

CITATION: *QRIC v Gavin* [2017] QCAT 153

PARTIES: Queensland Racing and Integrity Commission
(Applicant/Appellant)
v
Graeme Gavin
(Respondent)

APPLICATION NUMBER: OCR074-17

MATTER TYPE: Occupational regulation matters

HEARING DATE: 21 April 2017

HEARD AT: Brisbane

DECISION OF: **Senior Member Stilgoe OAM**

DELIVERED ON: *Ex tempore* 21 April 2017

DELIVERED AT: Brisbane

ORDERS MADE: **1. The internal review decision of the Queensland Racing Integrity Commission of 7 April 2017 is stayed pending the determination of the review or until further order.**

CATCHWORDS: PROFESSIONS AND TRADES – LICENSING OR REGULATION OF OTHER PROFESSIONS, TRADES OR CALLINGS – harness trainer – interlocutory decision – stay application

Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 22

APPEARANCES:

APPLICANT: Mr W Kelly, Queensland Racing and Integrity Commission

RESPONDENT: Mr S Neaves, barrister

REASONS FOR DECISION

[1] This is an application for a stay of a decision of the internal review board of the Queensland Racing and Integrity Commission, dated the 7th of April 2017. That internal review decision confirmed a penalty of a six-month

suspension of Mr Gavin, because he presented a horse with a prohibited level of TCO2 in the bloodstream.

- [2] The tribunal has power to grant a stay under section 22(3) of the QCAT Act, and the matters which it is required to consider are contained in section 22(4). They are, firstly, the interests of any person whose interests may be affected, any submission made to the tribunal by the decision-maker and the public interest.
- [3] In support of the application for a stay, Mr Neaves, on behalf of Mr Gavin, has also addressed the usual stay indicia, which is whether there is reasonable grounds for a review, balance of convenience and whether the failure to grant a stay would render the application of no effect, or nugatory.
- [4] In terms of both the section 22(4) requirements and the balance of convenience, what I am faced with is Mr Gavin saying that this is his only source of income. He supports an extended family, and he would not be able to support them, or indeed, live. He has, really, no other means of income beyond this, and he is of pensionable age.
- [5] In response, the QRIC says, well, yes, but there is a public interest involved in this. The harness racing industry is under intense scrutiny at the moment. It is common knowledge that two people involved in that industry have recently been charged with offences, and it is in the public interest to maintain the integrity of the harness racing industry.
- [6] I have some criticisms of the case. Mr Kelly has pointed out, in the submissions on behalf of the Commission, that while Mr Gavin has sworn to the financial circumstances he'll be in if a stay is not granted, there is no evidence to support that. Mr Neaves responded by saying, well, that's true, but by the same circumstance, there is nothing to contradict that evidence. The tribunal is a relatively informal tribunal, and it is not bound by the rules of evidence; however, something more than a bald statement is required when a party is asking the tribunal to exercise its discretion in its favour. It would be of significant benefit to the tribunal if matters such as the financial position of an applicant are fleshed out in more than a bald assertion.
- [7] My other concern – not concern, criticism – is that I read the transcript carefully overnight, and Mr Gavin, in the submissions by Mr Neaves, relies upon the advice of his vet, but it is clear from the transcript that he didn't in fact get any assistance from the vet until after the abnormally high reading had been determined. It is also clear from the transcript that, while Mr Gavin has had 45 years in the industry, he relied on the advice of people – let me read it – at page 7, line 46 of the transcript he's talking about the particular horse, and then at 47 he says:

“And obviously, you talk to people in the game. I was using Nutridex in my feed, over the tongue. They said, why don't you try Carboline? It seems to work a lot better on nervy horses.”

- [8] It just defies imagination that people in an industry which is so heavily regulated and so much in the spotlight will continue to rely on people “in the game” in a circumstance where there was an abnormal weather event, everybody knew that temperatures were very high, this horse, evidently, had a sweating problem and Mr Gavin chooses to talk to people in the stables and take advice from them, rather than talk to a qualified veterinarian.
- [9] So my comment is that, really, I understand that trainers and owners are in this industry, often for the love of the industry, but if you're going to call it an industry, then people are going to have to start acting like it's an industry, and taking some proper advice and not working on rules of thumb or what their mates tell them, down at the stables.
- [10] Having said that, the issue that will be before the tribunal in this matter is whether there is a lack of blame-worthiness by Mr Gavin. That is an issue which is open on the material, and when I balance the public interest in yet another TCO2 conviction and suspension against Mr Gavin's personal circumstances, I will exercise my discretion in favour of Mr Gavin in this particular circumstance. So my order is that the stay is granted.