appeal hearing on 9 November 2018.

HRV RAD Board Deputy Chairperson: Judge Graeme Hicks

This decision follows that of Judge Hicks on 12 October 2018 in relation to the granting of the stay application for Mr Mark Pitt and Ms Lisa Bartley, which can be viewed below.

The Racing Appeals & Disciplinary Board (RADB) is established under section 50B of the Racing Act (1958). The RADB is an independent Board established to hear and determine appeals in relation to decisions made under the rules to impose penalties on persons and to hear and determine charges made against persons for serious offences.

DECISION OF JUDGE GRAEME HICKS

IN THE HRV RACING APPEALS AND DISCIPLINARY BOARD

BETWEEN:

MARK PITT AND LISA BARTLEY

Applicants

and

HARNESS RACING VICTORIA STEWARDS

Respondent

INTERIM STAY APPLICATION

PRELIMINARY MATTER

On Tuesday the 9th of October of this week, some three days ago, the Chairperson of Harness Racing Victoria, Alanna Duffy, was appointed a Magistrate.

As a result, she no longer performs the function as chairperson of the Harness Racing and Disciplinary Board.

The practice in Victoria is she cannot give any notification of this impending appointment until it is announced by the government. This was done on Tuesday. As Deputy Chairman of the Harness Racing and Disciplinary Board, I have taken over the list management of the cases before it.

As of today's date, I'm going on leave and will be out of the jurisdiction.

Accordingly, I set the matter down for a full hearing to be heard on Friday the 9th of November at 9:30am, some three and half weeks away.

There's now before me, an interim application by Mark Pitt and Lisa Bartley for an interim stay pending determination of the relevant issues on Friday the 9th of November, 2018.

The parties have made submissions to me in writing.

It should be noted for completeness, that Mr Nathan Jack, who was also charged and convicted at the Magistrates Court of Victoria, has not applied for an interim stay.

BACKGROUND

1. Airbournemagic (driven by Mark Pitt) won race 4 at Cobram on 22 June 2015. The registered trainer of Airbournemagic was David Bartley (the father of Lisa Bartley).
2. Between 7 May 2015 and the day of the race, David Bartley had placed Airbournemagic in the care of his daughter, Lisa Bartley.
3. Airbournemagic had opened the betting on bet 365 at \$35 and was backed into \$4.80 when the race started.
4. The day after the race (23 June 2015), the Stewards commenced an investigation concerning the race.
5. On 13 November 2015, HRV contacted the Victoria Police Sports Integrity and Intelligence Unit and requested that it conduct its own investigation into the race.
6. On 7 September 2018, the applicants and Nathan Jack were convicted in the Magistrates' Court of Victoria of charges under section 195C of the *Crimes Act 1958* (Vic) in that they engaged in conduct that corrupts or would corrupt the betting outcome of an event. The reasons of the Magistrates' Court are attached and marked "A".
7. On 7 September 2018, the Stewards provisionally invoked AHRR 183(c) and (d) and 15(d) ("the provisional suspension") and invited submissions as to whether the provisional suspension should remain in place pending completion of the Stewards' investigation.
8. Having considered submissions on behalf of the applicants, the Stewards on 26 September 2018 suspended the applicants until the completion of the HRV Stewards' investigation ("the interim suspensions").
9. Copies of the decisions of the Stewards concerning the interim suspensions are annexed and mark "B" and "C".
10. The applicants lodged Notices of Appeal with the RADB on 1 October 2018 and indicated they wished to apply for a stay of the proceedings against them.
11. The RADB has fixed a date for hearing of the appeals against the Stewards' decision on Friday, 9 November 2018.

THE RULES

12. Rule 183 provides the Stewards with the discretion to make directions pending the outcome of an inquiry and states:

Rule 183 - Action pending outcome

Pending the outcome of an inquiry, investigation or objection, or where a person has been charged with an offence, the Stewards may direct one or more of the following

—

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- (a) that a horse shall not be nominated for or compete in a race;*
- (b) that a driver shall not drive or otherwise take part in a race;*
- (c) that the horses of certain connections shall not be nominated for or start in a race;*
- (d) that a licence or any other type of authority or permission be suspended.*

13. Rule 15(1)(d) provides that Stewards are empowered to exclude or direct the removal of a person from a racecourse.

14. Rule 267(1) provides that *“the Stewards may for such period and on such conditions as they think fit, disqualify a person who is found guilty of a crime or an offence in any State or Territory of Australia or in any country.”*

15. The power of the RADB to grant a stay derives from sections 50N and 50O of the *Racing Act 1958* (Vic). Section 50N(1)(i) states that the RADB may make interim orders and section 50O(1)(b) states that *“in the determination of any matter before the HRV Racing Appeals and Disciplinary Board, the Board may...make any decision or order that the Board considers is required in the interests of justice, including the imposition of any penalty under the Rules.”*

16. Rule 48(5) of the Victorian Local Rules of Harness Racing Victoria also states *“the HRV RAD Board may in its absolute discretion and subject to such conditions as it thinks fit suspend in whole or in part the operation of the decision which is the subject matter of the appeal to the HRV RAD Board pending the determination of the appeal.”*

DECISION

I have carefully considered the submissions from both parties in this matter and the cases they have referred to me.

For the purpose of this interim application, the relevant principles are largely set out in *Zucal v Harper* 2005, 29AAR563, *Maund v The Racing Victoria Limited* 2015 VSCA276, *Demmler v Harness Racing Victoria* [2015] VCAT 648 and the fact that protection of the public interest is a factor that needs to be taken into account in applications for a stay of orders by disciplinary tribunals.

The applicant's submission for a stay also relied on the principles of *Res Judicata*.

For the purposes of this interim ruling I accept the proposition put forward by the respondent that the stewards can re-exercise their discretion at any time.

Each of the parties raised several distinctions regarding the above cases and their application to the facts before me.

In my opinion, the cases referred to me by the parties, though relevant; do not deal with the situation which is before me.

That is an appeal against conviction in the Magistrate's Court of Victoria to the County Court.

An appeal to the County Court is not an appeal where the determination proceeds to a higher court on a question of Law.

The process before the County Court on appeal is as follows. It is a statutory mandatory order that a judge that hears an appeal in the County Court from the Magistrate's Court must set aside the Magistrate Court order. It is a mandatory order. The County Court of Victoria then proceeds to hear the matter by way of de novo. That is a complete re-hearing. The actual determination of the Magistrate in the court below is irrelevant. There are of course special cases where such order or determination may have some relevance to the proceedings before the County Court. However setting aside the Magistrate Court Order is mandatory, and for all intents and purposes, the determination in the Magistrate's court has no relevance. As the proceedings in the County Court, are conducted by way of complete re-hearing, the presumption of innocence applies. It is not extinguished, because the Magistrate's Court had made a determination of guilt.

Though in one sense, it is correct to say, they are presently convicted, it is quite wrong to say, considering the rules by which appeals are conducted to the County Court of Victoria from the Magistrates Court, that the conviction in the Magistrate Court can survive. It does not. It is set aside. As long as the parties prosecute the appeal, it is mandatory that the decision in the magistrate's court must be set aside. It is accepted by all the parties in these proceedings, as I understand the situation, that the applicants will prosecute their appeal in the County Court.

I accept that the interest of the integrity of the harness racing industry is relevant and a significant consideration in the determination of any such application before me.

It is not suggested that the Stewards have overlooked the personal circumstances of the applicants.

However, other considerations need to be applied as well. The applicants have been subject to a stay right through from the time they were charged with criminal offences up until today's date. In my opinion, I accept on the material placed before me, that the applicants will suffer at least some harm, if I was not to grant a stay.

On this interim application, I do not propose to make any final determinations.

The presumption of innocence that applies to Magistrates Court hearings equally applies to County Court appeals. In one sense the criminal proceedings for final determination do not end until the County Court appeal is heard.

Though not directly relevant, decisions of this board can be directly appealed to VCAT.

VCAT hearings on appeal are heard by way of a re hearing.

In the intervening time between a decision of this board and a determination by VCAT stay orders are regularly sought in VCAT to stay the orders of this board.

They are almost without exception granted.

Like VCAT, a county court appeal is by way of re hearing.

I note no charges have been laid by stewards against the applicants (including Nathan Jack)

Attached to this decision, are submissions on behalf of the respondent, by Mr Adrian Anderson on the 12th of October 2018, the submissions of the applicants by Nicola Craven of Cockburn and Co Solicitors on the 11th of October 2018, the certified extracts of the applicants conviction at the Magistrates Court of Victoria on the 7th of September 2018, and the decision of the Magistrate made on the 7th of September 2018.

On the return date I require the legal representation of all relevant parties to be present, but I do not require the attendance of the parties though they are free to attend if they so desire.

ORDER

That the decision of the stewards in exercising their power under AHRR 185 (c) and (d) and 15 (d) are stayed until Friday 9th of November 2018 or until further ordered.