RACING APPEALS TRIBUNAL

RAT 12/16

DATE: THURSDAY 28 JULY 2016

TRIBUNAL: **PRESIDENT**: MR T ANDERSON QC

MR MICHAEL MILLS, APPEARS FOR GREYHOUND RACING SA LTD STEWARDS

APPELLANT: MR M FAMIGLIETTI

MR DUNCAN STEWART APPEARS FOR THE APPELLANT BY LEAVE OF THE PRESIDENT

<u>IN THE MATTER</u> of an Appeal by **MICHELE FAMIGLIETTI** against a decision of Greyhound Racing SA Ltd Stewards

BREACH OF RULE: GAR 79(A)(4)(i) which states:

“"When a sample taken from a greyhound being trained by a licensed trainer or in the care of a registered person has been found to contain a Permanently Banned Prohibited Substance specified in sub-rule (2), the trainer and any other person who was in charge of such greyhound at the relevant time shall be guilty of an offence”.

PENALTY: 10 years disqualification, fine of $10,000.00

DETERMINATION

This is an appeal by Mr Michele Famiglietti, from a decision of the Greyhound Racing SA stewards.

On 5th January 2016 Greyhound Racing SA stewards took an out of competition swab from the greyhound *Are Ate* at the premises of Mr Famiglietti. The analysis of the swab showed that there was amphetamine present in the urine sample of the dog.

Mr Famiglietti was charged with a breach of Greyhound Racing Australia rule 79(A)(4)(i) which states:
“When a sample taken from a greyhound being trained by a licensed trainer or in the care of a registered person has been found to contain a Permanently Banned

Prohibited Substance specified in sub-rule (2), the trainer and any other person who was in charge of such greyhound at the relevant time shall be guilty of an offence".

Amphetamine is a Permanently Banned Prohibited Substance.

Mr Famiglietti pleaded not guilty and mounted a defence when the enquiry before the stewards took place. He raised several matters, all suggesting that the integrity of the sample had been affected. These included the possibility of the use of a worming product, contamination of the sample by sand, the fact that no gloves were used by the testers in the first part of the procedure and also, that the water used in relation to the cleaning of the ladle for the sampling was contaminated.

The appellant was found guilty of the offence

At the hearing of the appeal, Mr Stewart, who appeared by leave to represent Mr Famiglietti, acknowledged that the appeal on conviction revolved around the possibility of contamination of the samples by sand and the other matters were not pursued.

Mr Michael Mills appeared as counsel for the GRSA stewards.

In relation to the potential contamination by sand, the stewards conceded that the dog did kick some sand into the ladle at the time the urine sample was being taken. Mr Stewart argued that at that stage the sampling procedure should have been aborted and started again.

The stewards called in their enquiry Mr David Batty, who is the Laboratory Director at Racing Analytical Services Ltd. His evidence was fairly straightforward, although Mr Famiglietti challenged him on many aspects. At the outset of the Tribunal Hearing, Mr Stewart asked to speak to Mr Batty again and an arrangement was made for him to give some further evidence by way of the telephone hook-up. That was facilitated and Mr Batty gave evidence. In effect, he said that the only way that the sand could contaminate the urine sample to give a reading for amphetamine was if the sand itself had a presence of amphetamine from the urine of the dog or indeed, from someone who may have consumed amphetamine and urinated in the sand.

Mr Batty's point was that there was present in both the A and B samples, evidence of ingestion of amphetamine because of the tests which he had done. In other words, the amphetamine had gone through the dog's system. Mr Stewart argued however, that there was a possibility that the presence of amphetamine in the sand was the explanation for the amphetamine being found in the sample of urine.

Mr Batty was the only expert to give evidence. His evidence was that if the sand contaminated the sample the sand must have been contaminated itself because of the other metabolites of amphetamine found in the samples.

He told the Tribunal that metabolites can only be present following ingestion. Amphetamine cannot metabolise into the metabolites found on analysis other than by ingestion. Amphetamine will not metabolise as a result of contact with sand.

Mr Batty recently revisited the topic of sand in the samples following a telephone call from Mr Stewart. He retrieved the samples, took them from the freezer, allowed them to defrost and inspected all three bottles, that is, the two samples and the control solution.

He found no evidence of any sand in the bottles. He went on to say that if a person had urinated on the sand, and the sand got into the urine sample, the dog still had to ingest it because of the results shown on testing.

In my view his evidence shows that the suggestion of contamination of the urine samples by sand in not feasible. I reject the suggestion on the basis that it is the remotest of remote possibilities.

Mr Milne suggested it was a fanciful suggestion and Mr Batty replied *"you could go that far".*

The stewards did not allege at any stage that the amphetamine was deliberately administered but relied on the fact that it was in the system and the mere fact that it was in the system, of course, rendered Mr Famiglietti liable to conviction for the out of race swabbing.

I therefore reject the appeal on the basis that the swab samples were contaminated.

It was drawn to my attention that there are procedures in place in other states setting out the procedures to be followed when a sample is taken. There are none in South Australia as far as I am aware. It is probably time that such guidelines for sample collection be prepared and adopted for South Australian Greyhound Racing.

In relation to the question of penalty, the stewards fined Mr Famiglietti $10,000 and disqualified him from the industry for 10 years. He argued that the combination of these two penalties was manifestly excessive. The fact is that Mr Famiglietti has what Mr Mills, who appeared for the stewards, described as an appalling record.

On behalf of the Stewards Mr Mills submitted that;

"He has been found guilty on four previous occasions of presenting a dog for racing when not free of a prohibited substance.

1. *The first was to a race at Strathalbyn in July 2012. On 18 December 2012 the appellant was disqualified by the Stewards for 12 months pursuant to Rule 83.*

2. *The second offence was committed at Gawler on 9 October 2012. The third offence was committed at Angle Park on 11 October 2012. On 27 March 2013 he was disqualified by the Stewards for 18 months for the second offence and two years for the third offence. Both penalties were to be served concurrently commencing 3 April 2013.*

   On 14 May 2013 appeals against all 3 disqualifications were withdrawn and the Tribunal imposed a penalty of 24 months disqualification commencing 28 May 2013.

   3. The appellant's fourth prior offence occurred at Angle Park on 1 May 2013. The prohibited substance involved was hydoxystanozolol. On 31 July 2013, following a guilty plea to a breach of Rule 83, the Stewards imposed a disqualification of 6 months and a $1500 fine, added to the previous disqualifications, and which therefore expired on 28 November 2013."

I note that while Mr Mills submitted that final disqualification expired on 28 November 2013, it was actually 28 November 2015.

The disqualification for a total of 2 and a half years (and a fine of $1500.00) plus the earlier disqualification of 12 months are significant. The combination of offences only expired in November of 2015.

Mr Famiglietti got his licence back. This offence therefore took place less than a month after he got his licence back after a disqualification of three and a half years and a monetary fine.

There were no factors in relation to his cooperation with the stewards which can reduce the penalty. He pleaded not guilty. He suggested some fanciful reasons as to why the sample was contaminated and he generally made life difficult for the stewards in the conduct of their enquiry.

When one considers his record, together with his offending on this occasion, it is not surprising the stewards took such a harsh view of his offending.

However, in my view, the combination of the $10,000 fine and the disqualification for 10 years is manifestly excessive.

I have looked at penalties imposed elsewhere and they do not approach this level, although many of them are penalties imposed for people for first convictions and who have pleaded guilty. This case is quite different. Mr Mills pointed me to the NSW Penalty Table where calculations are made, based on the type of offence and previous offences being added as aggravating factors and he calculated that it would have been a minimum of 12 years on that basis if this offending by this person with the list of previous convictions had taken place in New South Wales. That of course did not include a monetary fine in the case of New South Wales.

Therefore, it is my view that justice would be done if the disqualification were reduced from 10 years to 7 years. I would leave the monetary penalty as it is, standing at $10,000.

The orders of the Tribunal are therefore that the appeal be allowed as to penalty only. The period of disqualification is reduced from 10 years to 7 years. The monetary penalty is to remain at $10,000 and I order that the bond money be refunded to the appellant.

I order that the disqualification takes effect as from midnight on Monday 1 August 2016.