RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR DB ARMATI

DECISION
SEVERITY APPEAL

19 JUNE 2018

APPELLANT CAMERON FITZPATRICK

AUSTRALIAN HARNESS RACING RULE 241 X 2

DECISION:

1. **Appeal upheld**
2. **Penalty of 12 years disqualification to commence on 25 November 2011**
3. **Written submissions on appeal deposit invited**

Introduction

1. The appellant, a licensed trainer and driver, appeals against the decision of the Special Stewards Panel of 1 March 2013 to impose upon him a period of disqualification of 15 years, to commence on 25 November 2011.

2. The charges relate to AHR241, and the charges were laid as follows:

> AHR 241: A person shall not in connection with any part of the harness racing industry do anything which is fraudulent or corrupt.

Charge 1:

> "Pursuant to the powers under AHR 300 afforded to this investigation panel by the HRNSW Authority, you, Mr Cameron Fitzpatrick, a licensed trainer/driver are charged under AHR 241 for corruption. The particulars of the charge being that you did corruptly give former HRNSW steward Mr Matthew Bentley a monetary reward to ensure that harness racing horse Lombo Baccarat was not drug tested at the race meeting held at Bankstown racetrack on Friday, 1 July 2011."

Charge 2:

> "Pursuant to the powers under AHR 300 afforded to this investigation panel by the HRNSW Authority, you, Mr Cameron Fitzpatrick, a licensed trainer/driver are charged under AHR 241 for corruption. The particulars of the charge being that you did corruptly give former HRNSW steward Mr Matthew Bentley a monetary reward to ensure that harness racing horse Lombo Baccarat was not drug tested at the race meeting held at Penrith racetrack on Thursday, 7 July 2011."

3. The Special Stewards Panel was, as described in the charge, set up by HRNSW to deal with matters in what has become known as the Green Light Scandal. The appellant pleaded guilty before the Special Stewards Panel and has maintained that admission of the two breaches before this Tribunal. This appeal, therefore, is a severity appeal only. Being a severity appeal, the necessity to deal with the facts in greater detail diminishes.

4. This appeal has had a chequered history. Immediately after the Special Stewards Panel decision of 1 March 2013 the appellant appealed to this Tribunal. That appeal was eventually withdrawn. It was withdrawn because the appellant was advised to, and did, approach the Board of HRNSW in an endeavour to have the disqualification varied. That approach was rejected.
On 31 January 2018, after a contested application, this Tribunal granted leave to the appellant to lodge a fresh notice of appeal, dated 23 October

2017, on various grounds including the establishment of special circumstances to justify an appeal out of time.

Evidence

5. The evidence before this appeal has comprised the transcript and exhibits before the Special Stewards Panel, the appeal panel decision, a statement of Rob Nalder, a statement of Michael Prentice, a statement of Sam Nati, a statement of Reid Sanders, a psychologist's report of Briallen Reid and a psychologist's report of Ms Videsha Samarawickham, references from 13 people, an email statement of Detective King, the oral evidence of the appellant, the oral evidence of his father, Mr Paul Fitzpatrick, the oral evidence of Reid Sanders.

The Green Light Scandal

6. It is necessary to put the Green light Scandal in some context in respect of this matter. The opening submission for the respondent outlines the participation of the appellant in that and his conduct in summary is as follows:

> "The appellant accepts that prior to races on 1 and 7 July 2011 he entered into an arrangement with a steward, Matthew Bentley, whereby Mr Bentley would ensure that his horse would not be drug tested after the race. And, if the horse won, the appellant would pay Mr Bentley $500. On each occasion, Mr Bentley confirmed in advance that he would be in charge. The appellant drenched his horse with bicarbonate of soda, which then won, and then, pursuant to the arrangement, the appellant paid $500 into an account nominated by Mr Bentley.

7. That is a summary of the key facts. More facts will be dealt with later.

8. The impact of the Green Light Scandal has been referred to in statements of evidence.

9. Mr Rob Nalder, who is a Board member of HRNSW, expresses in his statement that;

> "13….the Green Light Scandal left huge scars on the industry".

10. Mr Michael Prentice, who is the Integrity Manager of HRNSW, referred to the ongoing effects of the Green Light Scandal and in summary he referred to the particular effects to the stewards, and, as the stewards need to be received by the community as honest and acting with integrity, the scars of the scandal have run deep. Mr Prentice gave examples of where the stewards are treated with contempt by licensed persons. He said:

> "The Green Light Scandal served to severely damage not only the reputations of the stewards and industry participants involved in the corruption but everyone else in the harness racing community also."

He continued:

> "8. To allow those who participated in the scandal back into the industry prematurely would, in my opinion, undermine the true gravity of what occurred and the sacrifices stewards and participants alike have made since then as we continue in our efforts to try to repair at least some of the extensive damage by those who were involved."

11. Mr Sam Nati, the former CEO of HRNSW, said that:

> "12. The effects of the Green Light Scandal, past and present, cannot be understated. It brought the entire industry into disrepute and had a significant negative impact on my work and personal life. During that time close family members of mine received threats of violence and I even had threats on my life due to the investigation and a determination to follow it through. I had been involved in the harness racing industry since a very young age but no longer work or have any other involvement as a direct consequence of the green light scandal and I'm sure I'm not the only one."

12. The next is a statement of Mr Reid Sanders, the former Manager of Integrity and Chief Operating Officer of HRNSW. He said in part:

> "21…the effects of the Green Light Scandal on the harness racing community were more severe and far-reaching than we,HRNSW, could have imagined. The industry was rocked and the effects were far-reaching."

> "22. Once the scandal broke in the news, the reputation of the entire industry was seriously damaged and fell into disrepute….some of the articles in the media that reported on and, indeed in some respects spread, the chaos that was felt throughout the industry. In one report a steward's car was even fire-bombed and that is just one example of how serious the scandal was to the community"

And he continued:

> "23. …there appear to me some in the industry who are ready to forgive Cameron Fitzpatrick's actions, the persons who were so severely affected by his conduct remain unrepresented and it is my opinion that the scars left upon the industry may never heal."

13. There have been three other cases involving the Green Light Scandal and, in the various decisions issued in those matters, telling remarks were made about the effects of that scandal.

14. In Atkinson, Special Stewards Panel decision of 1 March 2012, the panel said:

> "21. …these events have done immeasurable harm to the harness racing industry and that it is hard to imagine a more sinister scenario than corrupt stewards acting with trainers to corruptly ensure that certain horses are exempted from the swabbing process…..That type of conduct corrodes public support in circumstances in which the industry relies on the confidence of the wagering public in the fairness of harness racing."

15. Next, this Tribunal set out in the decision of Ben Sarina, 15 August 2013, a number of matters which were picked up in its subsequent decision of Bennett of 21 March 2017, at paragraphs 58 and 59, in part, as follows:

> "58… and some key words drawn from page 5 of the Sarina decision comprise: unprecedented allegation, struck at the very heart of the industry, the central role of the protective nature of the disciplinary rules, integrity of harness racing is the primary objective of the rules."

And continued at 59, quoting Sarina, page 12, as follows:

> "'59. The findings on the key facts – bearing in mind there was no contest – the Tribunal has referred to in some detail. As to the investigation into corruption itself, it was one of the most serious kind and touched upon the key and fundamental points of integrity of the industry. That corruption and the actions of the people involved in it could not be worse. It might be said in a criminal law sense a worse-case scenario cannot be imagined. In a civil disciplinary sense, a worse-case scenario cannot be imagined."

16. The Special Stewards Panel in this matter, at paragraph 36 of its decision of 1 March 2013, said:

> "36….In pursuing this scheme, regrettably, a number of industry participants have also engaged in corrupt behaviour. Cameron Fitzpatrick is such a person….The erosion of public confidence resulting from corrupt conduct attacks the industry at every level and threatens its very viability. The discipline responses to such conduct forms part of the public response of the industry in condemning such conduct and serves to clearly spell out to industry participants that like conduct will not only be exposed but is likely to incur penalties in the highest range available."

The Tests

17. This is a civil disciplinary matter in which the criminal law takes no part and it is necessary for the Tribunal to have regard to all of the facts now before it and, having determined the objective seriousness of the conduct and the personal circumstances of the appellant, look to the future to determine what type of protective order is necessary.

18. That type of protective approach has been referred to in many jurisdictions. The quotes, in various terms, always deal with the overriding purpose of a disciplinary jurisdiction is the protection of the relevant industry by maintenance of standards laid down. Also, in looking at punitive effects, it is necessary to look to the future and it could be that there may be a factual finding that the harrowing experience of disciplinary proceedings, together with a real threat of loss of livelihood, may have opened the eyes of the individual concerned to the seriousness of his or her conduct so as to diminish significantly the likelihood of repetition. Often such a finding will be accompanied by a higher level of insight into his own character or misconduct which did not previously exist.

19. As has been said, the specific message of disciplinary cases explaining that jurisdiction is entirely protective. It is to make clear that the scope of the protective order must be defined by the reasonable means of protection as assessed in the circumstances of the case. It has also been often said that punishment might be an outcome but that the approach is not to punish but to protect.

20. A further aspect raised in this case by the appellant is character, both in respect of a determination of the facts in issue and also in respect of his character so far as it relates to any necessary order.

21. In this case the issues are again narrowed down by reason of the fact that the appellant, both before the Special Stewards Panel and before this Tribunal, has accepted that a lengthy period of disqualification is an appropriate outcome. The respondent submits that the 15 years found to be appropriate by the Special Stewards Panel is the appropriate order. The appellant, without expressing any particular time, says that it should be less. As has been said, key facts are not in issue.

The Facts

22. As the facts are mostly not in issue and this is a severity appeal only, they will only be summarised, so far as it is necessary, to give an indication of the facts and circumstances found in this hearing and taken into account by the Tribunal in determining an appropriate order.

23. The appellant has been licensed for a number of years He had a prior knowledge of licensed trainer Michael Russo, and the activities of that trainer in apparently engaging in corrupt conduct. The appellant picked that up from rumours. He had also made observations of things that he would expect to happen at the races, such as swabbing and the like not taking place in circumstances when he thought it should. He had had conversations with Michael Russo and that confirmed his own observations. Accordingly, he had knowledge that fellow licensed persons were engaging in corrupt conduct. It engaged in him a suspicion about actions of stewards. He did not report those activities. Interestingly, his father, Mr Paul Fitzpatrick, in his oral evidence to the Tribunal, indicated a similar knowledge and he took no action.

24. The appellant formed a friendship with the now corrupt steward Matthew Bentley, the person named in the charges and to whom he made payments. That friendship developed, notwithstanding the appellant's knowledge that some stewards were engaging in corrupt conduct. He met Bentley for the first time at the races. Their interests were similar because of age and the industry. They engaged in social interaction. For example, they would go out to dinner and drinks together, they would go to the casino together, they would constantly text and telephone each other. The friendship was on foot. The appellant agreed in this hearing that was an unhealthy relationship. That is particularly so for a licensed person with knowledge corruption is occurring

25. In May 2011 the heats and finals of the Schweppes Cup were run, there is a contest – and the Tribunal will return to it – about what happened on 13 May 2011. No payment was made as a result of the running of the final of the Schweppes Cup on that date. Subsequently, some months later, they, having continued their social interaction in the meantime, and continuing to contact each other back and forth – and the relevance of that will be touched on later – they had a conversation about the 1 July 2011 race, the first of the allegations of corruption.

26. It is not necessary to detail this , but there was discussion about Bentley being unable to have a winner, advice that the appellant's horse was running, and the keywords from Bentley as follows:

> "I'm in charge. Let's make sure of it. Do what you want to it. If the horse wins, give me $500."
>
> The appellant responded: "Okay."

As alleged, and not disputed, he drenched the horse, it won, and he paid Bentley $500.

27. Shortly after that, the horse was then due to race again Bentley said to the appellant;

> "I'm in charge again. Do what you want. We'll have the same result. If you win, pay $500 into the TAB account."

That offer was accepted. Again, the horse was drenched, it won and again it was not swabbed.

28. The appellant then went overseas in August. The evidence is limited on what occurred between the 7 July act of corruption and his departure overseas. What the evidence clearly does not establish is that the appellant had determined to cease his corrupt activities. He said he had but there is nothing to corroborate him on that point. He had engaged in planned corruption and had not acted on the spur of the moment on either occasion. Therefore why stop? Whilst he was overseas, the Green Light Scandal broke. He was overseas representing Harness Racing NSW in the World Driving Championships, it might be noted.

29. Whilst he was away, Mr Nati and Mr Sanders had spoken to the appellant's father, Mr Paul Fitzpatrick. There is an issue about what was said. The Tribunal will return to that.

30. The appellant was spoken to by his father and returned and by a mutual arrangement the appellant and his father met with Mr Nati at a Bankstown hotel. There is some dispute about what was said. Suffice to say that the evidence does establish that the appellant made admissions of his corrupt conduct on the two occasions alleged and that the matter apparently was not on reported by Mr Nati.

31. Mr Sanders gave evidence that he found out about that meeting and took over the conduct of the Green Light Scandal matters. Mr Sanders gave evidence to the Tribunal that he did that because "HRNSW leaked like a sieve", and interestingly, immediately after that meeting, there was a Sydney Morning Herald article referring in some detail to the matters which the appellant had said to Mr Nati.

32. The appellant was then compelled to produce his telephone and betting records. He did so, and the Tribunal particularly notes it was under a compulsory requirement. He then participated in an interview with the stewards. That interview was on 17 November 2011 and Mr Sanders conducted it. It is not necessary to deal with that in detail, suffice it to say that the appellant denied any corrupt conduct in any fashion at all. He denied knowledge, phone calls, placing bets, putting money into Bentley's account and the like.

33. In November 2011 the police attended his premises and arrested him. It appears that that led to the three charges subsequently dealt with in the Local Court and it was pointed out, so far as a humiliation factor relevant to subjective circumstances is concerned, that when the appellant arrived at the police station in the company of police and under arrest, television crews were there and filmed him and that was subsequently broadcast. The charges were for corruptly give/offer benefit to an agent- s249b(2) Crimes Act NSW.

34. Those charges did not come on for hearing until 23 October 2012. The appellant had maintained pleas of not guilty on the charges. There is an issue about the statement of agreed facts tendered to the court. The issue is about a third charge, which has not been reflected in the charges dealt with by the Special Stewards Panel. That related to the 13 May 2011 activities. He had spoken to Detective King prior to that court date to indicate his innocence in respect of the matter but was told it was too late. The appellant maintains at all times that he did not engage in corrupt conduct on 13 May 2011 and only pleaded guilty to that charge on the advice of his barrister with a desire to ensure a quick disposal of the proceedings and to avoid a jail term. He was sentenced to 150 hours' community service, concurrent, in respect of those charges.

35. The stewards had, in the meantime, stood him down from the date of his charge by the police on 25 November 2011. On 15 December 2011 the stewards proffered the charges against him which were dealt with by the Special Stewards Panel and which are before this Tribunal. He indicated on 13 January 2012, through his solicitor, that he was not admitting those two matters.

36. When it came to the Special Stewards Panel hearing, he had changed his mind and admitted the breaches of the rules and received the penalty in question. He gave an undertaking to the Special Stewards Panel that he would repay the prize money and his percentages. And he has done so in a sum of $6077.

37. The Special Stewards Panel found that his evidence to them in many respects was unsatisfactory. The Tribunal will return to that.

38. That then is the chronological statement of affairs that brings him before this Tribunal. Again, it is emphasised that that is a brief summary only.

39. Another key fact is that the percentages that the appellant made from the two races was $742, yet he paid an amount of $1000 to Bentley. The appellant had indicated that he did bet and he bet amounts from $150 to $1500 in his own betting accounts or on the TAB. The incredulity of that was examined before the Special Stewards Panel and they were much troubled by it. It remains essentially an unexplained set of circumstances.

Some Facts In Issue

40. As expressed, there are some facts in issue. Many of those really, on a disciplinary matter, where there is an admission of breach, go only to whether they indicate any amelioration of penalty or loss of that amelioration. Some can be disposed of on that basis.

41. The first related to the interview with Sam Nati and whether or not offers were made. There is a contest between Mr Nati and the appellant and his father about what was said. The Tribunal determines it is not necessary to decide that. It accepts that he made an admission. Whether that admission is consequent upon some suggestion of lenient penalty or not is answered by the fact that Mr Nati was in no position to reflect such an outcome. There was nothing advanced on behalf of the appellant that would indicate he engaged in any conduct after that which was consistent with him being misled by Mr Nati. To the contrary, shortly afterward he lied to the stewards about his involvement in the matter. It needs to be taken no further.

42. Next, there was an issue about his conversation with Rob Nalder. The issues there were whether Mr Nalder had held out to him he might get some lesser penalty, whether Mr Nalder was speaking as a Board member, as he was at the time, of HRNSW, or whether he was talking to him in his personal capacity. For the same reasons in respect of the Sam Nati conversation, nothing turns upon it in this matter. The appellant has not prejudiced himself in any way by reason of anything that was said or not said, or which they believed or didn't believe. It is not necessary to determine it to finality.

The 13 May 2011 facts

43. In respect of the Local Court proceedings contest, about what his reasoning was in respect of the admission of facts on 13 May 2011, that requires an analysis of what happened in the 13 May 2011 matter. One of the issues is who initiated the conversation about corruption, that is, the appellant or Bentley. The Tribunal determines that it does not have to decide that, the reason being that there is no doubt they were in constant communication by text and telephone and it is not possible to discern from text messages – and there being no transcript of telephone messages – that there was such an approach, that is, by the appellant, to initiate the corrupt conduct.

44. In relation to his admission about that 13 May matter in the Local Court, the Tribunal accepts that he did speak to Detective King before the hearing and that it was in respect of his unhappiness that he was being asked to admit to something he maintained he didn't do. He has maintained at all times he did not engage in corrupt conduct.

45. The facts briefly are that the appellant had spoken to Bentley about his concerns about the Schweppes Cup heat run just prior to the final on 13 May 2011 on the basis that he had a fear, as his horse had been swabbed, that it would produce a positive to caffeine because of its proximity to another horse that had been treated with caffeine. He spoke to Bentley about it and Bentley had essentially told him he had been a fool not to have spoken to him earlier because Bentley could have ensured that it was not tested.

46. There was then a subsequent conversation about his ongoing concerns about the possibility of the positive still being in the horse when it ran in the final. And again – and there is no doubt – Bentley told him that he would decide who was swabbed on the night because he would be in charge, because he makes the rules and he can do what he wants. The appellant says he was surprised by that, in his written statement to the Tribunal. The Tribunal finds that, having regard to his knowledge at that time, his expression of surprise is not accepted.

47. Again, there was a communication immediately prior to the race when he was told he could do what he wanted. The appellant, however, says he did not drench the horse. Because it did not win – it ran second – it was not swabbed. It was not subject to a pre-race test. There are, therefore, two possible aspects of corruption. The pre-race test not being undertaken is explained by the fact that the horse was tested at the previous race and the HRNSW stewards' policy at that time was not therefore to pre-race test it so soon after another swab. As to the other aspect of the matter, no payment was made to Bentley because the horse did not win. There is no other evidence, other than conjecture, to indicate that there was an arrangement between the appellant and Bentley to engage in corrupt conduct at that race.

48. The appellant has given sworn evidence to support his non-participation in corrupt conduct for that race. He was not broken down in cross-examination in respect of that. He confirmed it in his adopted as correct statement to the Tribunal. He has maintained that he was innocent of that matter at all times and the only thing to link him to any aspect of guilt was his plea of guilty in the Local Court, and that is explained.

49. Accordingly, applying the Briginshaw standard to that matter, the Tribunal does not have that comfortable level of satisfaction that he engaged in corrupt conduct in respect of the race of 13 May 2011.

Objective Seriousness

50. Having regard to those factual matters, it is necessary to assess the objective seriousness of the conduct.

51. The Tribunal has set out at length the impact of the Green Light Scandal, both on the industry, the stewards and licensed persons. It is necessary to assess his conduct in that green Light Scandal and not to deal with activities of others. The impact of that scandal has been severe particularly for the stewards, other licensed persons and the industry generally.

52. The appellant knew that Bentley was corrupt. Nevertheless, he continued his friendship with him and subsequently engaged in corrupt conduct with him. It is also to be noted that after he had spoken to Sam Nati, he spoke to Bentley with a view to trying to exculpate himself from the corrupt activities and for himself to avoid being sent to prison. It was also on the basis that he agreed with Bentley that he would lie to the stewards to try to protect Bentley from also receiving a prison term. He still did not change his perception of Bentley.

53. The Tribunal has said it does not accept that his activities were going to cease, other than by reason of the fact that he was caught out. The appellant lied to the stewards in his interview. The appellant's plea of guilty before the Local Court was late. The appellant's admission of the breaches of the matters brought before the Special Stewards Panel was late. The denial of the conduct to the stewards occasioned to them substantial trouble and effort in having to prove the case against him by detailed analysis of telephone records, SMS messages, betting records and the like. It is quite clear from Mr Sanders' evidence to this Tribunal that if the appellant had admitted in his interview with the stewards his corrupt conduct, their ability to quickly dispose of the matter for the benefit of the industry would have been much greater.

54. There is a thread of this appellant choosing facts to suit himself and showing no personal responsibility for any of his matters until he was completely put in a corner and unable to wriggle out of his situation any more.

55. On the other hand, it is accepted that he did make an early admission to Sam Nati, that his conduct, as now found, only related to two races, both within a short period of time of each other.

56. The reasons he lied in the stewards interview are now uncontested and he has given evidence that he knew the police were investigating corruption and he knew it would get back to the police if he made admissions to the stewards. He was also concerned that things he said to Mr Nati were reported in the Sydney Morning Herald, and that was not therefore something that could be kept confidential. And he had been told about the possibility of a jail term and his desire, whilst he was still friends with Bentley, to take action to protect Bentley. The Tribunal does not accept the

propriety of that conduct but it accepts his explanation for his lying to the stewards as based upon those three matters.

57. So far as his late plea of guilty in the Local Court is concerned, and his late admission of the breaches of the rules to the Special Stewards Panel, the Tribunal accepts that he was acting on legal advice. That advice was to not plead guilty and not admit breaches. That advice was to not admit the breaches until the Local Court proceedings were finalised. Whilst he is a licensed person and there was, it might be said, a greater obligation upon him in relation to the breaches here, it is understandable that he would not seek to expose himself to a greater penalty in the criminal justice system by reason of early admissions. However, he did subsequently plead guilty in the Local Court and to the breaches alleged against him.

58. It is also to be noted in respect of his conduct that, as submitted on his behalf in this appeal, he did not corrupt Bentley. Bentley was already corrupt. The gamekeeper had turned before the appellant became involved.The appellant himself was corruptible rather than corrupt, and he engaged in this conduct for reasons which he seeks to explain. That explanation for his conduct is and has been consistent throughout from the time he was prepared to make admissions.

59. He described himself in his oral evidence to the Tribunal as “crazy, too cocky, greedy” and “did not think”. He acknowledges that he did it himself. He could well have not done so.

60. Viewed objectively, therefore, the Tribunal considers that this is a worst case scenario of corruption as it involved a steward and a licensed person in a deliberate plan to avoid consequences and to avoid a level playing field for personal benefit. The Tribunal agrees that a lengthy period of disqualification is appropriate. It will turn to issues of parity in due course as guidance for what the starting point for that penalty should be.

The Appellant’s Subjective Facts

61. Next, it is necessary to have regard to the subjective factors of this appellant.

62. However, at the outset it must be expressed that in certain cases the objective seriousness of a breach of the rules may be so great that the personal circumstances and the financial hardship occasioned to a licensed person should not be taken into account to lessen the appropriate penalty for that objective seriousness. This case has many of the hallmarks of the application of that principle.

63. The appellant has been licensed since he was 19, both as a driver and a trainer. He had grown up in a family associated with the harness racing

industry, both his father and his grandfather. It might be noted that they had the highest reputation as a family in the industry prior to this.

64. Once he completed Year 12 he essentially devoted himself, until his disqualification, to the harness racing industry. He is now aged 32. At the time of these matters, he was about 26. He had success as both a trainer, in a limited way, but more so as a driver. He received a number of junior encouragement awards and various other awards and got to the Harold Park Medal by the time he was 24. It is apparent he has no other skills, excluding his knowledge about horses.

65. Evidence has been given in psychological reports, as referred to earlier. The issue is whether the contents of those reports should remain confidential. The respondent opposes that, if those conditions are taken into account in respect of any reduction of penalty. The Tribunal has determined that it is not necessary to read into this decision the conditions for which he has received treatment. The Tribunal has regard to each of those psychologists' reports and notes in particular that he took himself to those psychologists and they have reported good progress in respect of the matters for which they received him. His father and referees have confirmed the relevant impacts upon him. The Tribunal determines that the conditions to which he became subject were as a result of his corrupt conduct.

66. Next, there are the explanations for his conduct, and they are accepted. Being too cocky and too greedy is all too familiar for many a licensed person who comes undone.

67. His admissions to Mr Nati must be given note. However, he loses the benefit of any weight for that admission to a regulatory person because within a short space of time he was making denials to the stewards, and the cost and trouble occasioned to the stewards by that has been referred to and completely removes the benefit of an early admission to Mr Nati.

68. His subsequent plea of guilty in the Local Court is recognised as a subjective matter in his favour. His admissions to the Special Stewards Panel and this Tribunal, and his cooperation with them, is recognised. It is also recognised that he cooperated in meeting Mr Nati, as was suggested to him, and also his production of telephone and bank records, although that is diminished by reason of the compulsion to which he was subject.

69. Whilst he attended the stewards' inquiry, and he might have absented himself but been subject to a warning off, is a factor in his favour. That is diminished by his conduct once he attended there. The Special Stewards Panel were not particularly favourable in their findings in respect of his cooperation with them. It is quite apparent from their decision they felt he was only making admissions when it suited his own case. However, before this Tribunal his cooperation and ready admissions are recognised.

70. The Tribunal notes, as it has said, he has virtually no qualifications outside of harness racing. He gave evidence that he has worked as a builder's labourer, a wharfie, in real estate, as a warehouseman, and now works at a stud farm basically as a labourer.

71. The Tribunal has regard to the remorse and contrition which he has expressed to this Tribunal in his oral evidence and in his statement. He says that his life has changed. It has been thus because of the constant battle he has to get a job which he could enjoy and earn money, particularly to get back to the financial earnings he enjoyed whilst he was licensed, because he is not earning good money now. He expressed how he was keen to get back and would like to have a second chance. And, if let back, he would do it properly and honestly.

72. In his written statement to the Tribunal he expressed that he was deeply ashamed and fully accepts his guilt. He will regret it for the rest of his life. He acknowledges he has let down the industry and brought shame to his family and for that he is very sorry. In particular, he gives promises through his statement that he will never let the industry down again.

73. It is also taken into account that he has paid prize-money of $6076 to the owners of the horses yet only received $742 form his corruption and paid out $1000 to Bentley. He is entitled to credit for meeting his undertaking to repay made to the Special Stewards Panel.

74. The appellant receives support from his father, and in his statement he describes his son as a shy, sensitive, decent man, who is a hard worker and who acknowledges he has made a dreadful mistake for which he is very remorseful. He describes his son as not being greedy or dishonest and how much his son was terribly upset and humiliated because he did not fully realise the consequences. His father said he will pay the industry back.

75. The appellant has put in evidence a number of references.

76. The first is by Anthony Hall, Manager, Oak Ridge Spelling and Agistment Pty Ltd, who has employed the appellant for some four years in general maintenance-type capacities. He describes him as a good role model for the other staff and has developed into a leader. He assesses him as honest and reliable and is aware of his transgressions and said it was stupid and he has told him that he would never do it again. He has observed the impact the charges and penalties have had on the appellant and how often the appellant has stated how foolish he was.

77. The next reference is by his brother, Blake Fitzpatrick. He describes his brother as dedicated and hard-working, how shocked and devastated he was about his brother's involvement and how his brother has been deeply

remorseful for his conduct and how he, Mr Blake Fitzpatrick, gives a personal guarantee that if the appellant is given a second chance, he would prove to everyone and himself he is well worthy of his plea. That referee is a licensed person.

78. The next reference is by his another brother, Gavin Fitzpatrick. He describes his brother as hard-working, reliable and talented and how he has worked hard to establish a respected name. He says how his brother's conduct has affected all of them on many fronts and accordingly how distressed his brother is that he engaged in such conduct. He says his brother has now found out how tough the real world can be. He says he was always popular amongst the harness racing fraternity, who apparently miss him at the races. He says that to relicense his brother would be a huge benefit to the industry, which needs a breath of fresh air, and that his talent and personality will be for the betterment of the industry. He guarantees that if his brother is let back, he will re-establish himself as an honest, hard-working and talented participant. This referee is a licensed person.

79. Next is a reference of Mr Graham Ross, a retired person, who has known the family for a long period of time and has watched the appellant grow up. He says how he has learned a valuable lesson in life and on all the occasions that he has spoken to the appellant, the appellant has expressed his remorse. He describes the appellant as a great asset to the industry who would not reoffend and who is extremely remorseful.

80. The next reference is by a John Murphy. He has known the family for a long period of time and is a part-owner of racing horses and therefore, to that extent, a licensed person. He has also been on various harness racing organisations. The Fitzpatrick family had done his racing work for him. He has observed the appellant. Being fully aware of his conduct, he considers it completely out of character. He says the appellant is a strong individual, hard-working and dedicated to the sport, an excellent horsemen. He describes him as polite and one who will positively interact and communicate with owners. He was amazed by his dedication and work ethic. He says his conduct was completely out of character and a folly of youth. He describes how his life revolved around harness racing, how he is now completely contrite, fully understands what he has done and as a gifted hard-working young man he has already been adequately punished.

81. Next is by John Starr, director of a stud. He describes how the appellant had a previous unblemished record and how his family have suffered with embarrassment and that he is confident if he is given another chance he will be a future leader. He assesses that he is embarrassed and extremely sorry for his indiscretion.

82. Next is by Ken Scully, a solicitor to the family, who has known the appellant and has observed him to express profound remorse for his

conduct and how the penalty has been crushing on him. He was surprised by his conduct. He describes him as a person of integrity and sound moral upbringing, one who is respectful towards the laws of the land and government. He describes him as trustworthy and hard-working. He says he was somewhat naive and gullible but has the strength of character to make amends for his wrongdoing.

83. Next is by Matthew Sandblom, who is an owner/breeder and known the family for some time, he is therefore a licensed person. He says that the appellant has well and truly paid for his mistakes and has a lot to contribute to the industry. He believes in giving people a second chance. He believes the appellant could make a real contribution to the industry again if given a chance.

84. Next is by Peter Dewsbury, who has known the family, and the appellant has expressed his shame and remorse of his conduct and he has observed the toll it has taken on the appellant. He says how harness racing has been the appellant's livelihood and passion and because of his dismay and embarrassment, that he will be able to rebuild his life and continue to work hard and will never reoffend.

85. Next is by Peter Neil, an accountant, who says that the appellant suffered a harsh and extreme penalty which has had a dramatic impact on him. He somewhat forcefully suggests that the appellant should be restored to the industry because he has learnt an important lesson in life and will not repeat his behaviour. He will entrust his horses to the appellant.

86. Next is by Scott McDonald, who describes the appellant as a fine citizen and has values and manners. The appellant, he says, has displayed character by not blaming anyone else. He is now a well-matured individual. He would have no hesitation in employing him. And he is now a more rounded, level-headed character.

87. Next is by Stephen Wilson. he says he is a dependable, conscientious and trustworthy person, well mannered and extremely respectful. He says his conduct was out of character, he has suffered because of it, and is deeply remorseful and will not reoffend.

88. Next is by Mr Wally Mann, who has held various harness racing positions, and is therefore a licensed person, describes him as a polite, dedicated and honest young man who has acted entirely out of character and who is truly remorseful for his one-off actions. He says he will return a much wiser person and be an asset in mentoring other young persons.

89. TheTribunal rejects the submission that there should be some acceptance of his corrupt conduct by reason of his youth at the time. He was not a youth at the time, he was 26. He had been associated with the

industry and knew all about it. He had been licensed for a number of years. He was brought up in a family that taught him to do proper things, not engage in bad conduct. This was a deliberate and conceived plan in sure knowledge of its wrongfulness. He may well have matured and learnt his lesson, but he did not need to mature more or learn a lesson to avoid engaging in this corrupt conduct in the first place.

90. As has been expressed, the Tribunal accepts the reason for the late plea of guilty in the Local Court, the late admission of breach to the Special Stewards Panel and the reasons for him lying to the stewards in their interview.

91. Some issue was taken about whether or not at the Special Stewards Panel he was denying engaging in race-fixing. There is no doubt this was race-fixing, but it is not an overall issue to be independently decided, because race-fixing is corruption and the breaches are for corruption.

92. The Tribunal finds that he is a changed person, understanding of the wrongfulness of his conduct, reformed and unlikely to re-engage in such conduct. The Tribunal is comforted in those conclusions by the referees. More weight is given to the referees evidence by reason that some, not related, speak in support. That speaks for some in the industry who would have him back.

Parity

93. The next major issue to be determined is parity.

94. Much has been made of parity in this case and it is appropriate to look at equivalent Green Light Scandal matters, and they are those of Atkinson, Sarina and Bennett, as referred to earlier.

95. The matter of Atkinson involved three breaches of AHR 241, again involving Bentley and payments to him. In Atkinson, threats had been made against him and others and accordingly it appears Atkinson found the burden of his conduct too heavy to bear and he approached the Chief Steward and confessed to his participation in the scheme with Bentley. There is therefore no need to closely examine his conduct, as was the case here. Atkinson at the time was 47 years of age with 30 years in the industry, spent his entire life in it, therefore, and had no other qualifications or skills. He only had minor offences and nothing major in his past. Cooperation with the stewards was a major factor. He was disqualified for 10 years.

96. The case of Sarina of 15 August 2013 by this Tribunal was one that involved refusing to answer questions and giving false evidence. At the time he was 33 years of age, he had been in the industry since he left school, it

was his only source of income, although he could now perform occasional labouring work, and suffered a substantial financial loss. He had no other qualifications and had no other breaches for any like matters. The Tribunal found that the investigation into corruption was fundamental to the industry and that his lies to investigators and the lack of apology for his conduct, or contrition or remorse, the continuing failure were such that it was appropriate that he should be warned off.

97. The matter of Bennett of 21 March 2017 involved a refusal to produce items and answer questions. There was some withdrawal of denial of breach and the matter proceeded essentially on a severity basis. He had expressed no remorse for his conduct and he still refused to cooperate with the stewards, although he had offered to attend a resumed stewards' inquiry. He did admit the breach to the Tribunal and he had a long and successful association in the industry, with no prior improper conduct and was a person of good standing and character and made contributions to the industry. There was strong referee support. His offer to attend a resumed stewards' inquiry meant that in respect to the first matter he was disqualified for seven years, and the second, for two years.

98. To draw from those parity cases, they are three related matters of corruption. There were substantial admissions and cooperation and self-confessing and personal threats, long association with the industry and good prior record.

99. But having regard to the similarity of those cases to the facts here, it is apparent that anything less than seven years is out of the question and a penalty of anything up to a warning off could be considered appropriate on a parity basis. However, as no equivalent of a Parker-type warning was given before this Tribunal – and it was not asked for – and as the respondent seeks a finite term of disqualification of 15 years, it is not necessary to consider either a warning off, which of course could be varied, nor a penalty greater than 15 years on a parity basis.

100. It is important on a parity basis to have regard to the fact that Atkinson, on his facts, would be entitled to say that if this appellant received a penalty of less than 10 years, that Atkinson, with his better subjective facts and circumstances, would be entitled to express a grievance that he had been harshly dealt with compared to this appellant.

101. The Tribunal determines on a parity basis that the conduct of this appellant is a worst case scenario and these facts are worse than those in Atkinson. The only difference between Atkinson and this appellant is the passage of time since this appellant was first dealt with.

102. It might also be noted in passing the recent expressions of concern in the Racing Appeals and Disciplinary Board decision of 8 May 2018 in

matters of Smerdon and others. The Tribunal notes that a number of those parties have indicated an intention to appeal to the VCAT. Regardless of that, those matters involved, in some cases, over 100 races over a period of seven years in which horses were administered prohibited substances, in cases where none of them pleaded guilty. Some life penalties were considered appropriate.

103. It is not necessary to engage in a comparison of the severity of cases, but it is noted that the Disciplinary Board there described that activity as the biggest scandal and the most widespread investigation in the history of Australian racing. It is fair to say that this Green Light Scandal was the worst matter to confront harness racing in NSW.

The Conclusion

104. There is no fixed penalty so the penalties provided for in the rules are all available.

105. On an assessment of objective seriousness, the Special Stewards Panel felt 15 years to be appropriate. They did not express it in Atkinson, but if in Atkinson he ended up with 10 years and they had given him a 30 percent discount for his early plea, cooperation, personal financial circumstances, that 30 percent reduction would logically lead to 10 years, then it must have been a starting point of 15, although not expressed.

106. It might be noted that the Special Stewards Panel here also referred to the objective seriousness outweighing subjective factors principle.

107. It is not necessary to analyse the Special Stewards Panel decision. This is a de novo hearing and it is up to this Tribunal to decide for itself an appropriate penalty.

108. The key point is parity. As expressed, Atkinson and, to some extent, Sarina and Bennett would be entitled to have their facts analysed to see whether they were fairly dealt with compared to this appellant.

109. The Tribunal is satisfied that the message it must give to the industry at large, as it has so often described it to other licensed persons, to those who wager, to those who show an interest in it, those who are concerned for matters of welfare, that conduct such as this will receive a condign order which will remove the privilege of a licence for a substantial period.

110. There is a clear message required to be sent out, and the recent matters of Smerdon and others in the Racing Appeals and Disciplinary Board just referred to demonstrate the type of orders that may be required to reflect that.

111. There is no doubt he was driven by self-motivated greed in the full knowledge of the privilege of a licence and the wrongfulness of the conduct he was engaging in, exacerbated by the lies he told and the delays in which he engaged. That demonstrates the message for him is to be substantial.

112. The message to this individual appellant is somewhat reduced by the fact that he is to be assessed on the facts available in 2018 and not in 2013. There are strong subjective factors. There is now a clear understanding and acknowledgement of his wrong conduct. The character references have certainly emphasised that and they need not be repeated.

113. The Tribunal has formed a strong opinion that the objective seriousness of his conduct here completely outweighs his personal subjective factors.

114. Despite that conclusion, that objective seriousness must outweigh the subjective factors, there is the aspect of a five-year after first determination assessment of the character he now demonstrates. The Tribunal is satisfied that subjectively the necessity for a message to be sent to him is diminished.

115. Penalty must be determined on all the facts now available to the Tribunal and projected to the future for the necessary protective order.

116. The Tribunal determines that there is some room to give respect to changes in the appellant without diminishing the gravity of the conduct and the impact of the scandal generally. Those changes will reduce the prospect of a repetition of this conduct which occurred over a very short period of time 7 years ago.

117. Such a consideration will not adversely affect the parity principle as there is a 5 year time gap.

118. The appropriate penalty for objective seriousness is marginally reduced by the changed subjectives in the appellant, but not so as to reduce the required message for industry.

119. That will mean on a parity basis and, more importantly appropriate to the facts and circumstances here, a penalty of 15 years which deals with objective seriousness and takes in to account the subjective factors such as admissions and the like summarised in his favour earlier. Precise mathematics is not required.

120. A further reduction is then allowed for the changed subjectives which reduce the message to be given. That is a period of 3 years.

For each of the two breaches the Tribunal determines that a period of disqualification of 12 years is appropriate but in view of the proximity of the dates of the conduct, the similarity of the conduct and that the first matter had not been detected when the second occurred, that the penalties be served concurrently

DECISION AND ORDERS

120. A penalty of 12 years disqualification is imposed to commence on 25 November 2011.

121. As this is a severity appeal, the appeal is upheld.

122. Written submissions are invited on whether the appeal deposit of $250 should be refunded, refunded in part or forfeited. Brief submissions are appropriate and email to the Secretariat will suffice. The appellant should submit first.
