13 December 2022

**RULING No. 3**

**STAY APPLICATION**

**HARNESS RACING VICTORIA**

**and**

**TONY ASTBURY**

**Date of hearing:** 6 December 2022

**Panel:** Judge John Bowman (Chairperson).

**Appearances:** Mr Brad Powell appeared on behalf of the Stewards.

 Mr Lance Justice represented Mr Tony Astbury.

**Charge:** Australian Harness Racing Rule (“AHRR”) 15(1)(e) states:

 (1) Stewards are empowered -

 (e) to suspend or disqualify any person from participating in or

being employed or engaged in or about the harness racing industry;

**Particulars of Charge:** Mr Tony Astbury was suspended by Stewards from official duties (employment) within the harness racing industry pending the outcome of a criminal matter.

**DECISION**

Mr Tony Astbury, you have made a stay application in relation to a penalty imposed on you by Stewards on 18 November 2022. This matter has already been the subject of two Rulings made by me following an application heard on 23 November 2022. I would refer to those Rulings and particularly that of 6 December 2022. Whilst the earlier Ruling of 1 December 2022 – “Ruling 1” – is still relevant, it has to some extent been overtaken by events and by the Ruling of 6 December 2022 – “Ruling 2”.

An issue of some importance is the actual status of Mr Astbury. This unusual matter came on with such speed that very few papers or instructions were available on 23 November 2022. I wrote and handed down Ruling 1 on the basis of assuming that Mr Astbury was, at all relevant times, a licensed person. It was made clear in Ruling 1 that this was on assumption and not an established fact. Subsequent to that, and on 3 December 2022, Mr Brad Powell, Integrity Compliance and Investigations Manager at Harness Racing Victoria (“HRV”), stated that Mr Astbury is not, and has not been at any relevant time, a person licensed by HRV.

As stated in Ruling 1, I proceeded on the assumed basis that he was a licensed person at all relevant times. Obviously, when Mr Powell forwarded information to the effect that Mr Astbury was not and had not been so licensed at all relevant times, a further Ruling was required – hence Ruling 2. Each Ruling was focussed upon the important issue of whether this Tribunal had the required jurisdiction to deal with the application.

In Ruling 2, I concluded that the application was one in respect of which the Tribunal had jurisdiction and the application of Mr Astbury for a stay was heard accordingly.

I now move on to the issue of whether the application of Mr Astbury for a stay should be granted. The application was made by Mr Lance Justice, on behalf of Mr Astbury. The granting of a stay was opposed by Mr Powell on behalf of HRV.

Having weighed up the competing arguments, I have come to the conclusion that a stay should be granted. I have so concluded for the following reasons. I should make it clear at the outset that this is a Ruling based upon submissions. Evidence was not taken. Mr Astbury faces a criminal charge or charges. As I understand it, there is a preliminary hearing in the Hamilton Magistrates’ Court in January 2023. For the purposes of this Ruling, I accept the following.

1. The charge or charges against Mr Astbury concern the illegal possession of a firearm. The firearm in question is a sawn-off shotgun and apparently the licence or registration number on it had been filed off.
2. At the relevant time Mr Astbury was living in rented premises on a rural property.
3. At the request of a person on a neighbouring property, Mr Astbury took possession of the shotgun. He placed it in a drawer in a chest of drawers. This piece of furniture did not belong to Mr Astbury as a tenant.
4. Mr Astbury subsequently moved from the property. He had not removed the shotgun from the drawer. He had forgotten all about it. It and the drawer remained on the landlord’s property.
5. The gun was discovered by the next occupant of the house (or by someone associated with the landlord). It was drawn to the attention of the police. A charge or charges relating to the possession of the firearm and against Mr Astbury resulted.
6. The full time occupation of Mr Astbury is that he is a Clerk of the Course performing his duties at various harness racing venues, including at Melton. His employer varies according to the venue at which he works. For example, as I understand it, when he works at Melton, he is employed and paid by HRV. Most of the venues at which he works are in the western half of the state.
7. His duties are of considerable importance to the conduct of meetings. He wears the usual red-jacketed outfit of a Clerk of the Course. He assists with the presentation of the field, the conduct of horses on and off the track and with the general presentation and conduct of the meeting. Thus, it is a high profile position of some importance.
8. Mr Astbury provides his own horse, float and motor vehicle. As I understand it, he receives no or very limited reimbursement in respect of at least some of these expenses. The situation when he works at Melton is one where an allowance for travel expenses is paid, but this is not the situation when he visits various country meetings at which he officiates.
9. Mr Astbury lives in Beeac, which is a small town approximately 17 kilometres from Colac. He is 64 years of age. For the last couple of years he has had a partner, who in turn has a son in his mid 20’s and who has a significant health problem. Mr Astbury pays no rent. However, his gross income is in the vicinity of $50,000 gross per annum. He performs no work other than that of a Clerk of the Course and receives no other income.
10. He does have one breach of the Rules in relation to a betting offence. Apparently he did not appreciate that he cannot bet on meetings at which he is performing his duties, presumably because he is involved in every race. I accept that he has not done that since. For the purpose of the present application, I shall treat him as having a very good record. Being a full time Clerk of the Course may not be very remunerative and may involve a lot of travelling, but I accept that it is an occupation to which he is devoted.
11. Whilst the presumption of innocence may or may not be applicable in the present case, as Mr Astbury’s plea is probably not finalised, it is also a factor that has the capacity to be of relevance. Doubtless more will be known in the near future.

When all of the above is weighed up, I am of the view that the application for a stay of the standing down order should be granted.

Of course, whether that continues to be the situation depends on Mr Astbury’s ongoing behaviour and what occurs in relation to the criminal charge or charges.

In relation to that latter point, more may be known following the mention in the Magistrates’ Court in the New Year. The matter can always be brough back on by either party.

Mark Howard
Registrar, Victorian Racing Tribunal