TASMANIAN RACING APPEAL BOARD

Appeal No 20 of 2017/18 – STEPHEN WALTERS

Panel:	**Tom Cox (Chair)** **Kate Cuthbertson** **Rod Lester**	**Appellant:**	**Stephen Walters**
Appearances:	**Ray Murrihy and Adrian Crowther on behalf of the Stewards** **Anthony O'Connell on behalf of the appellant**	**Rules:**	**Australian Harness Racing Rule 235A(4)**
Heard at:	**Hobart**	**Penalty:**	**Disqualification for 12 months and $4,000**
Date:	**18 June 2018**	**Result:**	**Disqualification for 4 months and $4,000**

REASONS FOR DECISION

1. The appellant is a registered bookmaker, the part owner of various harness horses and a sophisticated wagerer on harness racing. Following a lengthy inquiry before the Stewards held over three days on 22 January, 20 March and 20 April 2018, the Stewards found the appellant in breach of the Australian Rules of Racing, s.235A(4), which provides:

> "*The connections must not lay any horse that is or may be entered by them or on their behalf, save that a book maker may lay a horse in accordance with its licence.*"

2. The particulars of the charge were as follows:

> "*That you, Mr Steven Walters between the 8 January 2017 and 24 September 2017 committed breaches of Harness Rule of Racing 235A(4) in that you, on the betting exchange Betfair Australia, did lay to lose or alternatively lay not to be placed, horses of which you were a connection within the meaning of the Rules by virtue of you Mr Stephen Walters holding an owning interest, such horses being entered on your behalf and competing in such Tasmanian Harness race meetings as follows:*
>
> *1. 8 January 2017 Hobart Harness Race 3 – layed POSTAL EXPRESS for $45.98*
> *2. 3 March 2017 Hobart Harness Race 4 – layed SIGN NO MORE for $66.10*
> *3. 12 March 2017 Launceston Harness Race 2 – layed CROMAC JAMIE for $11.46*
> *4. 14 July 2017 Devonport Harness Race 5 – layed EBONYALLSTARZZZ for $3082.42*

5. *14 July 2017 Devonport Harness Race 5 – layed EBONYALLSTARZZZ (not to be placed) for $682.54*
6. *23 July 2017 Launceston Harness Race 3 – layed EBONYALLSTARZZZ for $90.63*
7. *24 September 2017 Launceston Harness Race 3 – layed POSTAL EXPRESS for $44.00*

3. There was no dispute at the Stewards inquiry, or before this Board, that:

   (a) the appellant held a legal interest in each of the horses set out in the particulars within the definition of "connections" under the Rules of Racing. That definition is as follows:

   > "*connections include the persons who are the owners or lessees of a horse or who otherwise have a legal interest in it, a trainer, a manager of a syndicate, a joint ownership manager, stud master and the authorised agents of such persons.*"

   (b) that the appellant, on his personal Betfair Exchange account placed the "bets" on the dates, races, horses and in the amounts set out in the particulars of charge.

4. Nevertheless, the appellant contends that in placing those bets he did not "lay" those horses within the meaning of the Rules of Racing.

5. The Australian Rules of Racing, r.235A(6) provide:

   > "*For the purposes of this rule 'lay' means the offering or the placing of a bet on a horse:*
   >
   > *(a) to lose a race;*
   >
   > *(b) to be beaten by any other runner or runners;*
   >
   > *(c) to be beaten by any margin or range of margins;*
   >
   > *(d) that a horse will not be placed in a race in accordance with the provisions of r.49.*"

6. A Betfair Exchange account enables a person to not only place a traditional bet for a win or a place for any particular horse in any particular race, but also, like a bookmaker, it enables a person to offer a horse at particular odds to not win or not be placed in a race.

7. The Australian Rules of Racing, r.49 also provides that the horses shall be placed by the judge according to the order in which the horses' noses pass the winning post.

8. So, to take an example from the particulars of charge, the appellant offered EBONYALLSTARZZZ to not win at odds of between $2.96 and $3.50 in return for the sum of $3,082.42. We are told, and accept, that in taking various bets from other wagerers using their Betfair Exchange accounts, the appellant's liability was in excess of $7,000.00 in the event that EBONYALLSTARZZZ won the race. As matters transpired, EBONYALLSTARZZZ ran third, netting the appellant $3,082.42, being the total amount of moneys staked by those persons who accepted to bet on EBONYALLSTARZZZ to win at odds between $2.96 and $3.50.

9. The appellant contends that by offering a horse in which he has a legal interest to not win a race or not place within the race is not a "lay" bet within the meaning of the rule above. It is contended that such a bet is, effectively, a bet on the balance of the field to win or place, rather than a bet for his horse to lose or be beaten by any other runner or runners.

10. In support of the appellant's contention, he relies on a decision of the Racing Appeals Tribunal of New South Wales in *Jason Grimson*. In that appeal, Tribunal Member DB Armati found that Mr Grimson did not lay a bet within the meaning of the Rules in circumstances where he had placed a 5 leg multi-bet which included a bet for one particular race, namely race 7, a horse named SALTY ROBIN NZ to win when he had a legal interest in another runner, WYNBERG TERROR in the same race. In those particular circumstances, the member found that to place a bet to win on another horse is not a bet that the appellant's horse would lose. The appellant was simply betting on other horses to win.

11. At para.19 of that decision, the member stated as follows:

> "*The drafters have chosen the words "lose a race". The Tribunal is satisfied that the meaning of those words, in the context of 235A(6), in the context of 235A generally, in the context of the illegal betting provisions found in 173 and 234 to 235A together, and in the context of the fact that the balance of the rules do not touch upon these matters other than integrity issues and other requirements generally, has the specific meaning asked of it. Can it rise to mean not the word "on a horse to lose" but mean by betting on a particular horse, your own horse might lose? It does not say that. In the Tribunal's opinion, the rule cannot be expanded to cover, by the use of (a), a specific meaning that by betting on the other horses he was actually placing a bet that his horses would lose. He was not; he was betting on other horses to win. To win is not to lose.* "

12. It is immediately apparent that the circumstances of that appeal are completely different to the circumstances in the present case. The appellant did not solely bet on other horses to win in any particular race. He bet on his horses to lose or not place. How else could such a bet be characterised? Indeed, if it was not a bet for the particular horse to lose or not place, then what would such a bet look like? It is impossible to envisage such a bet and how it could differ from the bets place by the appellant. The proposition was specifically put to the appellant during the appeal: what would a bet to lose otherwise look like? It was conceded that it would look like the particular wager that was placed by the appellant.

13. For each of the particularised bets he offered, and another punter accepted, that in the event his horse did not win or place, the other punter would forego his or her stake to the appellant. In other words, for each bet, if his horse lost or did not place, he would gain the stake.

Penalty

14. As far as penalty is concerned, the Stewards disqualified the appellant for 12 months commencing on 20 April and imposed a fine of $4,000.00. It is worth setting out in full the matters the Stewards took into account at arriving at that determination.

CHAIRMAN: Mr Stephen Walters, the Stewards have given consideration to the matter of penalty and indicate in brief the matters that have

exercised our mind. We have taken into account, whilst you did reserve your plea, your address took more of a form of a no-contest, and we've given due consideration to that in assessing penalty. I think you mentioned thirty years as an owner, is that correct?

MR S WALTERS: Yes it is.

CHAIRMAN: Fifteen years as a bookmaker.

MR S WALTERS: Yes.

CHAIRMAN: All with a clean record.

MR S WALTERS: Yes.

CHAIRMAN: Your personal circumstances which we don't intend to allude to but we recognise.

MR S WALTERS: Yes.

CHAIRMAN: The Western Australian decision, I have to say, we didn't find decision notice terribly helpful. Mr Zucal has spoken to his former colleagues in Western Australia and it was some three or more years ago, they were trivial bets by amateur or hobby punters who also had an owner interest. We give regards to matters such as the impact of penalty on your bookmaking licence…

MR S WALTERS: Yes Sir.

CHAIRMAN: …and they are matters that have exercised the mind, also that five of the six designated races, the lays were modest to say the least. Having said that, it's a serious rule, it is there for a very good reason, you're an experienced gambler, you're an experienced bookmaker, you'd know all about lay betting and the precluding of connections in respect to publicity given to jockeys and others about betting on races in which they were involved. It is our decision, having due regard to that, and also the need for appropriate message to be sent, not only to yourself but to other participants who, regarded as connections of horses, that they cannot, and on one occasion at least in this, the Devonport race on 14th July, the lay bets were of a significant nature. The decision handed down by the Stewards is a penalty of Disqualification of 12 months commencing 20 April today, and expiring 20 April 2019. In addition, Mr Walters, you are fined the sum of $4,000. Against our decision you have a right of appeal which must be lodged within 14 days.

15. Before this Board the Stewards also submitted the following:

(a) by the Australian Rules of Racing, r.299, the appellant was deemed to have knowledge of the prohibition, as an owner, on placing a lay bet against a horse in which he had a legal interest;

(b) the relevant rule, r.235A, has been in effect since early 2014 and was implemented following the introduction of betting exchanges such as Betfair in the United Kingdom. The rule was taken from the equivalent United Kingdom Rules of Racing.

(c) The purpose of the rule, as far as owners are concerned, is to prohibit owners from exploiting information known to them about their horses and which is not generally available to the public. This has particular relevance in the race concerning *EBONYALLSTARZZZ* in which the field was small (six horses), and four of the horses were trained by Mr Yole, with whom the appellant was personally connected. This consideration is heightened by the additional fact that the horse was driven by the appellant's brother.

(d) Contraventions of the rule are difficult to detect and it is even more difficult to detect that inside information has been exchanged to give persons, such as the appellant, an unfair advantage over the general public;

(e) the imposition of a fine was appropriate given that part of the purpose of the rule is to prohibit persons such as the appellant from profiting from inside knowledge;

(f) the fine also represents approximately, albeit in excess of, the total sum of the profit obtained from all of the betting;

(g) it is a serious offence and strikes at the integrity of the industry and undermines public confidence in wagering on horse racing.

16. By contrast, the appellant submits as follows:

(a) the appellant simply did not know of the existence of the rule or the prohibition imposed upon him. He willingly accepted as much at the inquiry and, indeed, admitted to laying similar bets on his own horses over a number of years;

(b) insufficient weight was given to the appellant's good record as an owner of 30 years and a bookmaker of 15 years.

(c) the appellant cooperated with the Stewards and provided vast amounts of documentary evidence, such as betting accounts and telephone records, to enable the Stewards to properly investigate their complaint.

(d) the mischief sought to be prevented by r.235A is the trade and use of inside information. In this case, the information that the appellant had was available to the public if the public or any person within it had dedicated the time and effort the appellant had expended in assessing the prospects for each of the horses, and in particular EBONYALLSTARZZZ.

(e) there is no evidence of collusion between the appellant and the trainer or driver, despite a thorough investigation;

(f) Mr Yole needed to run EBONYALLSTARZZZ in order to create a field for the race. The fact that the length of the race didn't suit that horse was not "inside knowledge", but rather knowledge gained by the appellant through many years of experience in following the horse's form.

(g) There was nothing unusual about the amount of money laid on EBONYALLSTARZZZ. The appellant had laid over 500 horses with a liability in excess of $5,000.00 in recent years.

(h) The appellant had worked on developing a system for his Betfair Exchange account over 14 years and simply saw an opening to place a successful bet.

(i) As a bookmaker, the appellant is constantly laying bets against horses and, indeed, is required to accept such bets as a bookmaker. The appellant was simply acting as a bookmaker in his private capacity through his Betfair Exchange account.

(j) The publication of this particular rule was not brought to the appellant's attention, although he accepted before the inquiry that it was "not a good look" to be betting against one's own horse.

17. All the matters raised by both parties are relevant in exercising our discretion as to the appropriate penalty to impose. We accept the appellant's evidence that he was not aware of the rule and was, effectively, acting as a private bookmaker through his Betfair Exchange account. That said, the appellant ought to have been aware of the rule and ought to have had regard to his acceptance that placing the lay bet against his horse could give rise to a perception of impropriety. We also have regard to the fact that the detection of contraventions of the rules of this type is difficult but this factor is offset by the appellant's admissions and cooperation throughout the Stewards' inquiry. We also acknowledge that the appellant has now divested his interest in all horses and is not at risk of committing a further breach. Taking these matters, and all the submissions made by the parties, into account, we regard the appellant's culpability as moderate. To have a legal interest in a horse and accept bets up to a liability of in excess of $7,000.00 on any particular race for that horse to lose or not place, in circumstances where members of the betting public are unaware of the appellant's connections, strikes hard at the integrity of the industry and seriously undermines confidence in the betting industry. A disqualification is appropriate in the circumstances, however, given the totality of the mitigating factors, we consider a period of 4 months' disqualification to be appropriate in the circumstances.

18. The determinations of the Stewards are varied accordingly. 25% of the appellant's deposit is to be forfeited to the Secretary of the Department.