TASMANIAN RACING APPEAL BOARD

Appeal No. 06 of 2020

Panel:	**Kate Cuthbertson (Chair)** **Wendy Kennedy (Member)** **Suzanne Martin (Member)**	**Appellant:**	**Shane Whitney**
Appearances:	**John King, Director of Racing**	**Rules:**	**Not applicable**
Heard at:	**Tasracing** **Glenorchy** **Tasmania**	**Penalty:**	**Not applicable**
Date:	**14 February 2020**	**Result:**	**Upheld**

REASONS FOR DECISION

1. The appellant has appealed against a decision of the Director of Racing dated 16 January 2020 approving his application for a public trainer's licence on the condition that he not train from the property at 509 Millvale Road, Brighton (the Brighton Property). It is the imposition of this condition that is the subject of the appeal. The Brighton Property is where the appellant lives with his family and has well established kennel and training facilities.

2. The appellant submitted his application for a public trainer's licence to the Office of Racing Integrity (ORI) on 31 October 2019. The Director of Racing convened a Licensing Panel Review with the appellant on 9 January 2020 (the Review). The panel consisted of the Director of Racing, John King (the Director), the Racing Integrity and Stewards Manager, Tony Latham, and an Operations and Support Officer, Kelley Davis (the Panel). During the course of the Review, the Director advised the appellant that he had "a couple of issues" with his application.

3. Those issues included the following:

    - the circumstances surrounding the detection of cobalt in the greyhound *Two Bills* in Victoria which lead to the suspension of the appellant's trainer's licence;

    - the appellant's record of prior convictions including a conviction for assault; and

- interactions the appellant had with the local Council in respect of kennel licences relating to the Brighton Property.

4. The issue that was described by the Director as "more pressing" related to the appellant's father, Gavin Whitney (Mr. Whitney Snr), and his conviction for an offence under GAR 86B(1)(a) and (b) which prohibits the use or possession of any live animal, animal carcass or any part of an animal to entice a greyhound to pursue.

5. Mr Whitney Snr was disqualified for the term of his natural life as a consequence of this conviction which was confirmed on an appeal to the Board. The penalty is a mandatory one that applies to such convictions. The conviction related to a wallaby skin found by stewards during a kennel inspection conducted at the Brighton Property.

6. In respect of the latter issue, the Director advised the appellant that the industry was *"trying to work through the perception that someone gets into serious trouble at a particular property and then they are disqualified and then quite simply someone else gets a licence and then resumes the same activity"*.

7. During the course of the Review, the appellant advised the Panel of the following:

   - He was unable to explain the Cobalt positive he returned when training the greyhound that raced in Victoria. He explained he never intentionally gave the dog an injection or an additive that had Cobalt in it and thought that contaminated meat may have been the explanation;

   - The assault charge on his record of prior convictions related to a period when he was much younger and involved him coming to his father's defence after he had been pulled over for a breathalyser matter. The appellant explained that police handled his father roughly in circumstances where he was waiting to have a heart operation and was calling out for the appellant to get his *"heart spray"*. Whilst trying to get this to his father and explain his health problems, police tried to push the appellant away and he bumped them off. He also advised that in the scuffle one of the police ended up with a broken finger. He told the Panel that at the time he feared for his father's life so was *"a bit revved up"*;

   - In respect of the Council issues, he advised that he had sorted those out and that the kennel licence was all paid up and *"above board now"*. He explained that the kennel licence relating to the Brighton Property had run out at a time when the appellant was living in Victoria and not receiving his mail and that once he realised, he made an application for it to be reissued. The application for the kennel licence was granted, permitting the appellant to have 7 dogs on the Brighton Property;

- In respect of "the more pressing issue", the appellant explained that although the Brighton Property was owned by his father, Mr Whitney Snr did not live at the address. He was aware that his father would be unable to go to the property, go near the greyhounds or touch the greyhounds, but he was hoping that stewards may permit his father to attend to visit his grandson. The appellant told the Panel that he had no alternative training options as he lived at the Brighton Property with his partner and son and it was *"basically built to train greyhounds back when we built it all"*. He explained that $150,000 had been spent building the current dog sheds and that if he was not able to train from the property, he would have nowhere else to train from. He explained he probably would not be able to train dogs at all if he could not do it from the Brighton Property;

- With respect of the perception issue, the appellant stated that he understood that *"it's probably too easy for someone to get disqualified and then someone else just go in and they move into the property"*. However, this was a situation where he had been training dogs since he was 20 years old from the same property. He is now 43 and had trained at that property all his training life. He distinguished his situation from the example raised by the Director as he said it was not a situation where he had applied for his licence just because his father had been disqualified. The timing of his application followed from the conclusion of the period of suspension imposed in Victoria in respect of the Cobalt positive, he did not apply immediately following the expiration of that suspension as he was working and his father was training the dogs, but he was in the process of getting around to do that. He told the panel that it had always been his intention to get his licence back before his "*dad's problem*" occurred;

- He explained that he had lived at the property since he was an adult apart from a period when he moved to Victoria and trained dogs there. He had lived at the property on a permanent basis for about 6 to 7 years.

8. The letter to the appellant outlining the decision made in respect of his application stated the following:

> *Since then I verbally advised you of the Director's decision which was to approve your application for a public trainer's licence on the condition that you do not train from the property at 509 Millvale Road, Brighton. The Director is not prepared to have this property registered as a training establishment due to the fact that it is owned by your father, Gavin Whitney, who has been disqualified for life. Having a person training from a property where a person has recently been disqualified due to an extremely serious matter is not in the best interests of the image of greyhound racing in Tasmania.*
>
> *The Director is prepared to consider the registration of an alternate address if you are able to organise to train from another property.*

Gavin Whitney's conviction

9. By way of background, Mr Whitney Snr's conviction under GAR 86B(1)(a) and (b) related to a wallaby skin located in a trailer just metres from a jump box and run on the Brighton Property. There was also a toy wombat with a rope attached to it in the trailer which was designed to act as a lure. Mr Whitney Snr told stewards during the kennel inspection that he used the skin to torment the greyhounds and "*give them a jump out*" before he started using the toy wombat. He stated that he had tied the skin onto a little trolley with some rope. During the subsequent stewards' inquiry and appeal, Mr Whitney Snr denied using the skin when training the greyhounds. His denials were not accepted by the Board who found that the evidence supported the conviction. They were left in no doubt that the wallaby skin was used and possessed by the appellant for the purpose of enticing greyhounds contrary to GAR 86B(1)(a) and (b): *Gavin Whitney*, TRAB Appeal No. 1 of 2019/20.

Appellant's submissions

10. The appellant explained that he had held a trainer's licence for nearly 23 years. Apart from a period when he trained in Victoria for 12 months, he had always trained at the Brighton Property.

11. The appellant had his licence suspended due to the Cobalt positive in November 2018. That period of suspension ended on 1 May 2019. Mr Whitney Snr's disqualification flowed from a kennel inspection that was conducted at the Brighton Property on 12 September 2019. The appellant explained that he had commenced making enquiries about getting his trainer's licence back shortly after his own period of suspension expired in May 2019. The appellant is also a qualified builder. During the course of his suspension and the period immediately following he was working as a builder. He was in a position to submit his application for a trainer's licence in late October 2019.

12. At the time of the kennel inspection that led to his father's disqualification, the appellant was not actually in Tasmania but was working in Sydney as a builder. He explained that he would go to Sydney for 4 or 5 weeks at a time and return for brief periods.

13. The appellant has been a successful trainer of greyhounds in the past. Five or six years ago he was training 40 or 50 dogs. He described having a passion for the work. By contrast, at the time of Mr Whitney Snr's conviction, he was 72 years old and was only training a couple of dogs. The appellant described his father's training of dogs as a hobby and that it had been 25 years since he had trained in any serious capacity. He had taught the appellant how to train dogs but essentially the appellant had been the main trainer at the Brighton Property since he was 20 years old.

14. In respect of the improvements to the property, they were entirely funded and organised by the appellant. The new sheds and training set up were

built and paid for in 2008 and 2009. He is not charged rent by his father for the property but is expected to keep it well maintained.

15. In respect of the kennel licences, they had previously been held in his father's name but the appellant had been responsible for paying for their renewal. When he was staying interstate frequently, he had not received mail advising that the licence was due to expire and he had missed the opportunity for it to be renewed. As a consequence, he had to apply for a new one. The kennels were licensed in the appellant's name in June 2019, that is, before the kennel inspection which led to his father's disqualification, and during a period when he still did not have a licence himself.

16. The appellant argued that the condition imposed on his licence in effect punished him for his father's action. He said he was unable to set up at another location and would like to be able to live where the dogs he trains were located. He has had offers from people in Western Australia and New South Wales to train greyhounds at his property. The dogs being trained by his father at the time of the kennel inspection were no longer on the Brighton Property. It was not a situation where he was picking up where his father left off. He indicated if he was not able to train from his current location, it would be unlikely that he would train dogs at all.

Director's submissions

17. The Director acknowledged the disadvantage to the appellant that had been brought about by his decision to impose the condition. The Director indicated that he held no concerns regarding the appellant's experience or capability to train greyhounds. He acknowledged he had no significant prior convictions and there were in general no integrity concerns regarding the appellant himself.

18. The Director noted that pursuant to section 6(1)(a) of the *Racing Regulation Act 2004* (the Act), he was responsible for ensuring that greyhound racing was conducted with integrity. He also noted his responsibility to grant licences under the Rules of Racing pursuant to section 6(2)(f).

19. The Director submitted that his responsibility to maintain the integrity of greyhound racing included giving consideration to how the actions of regulators are perceived by others. This he submitted is linked to maintaining the social licence which allows the greyhound industry to operate. He noted that the decision to refuse a licence or impose conditions was not taken lightly.

20. In respect of this particular decision, the Director noted that one of the difficulties encountered by the industry was detecting breaches of the rules, particularly those relating to live baiting, as they take place on private property. In this case, the Director was keen to avoid any perception that he was endorsing disqualified persons passing on the baton to other members of their family. Such behaviour degraded the deterrent value of the penalty of disqualification. Allowing someone to train at exactly the same property where a person had been disqualified for very serious charges following a

kennel inspection sent the wrong message to the industry. It gave the impression that business as usual would be tolerated.

21. Further, the Director argued that it was convenient that the appellant's application was made after his father's disqualification. He suggested this reinforced the adverse perception inside and outside of the industry that activities on the property could continue as usual if the condition was not imposed. The absence of deterrence in those circumstances was said to reduce the perception of the integrity of the industry.

22. It was also argued by the Director that specific rules made it difficult to allow the Brighton Property to be registered as a training facility. He specifically referred to GAR 99(3)(g) which provides that unless the controlling body in special circumstances otherwise directs, a person who has been disqualified is not to enter or go or remain on, at any time, any place where greyhounds are trained, kept or raced.

23. That rule applies unless the controlling body determines that special circumstances allow an exception to be made. At the time of the appeal, the appellant did not indicate any intention to seek an exemption for his father to attend the property. Although the Director submitted that it would be unlikely that Mr Whitney Snr would keep away, the appellant stated his father would respect the prohibition on him attending, and that he had no need to come to the property.

24. The Director also referred to local rule 42.3(b) which provides that a disqualified person is prohibited from allowing or authorise any person to conduct any activity associated with the greyhound racing industry at *"his or her training establishment or kennel address"* without permission of the controlling body during the period of the disqualification. This was said to be an issue as Mr Whitney Snr is the registered owner of the Brighton Property. This raises the question of what is meant by the term *"his training establishment"* or *"kennel address"*. Given that the kennels are licensed in the appellant's name, it is arguable that the kennel address was not Mr Whitney Snr's kennel address. Further, as Mr Whitney Snr is not conducting any training himself, the property is not registered for the purposes of greyhound training in his name, and the appellant enjoys exclusive occupation of the Brighton Property and was responsible for establishing the training infrastructure currently on it, it is arguable that it would not meet the description of Mr Whitney Snr's training establishment. Further, any such obstacles created by reason of the operation of these rules may be overcome by the granting of an exemption.

25. Finally, the Director queried whether there was any deterrent at all in the disqualification imposed upon Mr Whitney Snr if a trainer's licence was issued to a family member who has had a break from the industry. In his view, the disqualification imposed upon Mr Whitney Snr was too fresh to allow the appellant to train from the same premises, despite the individual hardship that may cause.

Decision

26. This appeal before the Board is pursuant to s.28A(1)(a) of the Act. The onus is on the appellant to demonstrate that the Director's decision to impose the condition upon him ought to be reversed. In considering this appeal, the Board is not limited to the materials that were before the Director when the condition was imposed or the basis upon which he made his decision, but may have regard to all the material before it at the hearing including the evidence given and the submissions made by the appellant.

27. Pursuant to s.6(2)(e) of the Act, the Director is responsible for approving registrations under the Rules of Racing. The relevant rules of racing, namely the Greyhound Australasia Rules (GAR) in turn, provide by GAR 15(2)(b) that the Director when considering an application for registration may grant the application pursuant to any conditions it considers desirable.

28. In this case, the Director has indicated that it is desirable to impose a condition that the appellant not train from the premises that were the subject of a kennel inspection resulting in the imposition of a lifetime disqualification upon Mr Whitney Snr.

29. The general submission that the perception of the integrity of racing is negatively impacted by the granting of licences or registrations to individuals enabling them to continue to conduct activities previously conducted on a property by another who has since been disqualified must be accepted. The question, however, is whether or not the granting of unconditional registration in the circumstances of this case would reasonably give rise to such a perception.

30. In our view, there is much to distinguish the appellant's circumstances from those where the granting of a registration or licence gives the impression of *'business as usual'*. Mr Whitney Snr was not conducting significant training activities at the Brighton Property and had not done so for a number of years. The appellant has been the principal trainer at the Brighton Property for over 20 years. There is no suggestion the appellant was in any way involved in the activities that resulted in his father's lifetime disqualification. There is, further, no suggestion he had knowledge of those activities and he was not present at the property at the time of the inspection.

31. The Director's submission that it appears convenient that the appellant sought to be registered following his father's disqualification cannot be considered in isolation from other facts. The appellant had organised for the kennels to be licensed in his name with the relevant municipal Council in June 2019, that is, before his father's disqualification and while he himself was not licensed. This strongly suggests that the appellant had an intention to return to the industry at some point in time once eligible to do so. His explanation that he was working interstate as a builder which delayed his application for registration was accepted by the Board. The Board also accepted that it is the appellant who was principally responsible for the funding and development of the current training and kennel facilities on the property.

32. Although the property is owned by Mr Whitney Snr, the Board accepted he would be able to comply with the condition imposed by the rules that he not attend the premises. The evidence strongly suggested that the Brighton Property was treated by the appellant as his own.

33. This is not a situation where operations would continue as usual under the stewardship of a different registered trainer. The evidence strongly suggests that the appellant's professional approach to training will recommence if he is able to do so at the Brighton Property and that such an operation is distinguishable from the training engaged in by Mr Whitney Snr at the time of the inspection.

34. Further, the appellant's proposal is clearly distinguishable from those where family members who otherwise have limited involvement in the industry seek licences to operate in circumstances where the strong suspicion is that the disqualified person will in fact be the one conducting the operation. There is no suggestion this would be the case in these circumstances. The appellant is very much his own person and has long operated independently of his father.

35. In the circumstances, the Board upholds the appeal against the decision of the Director to grant the appellant's application for a greyhound trainer's registration on condition that he not do so from the premises at 509 Millvale Road, Brighton. In our view, the imposition of that condition is not necessary to ensure that greyhound racing is conducted with integrity either in a general sense or specifically by the appellant.

36. The decision to impose that condition is quashed pursuant to s.34(1)(a) of the Act. The Board orders that the appellant's application of registration as a public trainer of greyhounds be granted without conditions.

37. As the appellant's appeal was entirely successful, the whole of the appellant's prescribed deposit is to be refunded to him pursuant to s.34(2)(e) of the Act.