

# GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL

**Tribunal : B. R. Thorley, Judge**

**Assessor: Mr T. Green**

## APPEAL OF H. SARKIS

### DECISION

The Appellant, Harry Sarkis, carried on business as a studmaster and was registered as a trainer. He is very prominent within the greyhound racing industry if for no other reason than that he provided the services of the sire Brett Lee.

The stewards became aware of discrepancies in documentation that was being lodged with the Authority, as is required under various rules. In the result, they determined to hold an inquiry into the activities of Mr Sarkis. This resulted in twelve separate charges being laid against him under National Rule 109(4) in which it was alleged that he made a false statement in a document in connection with greyhound racing. Each of those twelve charges involved a separate bitch. Their names are to be found in the transcript of the stewards inquiry and it is not necessary, for the purposes of these reasons, that I identify each of them here.

In addition Rule 102(1)(b) of the Local Rules provides that:

*a sire must not serve, whether by natural or artificial means, more than 14 bitches in any one calendar month or such other number of bitches as the Authority may from time to time determine.*

It is common ground that, in relation to the matters alleged against Sarkis, the figure of 14 per month applied. He was further charged with four breaches of this rule: in particular, in the month of May 2004, with servicing 15 bitches; in the month of August, 27 bitches; in September, 26 bitches; and in October, 18 bitches. All of these services were by the sire Brett Lee.

The rules further require that the fact of any service by such a sire upon a bitch must be registered within fourteen days of the service. The inquiry identified that there were 72 such services rendered in the period between April and October 2002 in respect of which Sarkis had failed to register the service within the time prescribed. He was charged under Rule 105(1) on one single charge in respect of the totality of those 72 services. I pause to comment that a question might in other cases arise as to the appropriateness of rolling up in the one charge what really might be said to be 72 separate offences. However, specifically, no point is raised in this appeal in that regard, and I do not propose to say any more about it.

He was further charged with two charges under Rule 109(15) because, by negligent act, he failed to lodge the required certificate of service. The first charge was in relation to a dog called Vi's Magic and the second a dog called Poverty.

In respect of the total number of charges then laid, being 19, he was found guilty of the lot. On each of the 12 charges alleging a falsification of a document, the stewards imposed a penalty of four months disqualification. On each of the 4 charges relating to providing more than 14 services per month, he was subjected to further periods of disqualification, namely, for the over-servicing in May, 3 months; for each of the over-servicing acts in August and September, 6 months; and, finally, for the over-servicing in October, 3 months. It was directed that each one of those 16 separate impositions be served cumulatively. In other words, he was subjected to a total period of disqualification of 5½ years.

On the single charge of failing to register 72 services within 14 days, he was subjected to a fine of \$500, and on each of the two remaining charges of failing to lodge service certificates he was fined \$250; that is to say, a monetary penalty in total of \$1,000.

The Appellant appealed to this Tribunal, and although the original appeal was one restricted to the issue of severity, his grounds of appeal have been enhanced to include an appeal against the convictions on all of those matters where periods of disqualification were imposed. No appeal has been lodged to this Tribunal, and no arguments were addressed, in relation to the fines aggregating \$1,000.

Mr Callaghan, of Senior Counsel (instructed by Mr Hartmann) and with him Mr Robertson appeared for the respondent Authority, and the Hon. Mr T. E. F. Hughes QC (instructed by Mr Carney of Abbott Tout) appeared for the Appellant. I would wish at the outset to record my appreciation to both of these gentlemen for the succinctness with which their several submissions were put.

I would wish to turn first to the four charges which concern over-servicing by the dog Brett Lee. The contention here is that the rule in question is invalid because it is a rule which is, it is alleged, in restraint of trade. Mr Hughes QC has very fairly informed this Tribunal that he would not expect a ruling from this Tribunal in his favour. He very fairly informed the Tribunal that he assumed that this Tribunal

would accept the rule as laid down by the Authority and would give effect to it. He informed us that it was his intention to take the issue to the Supreme Court for its determination. That being so, it is not necessary for me to consider in any depth the submissions made about whether or not this rule is in restraint of trade or whether or not it is a validly made rule for the governance of the industry. Mr Callaghan SC also accepted this position. It is sufficient that I formally find the rule to be valid and confirm the convictions in relation to each of the four charges which were laid under it.

However, I do pause to make the comments that the facts of this case emphasise the need for regulation and supervision and that an adverse decision may have a significant impact on not only the greyhound industry but also those of thoroughbred and standardbred horses.

I should also record that there is no dispute before this Tribunal as to the factual matters that were investigated by the stewards. It is not in dispute, for example, that the amount of over-servicing from Brett Lee was as has been described above. Nor is it in dispute that there was a falsification in the documents required to be lodged in relation to each of the 12 bitches described above. That falsification was in relation to the date of service by Brett Lee.

The rules under which the industry operates are a combination of rules which are made by the local authority or which have been promulgated by a national body and adopted by the local authority to apply within the State of New South Wales. There is to be found within those rules a considerable number of rules which are designed to protect the integrity of the whole of the industry. In particular, Part 7 of the so-called Local Rules provides a number of rules which are designed to govern the activities of studs and studmasters in charge. It is clearly an important part of the governance of the greyhound industry that the activities of studs and of the sires and the people who control them be governed so that the stud records can be properly and accurately maintained, and that people who buy or otherwise acquire the progeny of litters resulting from stud activity can be assured of the truthfulness and genuineness of their acquisitions.

Falsifying dates in records furnished for this purpose provides great difficulty to people engaged in the industry, for the simple reason that whelping dates are not consistent with those records, and the age and derivation of the greyhound will always remain a matter of some dispute. Property rights are involved, apart from the general integrity of the industry. I do not need, it seems to me, for the purposes of these reasons, to visit the importance of these matters any further.

So there remain but two matters for me to decide. The first of these derives from submissions made by Mr Hughes which concern the proper interpretation to be given to National Rule 109(4). In its full form, that rule says:

*Any person (including an official) who:*

- (4) *being an Owner, Trainer, Attendant or person having official duties in relation to greyhound racing, makes a false or misleading statement in relation to an investigation, examination, test or inquiry, or makes or causes to be made a falsification in a document in connection with greyhound racing or the registration of a greyhound,*

*shall be guilty of an offence and liable to a penalty pursuant to Rule 111.*

Rule 111 provides:

*Any person found guilty of an offence under these Rules shall be liable to, in the sole and absolute discretion of the ... Stewards:*

- (a) *a fine not exceeding \$5,000 for any one offence ...*
- (b) *suspension and/or*
- (c) *disqualification and/or ...*

The difficulty to which the Tribunal's attention has been drawn derives from the words at the end of sub-rule (4) of Rule 109:

*... in connection with greyhound racing or the registration of a greyhound.*

The submission put by Mr Hughes is that the definition "greyhound racing" as contained in the 2002 statute is clearly restricted to that aspect of the greyhound industry which involves competitive racing of the actual dogs. "In connection with", it is argued, necessitates that there be a real nexus with that activity. It is further argued by Mr Hughes that the separate addition of the alternative "or the registration of a greyhound" reinforces his submission that "greyhound racing" does not include such ancillary activity as registration or, he argues, matters dealing with studs and the obligations of studmasters.

On the other hand, Mr Callaghan points to the 2004 Act, where the definition section, section 3, subsection (2), specifically gives power to deal with persons generally associated with greyhound racing and defines that person as including a greyhound breeder. He points also to section 15 of that same statute where, under subclause (2)(g) the Authority is given specific power to make regulations in relation to "the breeding of greyhounds, including the registration or recording of sires, services and litters."

Mr Hughes, of course, further makes the point that inasmuch as the rules enable the making of very significant orders by way of penalty against persons such as

this Appellant, interpretation of Rule 109(4) should receive an approach which reflects that such an adverse result might visit one such as his client. Not only are large financial penalties available to the stewards but so also are significant orders of disqualification involving, as they do, a complete inability on the part of the person to pursue his industry activity and employment, and these are clearly consequences of much gravity. Indeed, the very result accorded to Sarkis in the instant appeals would bear strength in that submission.

The counter-argument of course is that one should approach the interpretation of the rule bearing in mind that these are rules made by a sporting authority designed to regulate for the benefit of all of those who are engaged in the sporting industry of greyhounds, and that an approach should be made to the interpretation which reflects the need to ensure that the regulations can be given efficacy and which reflects that a narrow, legalistic approach is not appropriate.

I have to say that I have debated these matters with myself, and I have come down on the side of the submissions put by Mr Callaghan. Whilst I would think that there is much to be said for Mr Hughes's arguments, I think the need to provide rules which can be fairly interpreted to provide adequate rules of governance to apply to a person such as Sarkis is the decisive approach. That being so, it seems to me that all of those activities which are encompassed by a studmaster are activities which can be fairly described as being "*in connection with greyhound racing.*" The inclusion in the national rule of the phrase "*registration of a greyhound*" is I think otiose and for all purposes can be disregarded. I also make the comment that the national rules are not made pursuant to a local statute albeit they may be adopted by statutory authority.

The second issue which is raised is the question of the severity of the penalties which have been imposed. Both counsel are agreed—and I certainly accept, for my part—that this Tribunal is, as are the stewards, as indeed are the criminal courts, bound by principles of proportionality and, in the end result, totality. It is certainly a significant penalty that was imposed here on Mr Sarkis. One can turn to the transcript to see in detail the considerations that were taken into account by the stewards in reaching their decisions. The transcript at pages 131 et seq. contain an exposition of this. It is also noted that there had been prior occasions when the attention of Mr Sarkis had been drawn to perceptions on the part of the stewards that he may have been in breach of these very rules.

Reference was also made to the previous antecedents of the Appellant. There has not been much in recent times, but there is a significant period of two years disqualification imposed quite some years ago for a breach of the drug rules. However, that penalty which was imposed and served was in relation to a type of offence committed in his capacity as a trainer, and it was very different in character to that which is here at stake.

What we are here facing under all of the charges are some 90 separate acts either of disregard for or disdain of the obligations placed upon him. These acts were committed over a significant period of time and, in the main, were deliberate.

It might, I think, have been appropriate, looking at any one of the offences under Rule 109(4), to impose a period of four months disqualification. It certainly may have been appropriate in relation to the offences of over-servicing by Brett Lee in August and September to impose a disqualification period of six months. I think it can be argued that the imposition of a three-month disqualification for the May over-servicing might have been by itself too much; and to some extent, but perhaps not quite as much, the same argument might be advanced in relation to the penalty for the over-servicing in October of three months.

But, when one comes to aggregate the totality of all of those matters, then I think the stewards have fallen into error. I think a preferable approach when faced with this sort of difficult sentencing problem is to ask yourself what is in total the penalty which you think should be exacted for the pattern of activity that has been disclosed by the multiplicity of the offences at stake. Having ascertained what is then the total that you think appropriate, one then proceeds down the path of tailoring a result which achieves that totality. That I attempt to do here.

I think it appropriate that he be disqualified for a period in all of three years. To achieve that I propose to impose periods of disqualification in relation to each of the 12 charges under Rule 109(4) of three months. Each one of those will be served consecutively after the other. In relation to each of the four charges of over-servicing, I propose that in substitution for the stewards' orders, there be imposed disqualifications of three months on each of them, but I direct that each of those four periods of three months be served consecutively but that the 12 months disqualification thus imposed will run concurrently with the 3 years disqualification imposed supra. These orders are then made in substitution of the stewards' orders. The fines in relation to the other three charges are not in dispute and are confirmed.

The Appellant has not been on any stay of proceedings. Hence the orders will date from the date of the stewards' orders.

10 February 2005

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B. R. Thorley, Judge