

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Garland v Queensland Racing Integrity Commission*
[2018] QCAT 253

PARTIES: **CLINTON JOSEPH GARLAND**
(applicant)
v
**QUEENSLAND RACING INTEGRITY
COMMISSION**
(respondent)

APPLICATION NO/S: OCR134-18

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 8 June 2018 (*ex tempore*)

HEARING DATE: 8 June 2018

HEARD AT: Brisbane

DECISION OF: Acting Senior Member Browne

ORDERS: **IT IS THE DECISION OF THE TRIBUNAL THAT:**

- 1. The decision of the Queensland Racing Integrity Commission dated 22 May 2018 is stayed until the determination of the external review application or until further order of the Tribunal.**

THE TRIBUNAL DIRECTS THAT:

- 1. Queensland Racing Integrity Commission must file in the Tribunal two (2) copies and give to Clinton Joseph Garland one (1) copy of any documents pursuant to section 21(2) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), together with any transcript of evidence, by: 4:00pm on 6 July 2018.**
- 2. Clinton Joseph Garland must file in the Tribunal two (2) copies and give to Queensland Racing Integrity Commission one (1) copy of :**
 - (a) Any statements of evidence, which must be page numbered;**
 - (b) A statement from each witness to give evidence for Clinton Joseph Garland at the hearing including any experts; and**
 - (c) Any documents referred to in a statement of evidence which must be identified, explained**

and attached to the appropriate witness statement, by: 4:00pm on 3 August 2018.

3. The matter is listed for a Compulsory Conference in Brisbane on a date and time to be advised by the Tribunal.
4. The matter is listed for a Directions Hearing in Brisbane on a date and time to be advised by the Tribunal.

CATCHWORDS:

ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – PROFESSIONS AND TRADES – LICENSING OR REGULATION OF OTHER PROFESSIONS, TRADES OR CALLINGS – RACING – where applicant presented a horse for racing – where prohibited substance found in excess of the permissible threshold – where charges presented under the Australian Rules of Racing – where applicant disqualified from racing – where applicant applied for an external review and a stay of the decision – whether it is desirable to grant a stay until the determination of the external review

Australian Rules of Racing, r 178

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

Racing Integrity Act 2016 (Qld), s 3

Facoory v Queensland Racing [2009] QCAT 35

Morrissey v Queensland Racing Integrity Commission [2018] QCAT 161

APPEARANCES &
REPRESENTATION:

Applicant: G Hutchinson, Solicitor of Butler McDermott

Respondent: A Turner, legal counsel of the Queensland Racing Integrity Commission

REASONS FOR DECISION

- [1] **Acting Senior Member Browne:** On the 19th of April 2018, Clinton Joseph Garland was found guilty of a breach of the *Australian Rules of Racing* following an inquiry by the Stewards. Mr Garland was found to have presented a horse known as Bonino to a race at the Rockhampton Jockey Club on the 10th of June 2017. A post-race urine sample taken from Bonino was found to contain a prohibited substance, namely cobalt, in the excess of the permissible threshold as prescribed under the *Australian Rules of Racing*, 178. Mr Garland was disqualified from racing for a period of 18 months, to commence on the 26th of April 2018.

- [2] Mr Garland applied to the Queensland Racing Integrity Commission for an interval review of the Stewards' decision. On the 22nd of May 2018, the Commission confirmed the Stewards' decision on the charge and the penalty. On the 25th of May 2018, Mr Garland filed an application in the Tribunal to review the internal review decision. Mr Garland has also applied for a stay of the internal review decision until the Tribunal has determined the application to review. The application for a stay first came before me on the 31st of May 2018. On that day, I made directions listing the application for a stay for a hearing today; that Mr Garland file any material, including statements of evidence, in support of the application; and that Mr Garland be permitted to attend the hearing today by telephone. Mr Garland has complied with the Tribunal's directions and has attended the hearing in person today to be cross-examined.
- [3] Turning now to the application to stay, there is power under section 22 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) to grant a stay in a review proceeding if the Tribunal considers that the order is desirable having regard to certain matters. The matters to be considered include the interests of the person who may be affected by the refusal of a stay, any submissions made by the decision-maker, and the public interest. The question of whether it is desirable to grant a stay involves the exercise of a broad statutory discretion and may include a consideration of other matters, such as whether there is an arguable case and whether the balance of convenience favours the granting of a stay.
- [4] In this matter, Mr Garland relies on his own evidence, contained in a statement filed in the Tribunal on the 7th of June 2018, and his sworn oral evidence given at the hearing today. Mr Garland is a licensed trainer and operates his own business, Garland Racing. He has held a trainer's licence for approximately 16 years. He has five prior offences pursuant to rule 178, the most recent being in 2015. This matter before me is his first offence involving a prohibited substance, namely cobalt.
- [5] In the application to stay, Mr Garland says that he has an arguable case, and if the stay is not granted, he will be required to serve a substantial period of the disqualification, being 18 months, before he has had any opportunity to have the matter reviewed. Mr Garland says that it is in the interests of justice that he be granted a stay so that he may preserve his own position with respect to the review. In written submissions filed today, Mr Garland submits that a failure to grant a stay prejudices his ability to earn a livelihood. The loss of his business will have a flow-on effect to other persons such as farriers, feed merchants and vets. Mr Garland submits that by reason of the disqualification, he will be required to transfer all of his horses out of his stables.
- [6] Mr Garland says that as noted in the internal review, he fiercely denied ever having used cobalt in respect of horses. Mr Garland also submits, amongst other things, that he is capable of demonstrating that he has an arguable case that the penalty imposed was manifestly excessive and there is limited precedent from this Tribunal in relation to matters involving cobalt for thoroughbred horse trainers. Mr Garland also submits that the balance of convenience favours the granting of a stay. If the stay is granted but the applicant is unsuccessful on review, the weight and force of the 18-month disqualification will not be materially altered on review. On the other hand, if Mr Garland is successful on review, he will suffer significant financial loss due to not only the disruption of his business but the loss of his livelihood.

- [7] The Commission oppose the granting of the stay. In written submissions filed today, the Commission submit that in pleading not guilty to the charge, Mr Garland was unable to tender any explanation as to how the results of the analysis revealed the presence of a prohibited substance, namely cobalt, in breach of the Rules. The Commission refer to many factors that they say were considered by the Stewards in imposing penalty, such as the plea of not guilty, the level of the cobalt sample, the fact that Mr Garland had been a trainer for approximately 16 years and would usually have 15 horses in training, Mr Garland employs track workers and stable staff as required, and the effect of the disqualification.
- [8] The Commission contend that Mr Garland's prospects of success are poor and that no arguable case exists in relation to the charge or penalty. The Commission also contend that Mr Garland has provided unsubstantiated evidence of his current expenses, his income and financial expenses and income of his business to support his submission that he will suffer financial hardship if the stay is not granted. The Commission submits that the offence is significant and a breach of this nature impacts on the integrity of the racing industry and has significant welfare issues associated with such an offence. The Commission submits that the public interests outweigh the private interests of Mr Garland.
- [9] In oral submissions, Ms Turner for the Commission also submits that the starting-point in relation to a penalty of this kind is 12 months and a number of factors considered by the Stewards are outlined in the Commission's written submissions at paragraph 17. Ms Turner submits that to succeed today, Mr Garland must show he has prospects, and without proof, that the breach is a strict liability offence and a significant period of disqualification is forthcoming.
- [10] I have considered the written and oral submissions made at the hearing today. I have also considered the evidence of Mr Garland. Mr Garland's sworn evidence is that horse-training is his primary income; however, his employment with another entity, known as Schwarz, assists with his financial obligations, including those that are horse-related. Mr Garland's evidence is that he employs track-work riders and two strappers for his business and his parents own shares in approximately 10 of the horses that he trains at his stables. Mr Garland owns the entire property and is responsible for the mortgage as well as other expenses, including the care of his son, who lives with him 50 per cent of the time, and the care of his elderly parents.
- [11] Mr Garland deposes to the effect of the disqualification on his income and livelihood. His evidence is that he would no longer be able to be involved in any racehorses and would likely be required to vacate his property and find alternative residence. Mr Garland also has other investments related to his work as a trainer, including a truck and a float for the purpose of transporting his horses. Mr Garland's evidence is that he has invested a significant amount of money in establishing his business, in the form of premises, plant and machinery. Mr Garland also deposes to the impact the disqualification will have on third parties, namely his parents, should a stay not be granted. Mr Garland's parents have invested a significant amount of their own money in shares of some of the horses he trains. Mr Garland deposes to the impact on his profit margin in the last two months since the disqualification as a result of transferring horses that he trains. His evidence is that he does not use cobalt or feed it to any of the horses that he trains but he does use B12 supplements but does not use them within three days of a race day.

- [12] Turning now to the question of whether it is desirable to grant a stay in this matter under section 22, subsection (4) of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld). I have firstly considered whether Mr Garland has an arguable case. Mr Garland has throughout the Stewards' inquiry, the internal review process and at the hearing today denied the charge and the use of cobalt. Mr Garland was cross-examined at the hearing today about the charge, his use of B12 supplements and certain feed for horses. Mr Garland maintained his evidence during cross-examination that he does not use cobalt. Mr Garland accepted during cross-examination that B12 supplements contain a low amount of cobalt, but when questioned about the use of B12 supplements he stated that he uses the supplements within the Rules of Racing.
- [13] Mr Garland was cross-examined about the feed he gave to the horse Bonino, in particular the feed known as Phar Lap. Mr Garland accepted when questioned that he is aware the feed known as Phar Lap contains cobalt traces. When questioned further about the feed known as Phar Lap and whether Mr Garland conducted any testing of the feed used by him relevant to the issue of whether there is an explanation for the finding of cobalt, Mr Garland stated that he requested help from the Commission to test the feed and stated that the Commission never tested his feed.
- [14] I accept Mr Garland's evidence. I am satisfied that Mr Garland has established he has an arguable case. The internal review reasons show that Mr Garland did not accept the charge and his legal representatives raised an issue at the Stewards' hearing about the policy or procedures for the sample analysis. I am satisfied there is a live issue on review involving the validity of the sample identified by Mr Hutchinson in his closing oral submissions on behalf of Mr Garland today. The issues that arise as to the validity of the sample taken are matters to be considered by the Tribunal on review. Putting aside the contest as to whether the sample taken is prima facie evidence of a breach of the Rules of Racing, and if the Tribunal were to find on review that there is a breach of the Rules of Racing, I am otherwise satisfied that Mr Garland has an arguable case in relation to the penalty imposed by the Stewards.
- [15] Mr Garland raises a number of issues that he is open to advance on review, concerning issues such as the feed given to the horse Bonino and the use of B12 supplements. I accept that there is limited guidance from the Tribunal as to penalties imposed on a positive finding of cobalt in racing thoroughbred horse matters such as this. I take guidance from a recent decision of this Tribunal, in the matter of *Morrisey v The Queensland Racing Integrity Commission* [2018] QCAT 161, of Member Holzberger. In that case, the Tribunal considered the imposition of a suspension instead of a disqualification as appropriate penalty. The Tribunal observed that a suspension is a severe penalty. In *Morrisey's* case, the Tribunal accepted that a lesser penalty than that imposed on the applicant in another case, of *Moody*, was appropriate in all of the circumstances.
- [16] I am satisfied that there will be a detrimental effect on Mr Garland's interests if a stay is not granted. I accept Mr Garland's evidence given at the hearing as to the financial impact the disqualification will have on his business should a stay not be granted. Mr Garland was cross-examined at the hearing today about his financial matters. He has also provided details of his income from training horses in his statement. Mr Garland maintained his evidence during cross-examination that he is solely responsible for paying his mortgage, is the carer of his son and the carer of his elderly parents. Mr Garland also gave evidence during cross-examination in relation to the income

derived from other employment, with Schwarz Excavations. Although Mr Garland was unable to confirm the exact amount of income derived from his work with Schwarz, he stated that he earns approximately \$48 per hour, working no more than approximately 30 hours per week.

[17] I accept Mr Garland's evidence that in the last two months, his profit margin has been impacted because he has been required to transfer horses. Mr Garland was cross-examined about his evidence, contained in his statement, in relation to the transfer of certain horses since the presentation of the charge. Mr Garland stated that once made public about his charge, the owners of certain horses took the horses off him because they were worried about the positive finding of cobalt. I accept Mr Garland's evidence and place no weight on the report of Derek Major sought to be relied upon by Mr Garland at the hearing today. I am also satisfied that there are other parties' interests that will be affected by reason of the disqualification in the event that the stay is not granted. I accept Mr Garland's evidence that he is the sole carer of his parents, who live on the property with him. His parents do not contribute towards the mortgage and living expenses and hold interests in some of the horses that he trains.

[18] I have also considered the submissions of the Commission and the protection of the integrity of the racing industry. In written submissions, the Commission contends that in all of the circumstances, the granting of a stay would be incongruous with the purposes of the *Racing Integrity Act 2016* (Qld) and that the public interest outweighs the private interests of Mr Garland. I take guidance from an earlier decision of the Tribunal in *Facoory v Queensland Racing* [2009] QCAT 35. In that case, the Tribunal was not satisfied that merely granting the stay of the operation of the decision until the hearing of the review had concluded would necessarily undermine the public's confidence in the racing industry but:

...would rather in most cases lead to greater confidence in the public about the system as a whole by reinforcing the presence of an independent review by the Tribunal of decisions made by Queensland Racing.

[19] I am satisfied that in this case, the detrimental effect on Mr Garland's interests, including his financial interests, if a stay is not granted outweigh any negative impact on the public interest if the stay was granted. I am satisfied that it is desirable to grant a stay in this matter. So the decision of the Tribunal is that the decision of the Queensland Racing Integrity Commission dated 22 May 2018 is stayed until the determination of the external review application or until further order of the Tribunal. I will also make some directions to progress the application OCR134 of 2018.