

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Mark Alexander Currie v Queensland Racing Integrity Commission* [2018] QCAT 245

PARTIES: **MARK ALEXANDER CURRIE**
(applicant)
v
QUEENSLAND RACING INTEGRITY COMMISSION
(respondent)

APPLICATION NO/S: OCR162-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 26 June 2018 (*ex-tempore*)

HEARING DATE: 26 June 2018

HEARD AT: Brisbane

DECISION OF: Member Paratz

ORDERS: **1. The decision of the Queensland Racing Integrity Commission is stayed until determination of the application for review filed on 22 June 2018 or until further order of the Tribunal.**

2. These reasons are to be transcribed and published.

CATCHWORDS: PROFESSIONS AND TRADES – LICENSING OR REGULATION OF OTHER PROFESSIONS, TRADES OR CALLINGS – Racing licence – disqualification

ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – Stay of decision

Queensland Civil and Administrative Tribunal Act 2009 (Qld)

Facoory v Queensland Racing [2009] QCAT 35
Maund v Racing Victoria Limited and Another [2015] VSCA 276

REPRESENTATION:

Applicant: Mr M White of Counsel (instructed by Butler McDermott Lawyers)

Respondent: Mr S McLeod of Counsel (instructed by the QRIC)

REASONS FOR DECISION

- [1] **Member Paratz:** Mr Currie has applied for a stay of an internal review decision of the Queensland Racing Integrity Commission made on 20 June 2018.
- [2] The decision was to confirm the decision of the stewards made on 21 May 2018 on all charges and penalties.
- [3] Twelve charges were brought under section 178E(1) of the Australian Rules of Racing as to administering any medication to a horse on race day, prior to such horse running in a race.
- [4] Charges were brought under section 175(a) of the Australian Rules of Racing as to dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.
- [5] Mr Currie was found guilty under all 16 charges and penalised as follows:
- Charges 1 to 5 under AR178E on 24 March 2018, was nine months disqualification, each charge to be served concurrently.
 - Charges 6 to 12, under AR178E on 7 April 2018, was nine months disqualification, each charge to be served concurrently.
 - Charges 13 to 15 under AR175(a) on 24 March 2018 was nine months disqualification, each charge to be served concurrently.
 - Charge 16 under AR175(a) on 7 April 2018 was 12 months disqualification.
- [6] Orders were made by the stewards as to the groups of penalties being served cumulatively, with the effect that Mr Currie was imposed in total a two-year period of disqualification.
- [7] The matter has been brought on urgently for an oral hearing.
- [8] Mr Currie and the Queensland Racing Integrity Commission were each represented by counsel. Mr Currie gave oral evidence as to two affidavits he had filed, and was cross-examined on them.
- [9] Submissions were made by each counsel.
- [10] Having regard to the urgent nature of the application and the significance of the matter, I have taken some hours to consider the matter, and will now give an oral decision, and direct that it be transcribed and published.
- [11] The principles for a stay to be granted are well-established. In this matter, the two primary considerations are
- (a) Does Mr Currie have an arguable case in the review, and
 - (b) Does the balance of convenience favour the granting of the stay?
- [12] I will discuss the arguable case issue first.

Arguable Case

[13] It was submitted for Mr Currie that there were four grounds upon which the review application was made:

- (1) actual or apprehended bias,
- (2) ambiguity in respect of the charges,
- (3) lack of reasons and
- (4) lack of substance to the charges.

[14] I will deal with each ground in turn.

Bias

[15] It was submitted that the stewards displayed at least apprehended if not actual bias, as the same stewards had also dealt with charges arising from the same incidents against Mr Currie's son Ben, and also other employees.

[16] Further, it was suggested that the hearings in relation to Mr Currie and his son were interposed on Friday, 13 April 2018, to the extent that the number of the transcripts appears to overlap.

[17] The difficulty with this argument is that it focuses on the stewards, whereas the decision that is subject to this review is the decision of the internal reviewer.

[18] The submissions were not directed to any bias on the part of the internal reviewer, so this ground appears to lack strength.

Ambiguity

[19] The submission is put for Mr Currie that the charges lack particularity and that proper particulars of the charge were never provided.

[20] In the course of these proceedings, there did not appear to be any confusion as to the dates, the actors, the horses involved or the substances involved.

[21] Whilst the charges only refer to a medication, the stewards' inquiry, the internal review and this hearing revolved around a product known as boost paste, and a photo of a syringe of that product was in evidence.

[22] This does not readily suggest that Mr Currie would have been confused as to the basis of the charges or the factual allegations as to them.

[23] Associated with this ground is a submission made by counsel for Mr Currie that the convictions under both section 178E(1) and 175(a) gives rise to duplicity, and that the penalties are penalising him twice for the same actions.

[24] Counsel for the Queensland Racing Integrity Commission had a different view as to the appropriateness of convictions under both sections, and submitted there was no duplicity.

- [25] There is therefore a contested view in law as to whether the charges are duplicitous, and whether convictions under both sections together can stand.

Lack of reasons

- [26] The submissions as to lack of reasons also were directed to the stewards' decision. This review is as to the internal review, and comprehensive reasons were provided by the reviewer which do not appear to be challenged on that ground.

Lack of substance to the charges

- [27] This is the central challenge that Mr Currie seems to make to the decision.
- [28] The submission for Mr Currie is that what was given to the horse was a vitamin supplement, which should not be defined as a "medication" under Australian Rules of Racing 178E.
- [29] The question of whether this type of product should be treated as a medication does not appear to have been considered in a relevant court or tribunal, and counsel were unable to point to any such decision.
- [30] It will be a question of law as to whether the giving of the boost paste breaches Australian Rules of Racing 178E. Mr Currie wishes to challenge that contention, and the question that arises is as to whether he should be given the opportunity to do so.

Balance of convenience

- [31] In *Facoory v Queensland Racing* [2009] QCAT 35, a submission was made and accepted that, without the stay, the trainer would be caused extreme hardship on his business and family, and that the interests of his owners, his horses, and his employees and his family, would be adversely affected in the event that a stay was not granted. A stay was granted in that case, having regard to those submissions.
- [32] In this matter, Mr Currie has said that he operates the Currie Racing business as a partnership with his son Ben. He deposed that the business has monthly expenses of at least \$100,000, and has 40 staff who are a mix of both employees and contractors.
- [33] Mr Currie said that the stewards' decision has had a significant detrimental effect on the business, that 20 to 30 horses have been removed by owners, that some owners have stopped making payments for services, and that about 10 staff have left as they do not want to be associated with a stables that is under suspicion.
- [34] He further said that if a stay is not granted, that by the time a hearing of the review takes place, there will be no business, as the business will have steadily run down by then.
- [35] Mr Currie doubted that his son Ben would be able to run the business without his assistance. Further, he specifically referred to the need to syndicate three yearlings which have been bought for a total of \$370,000, and that each syndicate might involve up to 20 owners. He thought that Ben would be unable to have appropriate discussions with that many owners, or have the contacts to be able to do so.

- [36] Mr Currie said that he draws amounts of \$200 to \$300 a week from the business, but that it pays all his expenses on top of that.
- [37] He has a concrete truck business, but said that was sporadic, and sometimes made a profit and sometimes a loss each month, but did not attribute much benefit to it.
- [38] Mr Currie's wife is in full-time clerical employment, but he said her income did not contribute to his expenses.

Discussion

- [39] It is clear that Currie Racing is a significant business operation. I accept that Mr Currie plays an active and substantial role in its activities, and that he and the business would suffer substantially if he is unable to work in it.
- [40] Ultimately, of course, if the review confirms the internal review decision, then financial consequences will fall on Mr Currie and the business.
- [41] At issue is whether a successful review would place Mr Currie in a position where he was not "restored substantially to the position he is in now", which is a test put by Cavanough AJA in *Maund v Racing Victoria Limited and Another* [2015] VSCA 276 at paragraph 37.
- [42] The Commission raised concerns as to public faith in the integrity of the racing industry. That is a primary issue which the Tribunal must have regard to.
- [43] I am satisfied that, if a stay is not granted, that Mr Currie would suffer substantial hardship in the period until a hearing is held and determined, and that the consequence may be that his position would not be able to be restored to his former position.
- [44] I consider that there are questions of law in contention, particularly as to the duplicity of charges and as to whether the giving of the boost paste constitutes the giving of a medication under the Australian Rules of Racing, and that Mr Currie is entitled to have the opportunity to test those questions of law in the Tribunal and have them decided if he so desires.
- [45] I consider that the integrity of the industry will be served by the testing of these questions of law in this matter in the Tribunal, and in the eventual determination of the review as to the decision under review.
- [46] Given the significant adverse financial consequences that I accept Mr Currie will suffer in the interim if a stay is not granted, I consider that the balance of convenience lies in the granting of a stay.
- [47] I order that:

(1) The decision of the Queensland Racing Integrity Commission is stayed until determination of the application for review filed on 22 June 2018, or until further order of the Tribunal.

(2) These reasons are to be transcribed and published.