RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR DB ARMATI

EX TEMPORE DECISION

WEDNESDAY 30 JANUARY 2019

APPELLANT MARIO MULTARI

GAR 83(2) x 6, 83(1A)(a) x 6, 79A(4) x 5 and 86(e) x 1

SEVERITY APPEAL

DECISION:

1. **Severity appeal upheld**
2. **Total penalty of disqualification on all matters of 3 years 9 months from 14 April 2018**
3. **50 percent of appeal deposit refunded**

1. The appellant, licensed trainer Mr Mario Multari, appeals against the decision of the Inquiry Panel of 29 June 2018 to impose upon him a total period of disqualification of 6 years and 9 months. The inquiry panel dealt with 18 different breaches of the rules. They dealt with them under inquiry numbers. The Tribunal proposes to deal with them by numbering each of the 18 matters dealt with.

2. This is a severity appeal only and accordingly the necessity to set out facts in detail falls away. The appellant was dealt with for 18 breaches and does not appeal in respect of one of those breaches (86(e)); he appeals on severity on the remaining 17.

3. Before the inquiry panel the appellant admitted a number of the matters and denied others. Adverse findings were made on all matters. Individual penalties were imposed for each matter, concurrency and cumulation considered, and the total penalty of 6 years and 9 months determined. On appeal he maintained he did not breach the rules on matters he "pleaded not guilty" to. During preparation for the appeal he withdrew the appeals against "guilt' and the appeal became severity only.

4. A summary of the breaches is:
1. presentation race day 21.11.17-Sir Duggie— Ipamorelin
2. administration race day 21.11.17 Sir Duggie— Ipamorelin
3. presentation raceday 8.1.18- Sir Duggie- Ipamorelin
4. administration raceday 8.1.18- Sir Duggie- Ipamorelin
5. presentation raceday 23.2.18- Sir Duggie- Ipamorelin
6. administration raceday 23.2.18- Sir Duggie- Ipamorelin
7. presentation raceday 27.2.18- Sir Duggie- Ipamorelin
8. administration raceday 27.2.18- Sir Duggie- Ipamorelin
9. out of competition 3.3.18 - Can't Dance -Ipamorelin,GHRP-6
10. out of competition 3.3.18 - Stilton Aggie -Ipamorelin,GHRP-6
11. out of competition 3.3.18 - Miss Duggie -Ipamorelin,GHRP-6
12. out of competition 3.3.18 - Sir Duggie -Ipamorelin
13. out of competition 3.3.18 - Charlm Miss -Ipamorelin,GHRP-6
14. presentation raceday 3.3.18 - Stilton Aggie -Ipamorelin,GHRP-6
15. administration raceday 3.3.18-Stilton Aggie- Ipamorelin,GHRP-6
16. presentation raceday 3.3.18 - Can't Dance-Ipamorelin
17. administration raceday 3.3.18 - Can't Dance -Ipamorelin
18. failure to comply with lawful order of a steward to produce documents

5. The presentation matters are breaches of rule 83(2) which relevantly states:

> 83(2) A trainer of a greyhound nominated to compete in an event shall present the greyhound free of prohibited substances.

6. The administration matters are breaches of rule 83(1A)(a) which relevantly and paraphrased states:

> 83(1A)(a) A person who administers a prohibited substance to a greyhound and it is detected in a sample taken from the greyhound that has been presented to race is guilty of an offence.

7. The out of competition matters are breaches of rule 79A(4) which relevantly and paraphrased states:

> 79A(4) When a sample taken fro a greyhound being trained contains a Permanently Banned Prohibited Substance the trainer is guilty of an offence.

8. The lawful order rule is 86(e) which relevantly and paraphrased states:

> 86(e) A person is guilty of an offence if the person refuses to produce a document in relation to an inquiry when directed by the stewards to do so.

9. The brief facts are that the appellant has been a licensed trainer since age 18. He is now 46 and therefore he has been licensed for 28 years. He has one prior prohibited substance matter some 20 years ago, the details of which are not here in detail. He had been training a number of dogs as a hobbyist.

10. About a year before – and accuracy is not required – the first sample on 21 November 2017, he had acquired a product labelled 129. He had had discussions with friends on building sites. He had made Internet searches. He had found a bodybuilding product for humans which he felt would provide beneficial results for his greyhounds. He purchased the substance on the Internet, the circumstances of that purchase he was not able to establish. Indeed, a failure to produce those records led to the 18th matter, which was failure to comply with a lawful order of a steward to produce documents, a breach of 86(e). In respect of that matter he was subject to a disqualification of 6 months cumulative on other matters. He has not appealed that finding. The analysis of those reasons need not be undertaken as that is not the subject of an appeal.

11. It is apparent from the material given in three records of interview prior to the stewards' inquiry, and at the stewards' inquiry, that the appellant acquired the substance without making any inquiries of any professionals as to the precise impact such an unknown substance might have on a greyhound, let alone a greyhound presented to race.

12. Other than the number 129, the bottles were unlabelled, without warnings, the contents unknown, the likely impact other than the fact it was some form

of vitamin or tonic or supplement – because that's what the Internet had told him – were completely unknown.

13. This is a trainer of many years' standing who cannot have been blind to the sheer foolhardiness of his actions. This substance had to be injected. He mixed it up with B12, a legitimate vitamin supplement, to be injected, and injected it in his dogs over a period of time. As a licensed trainer, the lack of husbandry practice would have to be described as the most serious capable of assessment. No inquiry was made of the regulator. No inquiry was made of any vet. No proper inquiries were made about an unlabelled, unsubstantiated substance for injection in a racing dog.

14. It is submitted on his behalf that he was acting in the best interests of the dogs to try and provide them a supplement, as it were, to make them better. The fact that it would be a performance-enhancing drug appears not to have entered his mind. The fact that it contained peptides, discovered for the first time in racing dogs, did not cross his mind. The evidence does not go so far as to establish knowledge that he was injecting peptides, but sheer foolhardiness and a lack of husbandry practice is.

15. The objective seriousness is to be viewed on that basis. It could not be a worse-case scenario of husbandry failure, but not aggravated on an objective serious consideration by intentional injection of a peptide. And, more importantly, the intentional injection of a peptide with a view to enhancing performance. And enhancing performance is, as has so often been expressed, a breaking of the level playing field to which all participants are entitled to expect there will be adherence in the presentation of a dog to race. It is acknowledged that he believes he was taking the health of his greyhounds seriously and was providing for their optimum health. But his beliefs have been shown to be greatly misplaced.

16. Peptides are prohibited. They are permanently banned substances. They are not permitted substances for administration to humans and nor to racing dogs. They are described by the expert evidence to the inquiry panel as being grey market drugs because they are not illegal in fact. The Tribunal returns again to the thought that any licensed trainer presenting a dog to race could buy from a bodybuilding company on the Internet an unknown drug and inject it in a racing dog is just inconceivable.

17. The other matters contained within objective seriousness require consideration of what the appellant did and the timings of his actions. The appellant is highly critical of the respondent for not telling him any sooner that the sample taken on 21 November 2017 from the greyhound Sir Duggie was positive. Much reliance was placed upon Rule 82. To paraphrase, Rule 82 says if a prohibited substance is found on analysis, then the regulator shall upon receipt of that certificate notify the trainer.

18. The facts are that on 21 November the sample was taken. On 27 February 2018 the regulator received the positive result to the peptide. On 2 March inspectors attended his registered address, unannounced, for a kennel inspection and to present the fact that there was a positive. It is this Tribunal's notice from numerous cases that a kennel inspection is carried out in this industry without prior warning to a trainer so as to ensure that when a kennel inspection is carried out prohibited substances and their containers such as the particular bottle which may have been used has not been disposed of. It is not the practice – and this trainer has not been uniquely dealt with in this sense – not to have telephoned him to say he had a positive and "we'll come out in due course to have a chat to you".

19. He had changed addresses but not notified the regulator and thus he was not actually visited until 3 March. There are a number of facts to which the Tribunal will return about that.

20. There is no evidence that the regulator has sat upon the knowledge in an endeavour to catch out this appellant at a kennel inspection by finding additional breaches of the rules. It is not established by the appellant evidentially.

21. On 3 March the appellant was preparing two greyhounds to take to Lithgow to race: Stilton Aggie and Can't Dance. He says when the inspectors arrived they did so with great commotion and a considerable disturbance to his family which has led to some ongoing issues. Those inspectors were not called before the inquiry panel to deny that they had acted in the way that the appellant says they did. But, more importantly, they have not been called to deny the appellant's statements at interview and at the inquiry that he was effectively told that he should take those dogs to race because they were due to race shortly after the kennel inspection. Out of competition samples were taken from 5 dogs. As it turned out, two of them produced positive race day presentation samples to the subject drugs as did the other dogs produce positives to out-of-competition testing, as did the two dogs subsequently presented to race presented out-of-competition positives. As did Sir Duggie the previous in-competition testing, which was, also positive to t, out-of-competition testing.

22. Some more details on what is being dealt with. Of the 17 matters that are here, the first 8 relate to the greyhound Sir Duggie. It was presented to race on 21 November 2017, 8 January 2018, 23 February 2018, 27 February 2018. Noting that 27 February 2018 was the date that the regulator received notification of the positives.

28. On 3 March, at the time of the kennel inspection, there was an out-of-competition testing in respect of Can't Dance, Stilton Aggie, Miss Duggie, Sir Duggie and Charlm Miss. Subsequently, on 3 March, as has been said, Stilton Aggie and Can't Dance were presented to race and returned positives. As a

result of that, there are a number of breaches of Rule 83(2), presentation with a prohibited substance, and 83(1A)(a) of administer on race day. In addition, as stated, there are 79A(4) matters in respect of out-of-competition testing.

29. The drug in question, as has been described, is ipamorelin and a further synthetic is GHRP-6, each of which are synthetic drugs, as previously described, and each of which are permanently banned substances as they are peptides. The fact that the drug GHRP-6 was not detected in the 3 March race day sample of Can't Dance was said by the experts to the inquiry panel to be consistent with that greyhound having excreted that drug but still retaining the ipamorelin between the time of its out-of-competition testing and its presentation and sampling on race day.

30. Those are the key facts. As said, they are not all analysed because it is a severity appeal.

31. There are some matters here upon which this Tribunal places greater weight than that which the inquiry panel found to be appropriate. The absence of evidence by the inspectors to deny them telling the appellant to take the greyhounds nominated to race on 3 March is an important fact. The appellant has expressed in interview and to the inquiry panel that he did not want to face, as he had in the past, a late scratching penalty. There was also the fact, which the Tribunal accepts, that he was somewhat upset and perhaps not thinking clearly as a result of the kennel inspection and the matters that had been put to him.

32. Having been told to take the dogs to race against his wishes, it becomes less serious that the greyhounds were subsequently presented to race and found to have the subject peptide, or peptides as the case may be, in them.

33. The fact that there was, as alleged, non-compliance with Rule 82 and delay is not found to be a factor which assists the appellant in any way at all. That has been partially analysed. But the Tribunal is of the opinion that the actions taken by the inspectors within the time that they did was not for any nefarious purpose by them or the regulator but was consistent with usual practice and they followed it. The appellant, therefore, cannot complain that between 27 November and 3 March no one told him anything.

34. The objective seriousness of these matters has been referred to, namely, the fact that it was a peptide administered, as it now must be found, to each of these greyhounds, with a total failure of husbandry practice. It is viewed at the upper end of the seriousness of a breach. The intent to treat the greyhounds beneficially would ordinarily lead to a more substantial reduction on objective seriousness than will be given here. It cannot be given because, whilst there is one past matter of 20 years ago, this appellant cannot be expected to have objective seriousness considered on the same basis as a person of 28 years' training experience who had no prior matters. Greater the

caution that should have been exercised in relation to the subject product that he bought and administered. And to repeat: it is the most grave situation of husbandry failure that causes the Tribunal to assess this is a most serious objective case.

35. In determining penalty the Tribunal notes that the appellant has accepted the privilege of a licence and has taken with it all of the consequences that fall upon a licensed person. One of those must be that he is subject to the penalty table which Greyhound Racing NSW has used for a considerable number of years. As the Tribunal has said on many occasions, that penalty table provides, for the Tribunal, guidelines, and not tramlines, and it is for the Tribunal to assess each case on its own merits.

36. The Tribunal, as it has said on many occasions, sees no reason not to give some consideration to that table as it provides a greater certainty of parity in its use both by the Tribunal and by the inquiry panel and by stewards sitting outside an inquiry panel. It provides an element of information and certainty to industry participants as to what particular conduct might lead to what particular range of penalties.

37. That penalty table provides that this is a Category 2 drug and that for a breach of the rules, not differentiating between presentation administration and out-of-competition testing, a starting point of 156 weeks of disqualification is appropriate.

38. No submission was made that a disqualification should not be imposed. Having regard to the objective seriousness of this matter, the Tribunal is of the opinion that each matter warrants a period of disqualification.

39. The Tribunal is of the opinion that each matter warrants a starting point of 156 weeks. The Tribunal is of the opinion that certain lesser penalties can be imposed when the matters are separately looked at.

40. The Tribunal comes to different conclusions to those of the inquiry panel, and there are two key reasons for that. Firstly, the inquiry panel determined to increase the starting point and in fact give greater penalties for some of the matters than the starting point provided. Having regard to all the objective facts, without turning to subjective matters that go to those objective facts, the Tribunal is of the opinion that the starting point of 156 weeks is appropriate, not a greater period. And, secondly, in respect of seven of these matters, which were denials before the inquiry panel, the appellant has made an admission of the breach of the rule and asked the Tribunal to deal with him on severity only.

41. Briefly touching on the subjective matters, the Tribunal has referred to some of his personal circumstances. The other subjective factor of importance – and the stewards did address it in some ways – is that by

admitting the breaches before the inquiry panel, in doing so by cooperating with the inquiry, subject, of course, to the non-compliance with the 86(e) matter, that he is entitled to a 25 percent discount for the admissions he made there. His admissions before this appeal, however, having come after the initial appeal was lodged and after he did not make those submissions before the stewards, cannot attract that full 25 percent discount. In the circumstances, for the utilitarian value of his admission of the breaches, he will receive on those matters a 15 percent discount.

42. In addition, the inquiry panel did not give him expressly a discount in respect of some of the matters on which their starting point was expressed to be 3 years. He will receive that discount in the calculations by this Tribunal.

43. The Tribunal deals with the penalties, therefore, on the following bases: as it has said, it has elected to number these matters 1 to 17 as currently before it and of course has to have regard to matter 18 as to a cumulation in any event. The numbering, for the benefit of cross-checking the particular list used by the inquiry panel, is simple. The first matter the inquiry panel had was number 18S025. That contained two separate matters, and the Tribunal will number them 1 and 2. 18S026 contained two matters and they will be 3 and 4. Likewise, for 051, will be 5 and 6. And 052 will be 7 and 8. 057 will be 9; 058, 10; 059, 11; 060, 12; 061, 13; 062, which had two matters, will be 14 and 15; 063, which had two matters, will be 16 and 17 and, of course, as said a number of times now, 049, which is matter 18.

44. In respect of matters 1 to 8 – that is, 025, 26, 51 and 52 on the old table – the starting point of 3 years is considered to be appropriate in each matter. The Tribunal declines to reduce it by any matters relating to objective seriousness.

45. In mathematics unexplained, appearing to give a 25 percent discount, the stewards imposed a penalty of 2 years and 2 months. A 25 percent discount on 3 years would be 9 months, which would be 2 years and 3 months. However, as he had the benefit of that lesser period, the Tribunal will remain with that for matters 1, 3, 5 and 7, periods of disqualification of 2 years and 2 months.

46. In respect of matters 2, 4, 6 and 8, the inquiry panel determined a penalty of 3 years. They may have, but did not express it, gone to 3 years and 6 months and then reduced it by 25 percent, but they did not say that. The Tribunal nevertheless has determined that a starting point will be 3 years from which a 25 percent discount should be given, which is 9 months. And in those matters there will be a period of disqualification of 2 years and 3 months.

47. Having regard to the fact that they involved, in matters 1, 3, 5 and 7, a breach of 83(2), presentation with prohibited substance, on four separate occasions but each prior to notification of detection on 27 February, and in

respect of matters 2, 4, 6 and 8, which are 83(1A)(a) matters, which are administration on race day, they all occurred prior to him being notified. The Tribunal has considered whether he should, as it were, “get away” with four separate acts and four separate presentations without some form of cumulation but has determined on the totality of the facts that each of those matters 1 to 8 will be served concurrently. The effect of that, therefore, to summarise it is: in respect of matters 1 to 8, in total there is a period of 2 years and 3 months disqualification.

48. In respect of matters 9, 10, 11 and 13, which to help with coding are 57, 58, 59 and 61, each of those involved out-of-competition testing of four separate greyhounds to that of Sir Duggie. Each of those involved, as the Tribunal must now find on the totality of the facts, an administration of the subject substance to each of those greyhounds in addition to that given to Sir Duggie. Those matters are to be differentiated from the Sir Duggie matters.

49. The stewards determined that there be a disqualification in each of those five out of competition matters of 2 years. The appellant has now made an admission in respect of those matters to which a 15 percent discount will be given. Roughly calculated, that leads to a discount from 24 months to 22 months. In each of those matters, therefore, of 9, 10,11 and 13, there will be a period of disqualification of 1 year and 10 months.

50. n respect of matter 12 – that is 60 – Sir Duggie there will be a disqualification of 1 year and 10 months.

51. The Tribunal has determined, as there are separate greyhounds involved, that that cannot be entirely concurrent with the other matters involving the administration not on race day and that there should be some additional penalty imposed to be dealt with by way of cumulation.

52. In respect of those matters for which a different greyhound is involved, namely, 9, 10, 11 and 13, there will be in respect of each matter, separately, a period of cumulation of 3 months. Therefore, from matters 1 to 8, where there was a disqualification imposed of 2 years and 3 months, there will be added cumulative 3 months in respect of 9, plus 3 months in respect of 10, plus 3 months in respect of 11, plus 3 months in respect of 13, which takes it up to 3 years and 3 months.

53. Matter12 is concurrent with those penalties. Therefore, there is no additional penalty imposed by accumulation.

54. In respect of matters 14 and 16, which are Charge 1 in 62 and Charge 1 in 63, the inquiry panel considered a disqualification of 3 years. Whether they started at 3 years and 6 months and gave a 25% discount is not known. For reasons expressed, the Tribunal is of the opinion that the starting point should be 3 years. Against that, there is to be a discount of 25 percent, which is 9

months. And in respect of those two matters, there will be a period of disqualification of 2 years and 3 months.

55. In respect of matters 15 and 17, the stewards determined a starting point of 3 years and 6 months in each matter and no discount was given for an admission. The Tribunal has determined, as expressed, a starting point of 3 years. Against that, there is now to be a discount of 15 percent, which reduces those matters to 2 years and 7 months.

56. The Tribunal, as expressed earlier, considers that the fact that those two greyhounds were presented to race on 3 March immediately after the stewards' kennel inspection, in circumstances where the appellant was not told not to race them and admitting in favour of the stewards, as the Tribunal does, that they were not the greyhound Sir Duggie, which had produced positives, but that he was told to take them to the races and that he did so, is such that the Tribunal is of the opinion that those matters should in all the circumstances be served concurrently. Therefore, the concurrency will relate to the previous penalties and there will be no addition for it.

57. The effect of all of those determinations in respect of the matters with which this Tribunal is dealing is that there is a period of disqualification of 3 years and 3 months. As he was suspended on 17 April 2018, those periods of disqualification will commence on that date. The Tribunal notes that the 86(e) matter is the subject of a period of cumulation of 6 months and in fairness it should now be returned to, having regard to that penalty, to see if there is any submission in respect of the cumulation of that penalty, not its length, because that was not the subject of appeal.

SUBMISSIONS MADE IN RELATION TO MATTER 18

58. A further issue then is what happens with the matter which was not the subject of appeal, matter 18, as the Tribunal has described it, or 18S049, an 86(e) matter, failure to comply with a lawful order and produce documents. The Tribunal made some reference to that in its determination. The stewards determined a 6 months' disqualification cumulative on all other matters. The totality principle is submitted as applying to this. The Tribunal considers this to be a separate matter to the other matters, it occurred at a different time in different circumstances, although interrelated with the appellant's earlier conduct.

59. In those circumstances, the Tribunal does not consider the totality principle would mean that considering all matters together some lesser penalty than that which was previously appropriate should be imposed and the Tribunal is of the opinion it should be cumulative. That will remain, therefore, the order, that that matter is noted, there being no appeal against the length of the penalty of 6 months, that that 6 months will be served

cumulatively to the 3 years and 3 months to which the Tribunal has already made a determination.

60. The result of this determination is that the severity appeal is upheld.

61. The total period of disqualification is 3 years 9 months commencing 17 April 2018.

SUBMISSIONS MADE IN RELATION TO APPEAL DEPOSIT

62. At the conclusion of the matter application is made for a refund of the appeal deposit. This was a severity appeal. To that extent it has been successful. No particular counter submission was put to the Tribunal against which it could assess the merit of success as a submission. In those circumstances, a substantial penalty has been imposed regardless of the nature of the severity, the Tribunal orders 50 percent of the appeal deposit refunded.
