

DECISION

Racing Integrity Act 2016, sections 252AB

Review application number	RAP-23	
Name	Jack Price	
Panel	Mr Kerry O'Brien AM (Chairperson) Mr Daryl Kays (Panel Member) Mr John McCoy OAM (Panel Member)	
Code	Thoroughbreds	
Rule	AR 240 Prohibited substance in sample taken from horse at race meeting	
Penalty Notice number	Not Applicable	
Appearances & Representation	Applicant	Michael Munro
	Respondent	Dominique Murphy
Hearing Date	30 May 2023	
Decision Date	30 May 2023	
Decision <i>(delivered ex tempore)</i>	Application not accepted	

Reasons for Decision

- [1] The issue that arises today is whether this Panel has the jurisdiction to entertain this particular application.
- [2] Mr Jack Price is one of the owners of the thoroughbred End Assembly. Mr Munroe, who spoke on Mr Price's behalf this morning, is another such part owner.
- [3] Mr Price has applied for the review of a decision made by a panel of thoroughbred stewards, pursuant to Australian Rules of Racing AR240(1) that the horse End Assembly be disqualified from race 8 at Eagle Farm on the 17th of December 2022.
- [4] Relevantly, AR240 (1) and (2) provided as follows:

Prohibited substance in sample taken from horse at race meeting;

(1) Subject to subrule (3), if a horse is brought to a racecourse and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the horse must be disqualified from any race in which it started on that day.

(2) Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.

- [5] RAP-19 (Ben Currie) and RAP-22 (Mark Currie) are review applications relating to a decision made by stewards on 22 May 2023 to take disciplinary action against both Ben Currie and Mark Currie for contravening AR 240 by conduct associated with the disqualification of the horse End Assembly.
- [6] The applicant in today's matter maintains that this Panel does have jurisdiction to entertain his application on the basis that the disqualification of the horse resulted in a penalty to him and his co-owners by way of the loss of prize money.
- [7] For the respondent it is submitted that the that this Panel has no jurisdiction to entertain the application, as the application does not meet any of the categories set out in section 252AB of the *Racing Integrity Act 2016*.
- [8] Section 252AB(1) provides that;
 - A person may apply to the panel for a review, under this part, of a racing decision of a steward to—
 - (a) take disciplinary action relating to the person's approval or licence; or
 - (b) take exclusion action against the person; or
 - (c) otherwise impose a penalty, whether monetary or non-monetary, on the person.

- [9] Disciplinary action is defined in the *Racing Integrity Act 2016* as follows;

disciplinary action, relating to an approval or licence, means 1 or more of the following—

- (a) cancelling the approval or licence;
- (b) suspending the approval or licence for a stated period;

(c) varying the approval or licence in either of the following ways, except if the variation is made as the result of an application of the control body for the approval or the licence holder—

(i) changing a condition stated in the approval or licence to which it is subject;

(ii) stating a new condition to which the approval or licence is to be subject;

(d) for a licence—

(i) imposing a monetary penalty; or

(ii) closing, for a stated period, premises or part of premises stated in the licence as premises at which an activity may be conducted under the licence.

[10] The term exclusion action is defined in s252 AA of the Act in the following way;

exclusion action, against a person, means action taken by a steward—

(a) to name the person on a list kept under the rules of racing that identifies persons whose entitlements under the rules are forfeited; or

(b) to warn off the person from entering, or remaining at, a place being used for a race meeting.

[11] It is clear in the Panel's view that the decision to disqualify the horse End Assembly cannot amount to either disciplinary action or exclusion action within the meaning of those terms as set out in the legislation.

[12] The term penalty is not defined in the Act, however, the Australian Rules of Racing do provide a definition in these terms;

penalty includes the suspension or partial suspension of any licence, disqualification, reprimand and the imposition of a fine (penalise has a corresponding meaning).

[13] The *Acts Interpretation Act 1954* defines **penalty** to include forfeiture and punishment.

[14] Ms Murphy, who appears for the respondent, has also made reference to the Australian Concise Oxford Dictionary definition of the term penalty to mean punishment, especially payment of a sum of money for breach of rule, law or contract; disadvantage imposed on competitor in sports, etcetera who has broken a rule.

[15] Logically, the term penalty would seem to connote the taking of some form of action or the imposition of some form of sanction against a person or persons in response to some offending conduct, whether criminal or civil in nature, engaged in by that particular person or persons. That would accord with the commonly understood meaning of that term.

[16] In the context of the particular provision, section 252AB, the imposition of a penalty means the imposition of a punishment by the stewards on an individual person, as a consequence of their act or omission.

[17] Section 252AB(1)(c) speaks expressly of the imposition, monetary or non monetary, "*on the person*". It is clear that the legislative intent is that the penalty imposed is personal to the individual.

[18] Such an interpretation is confirmed by the express language used in each of the other subparagraphs of section 252AB(1), namely that the racing decisions of the stewards which invoke the jurisdiction of this Panel are only those which involve disciplinary action relating to "*the person's*" approval of a licence, the taking of "*exclusion action against the person*", or the imposition of a penalty on "*the person*".

- [19] The decision that Mr Price is seeking to have reviewed is a decision to disqualify a horse pursuant to AR 240(1). That decision is not a decision to impose a penalty on the applicant, Mr Price or any of his fellow co-owners, even though a consequence of that decision to disqualify the horse is that any prize money the horse won in that race will not be paid to the owners of the horse.
- [20] The decision of the stewards panel made on the 22nd of May 2023 to disqualify the horse End Assembly from race eight at Eagle Farm on the 17th of December 2002 is not subject to review by this Panel.
- [21] Accordingly, as the Panel has no jurisdiction to entertain this matter. The application by Mr Price for review cannot be accepted and should be dismissed.

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