

IN THE RACING APPEALS TRIBUNAL

RICHARD JASON POLIDANO

Appellant

v

GREYHOUND WELFARE AND INTEGRITY COMMISSION

Respondent

REASONS FOR DETERMINATION OF THE APPELLANT'S APPLICATION PURSUANT TO CLAUSE 14(1)(a) OF THE RACING APPEALS TRIBUNAL REGULATION 2015

BACKGROUND

1. By Notice of Appeal dated 6 May 2024, Richard Jason Polidano (the Appellant) has appealed against a determination of the Greyhound Welfare and Integrity Commission (the Respondent) made on 30 April 2024 to impose an interim suspension pursuant to r 169(5)(c) of the *Greyhound Racing Rules* (the Rules). These reasons address the Appellant's accompanying application for a stay.

THE FACTS

2. Until 20 May 2024, at which time his registrations expired, the Appellant was registered as a public trainer and breeder. On 24 April 2024, officers of the Respondent attended a property in Berkshire Park (the property). Whilst the Appellant's father resides at the property, it is also approved by the Respondent as kennel premises for the purposes of the Appellant's activities as an industry participant. This is so, notwithstanding the fact that the Appellant himself apparently does not reside there.
3. At the time of their attendance, the Respondent's officers observed an unnamed greyhound (the greyhound) with multiple open wounds on its rear legs. The greyhound was seized and taken for veterinary treatment. The wounds are clearly visible in a number of photographs with which I have been provided.

4. The clinical note of a Veterinary Surgeon who examined the greyhound on 24 April 2024 includes the following:

- *5 x 4 cm full thickness dermal wound on the location of the right lateral acetabulum. Skin around wound has become thickened firm and contracted. Moderate amount of unhealthy granulation tissue grown into the caudal edge of the wound. Tissue appears mottled with a film of tan/green material over it. Mod amount of straw coloured fluid accumulated in wound defect. Sample taken from wound for cytology.*
- *2 x 2 full thickness dermal wound on the location of the left lateral acetabulum. Skin around wound has become thickened, firm and contracted. Moderate amount of unhealthy granulation tissue filling the caudal half of the wound. Tissue appears mottled haemorrhagic with a film of tan/green material over it. Mod amount of straw coloured fluid accumulated in wound defect.*
- *2 x 2 full thickness dermal wound on the location of the right lateral stifle. Firm contracted edges. Red dry granulation tissue filling wounds. No discharge.*

ASSESSMENT:

1. *4 symmetrical full thickness dermal wounds. Starting to fill with unhealthy granulation tissue and edges contracting. Estimated to be approximately 2 weeks old.*
2. *10% underweight. Ideally closer to 29.2 kg.*

5. On 26 April 2024 the greyhound underwent surgical debridement of the wounds. Post surgery treatment included antibiotics prior to discharge from the clinic on 1 May 2024. A recommendation was made for a weekly veterinary check for the following month.

6. The Appellant has provided a report from Dr Derek Major dated 17 May 2024. Dr Major has not examined the greyhound, and has provided his report on the basis of documentary material which was made available to him, including the same six photographs which have been provided to me. By reference to those photographs, Dr Major reported:

The wounds are clean, and no necrotic (dead) tissue can be identified. There appears to be a healthy rim of epithelialisation (superficial skin

cells) around each wound. The wounds appear to have been recently cleansed, either by a person, or by the dog itself, by licking.

The appearance and location of these wounds is consistent with decubital ulcers (pressure soles (sic)). I have seen no history which might reveal the cause of these lesions.

...

The evident epithelialisation indicates that the wounds are at least 1 and 2 weeks old. At this point, any dead tissue has either been removed of (sic) has sloughed off, and the wound is actively healing by contraction and epithelislisation.

7. Dr Major went on to express his views about appropriate treatment. Those views appear consistent with the post-surgical treatment which has actually been administered, including the prescription of antibiotics.

8. On 24 April 2024, the Respondent wrote to the Appellant advising of a proposal to impose an interim suspension, and provided the Appellant with an opportunity to make submissions as to that proposed course. On 29 April, the Appellant responded, stating (amongst other things) that:
 - (i) he owned, and had bred, the greyhound;
 - (ii) he was raring the greyhound at his father's property;
 - (iii) he moved away from the area due to personal circumstances,
 - (iv) when he noticed the wounds on the greyhound he had been told that he had been given antibiotics.

9. I have been provided with a photograph of a box bearing the words "Amoxyclav 250" ... *for treatment of bacterial infections*", another photograph of a bottle bearing the words "Yellow Lotion, Antiseptic Astringent Wound Lotion", and another photograph bearing the words "Riodine Antiseptic Solution". I infer that these treatments were given to the greyhound at some point. When that might have been is not entirely clear on the evidence which has been provided to me.

10. On 30 April 2024, the Respondent wrote to the Appellant advising that a decision had been made to impose an interim suspension of the Appellant's registrations. The reasons for that decision were expressed as follows:

The Commission is investigating allegations of animal welfare breaches by [the Appellant].

11. It is that determination in respect of which the Appellant seeks a stay.

THE RELEVANT TEST

12. Shortly put, in order to be granted a stay the Appellant must establish that:

1. there is a serious question to be tried; and
2. the balance of convenience favours the imposition of a stay.

13. The authorities which establish and explain those principles have been set out in prior decisions and I do not propose to repeat them. I have made my determination in accordance with those principles.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

14. Although it is not entirely clear, it appears that the Appellant submits that the determination made by the Respondent is flawed as a matter of law. The Appellant submits, in particular, that the Respondent has "*a legal obligation to nominate exactly what the concern is and why this should result in a suspension*" and has failed to do so. The Appellant further submits that it is incumbent upon the Respondent to "*properly formulate and make out the allegations where it seeks to exercise this power in these circumstances*", and that the Respondent has "*cast a much wider net which ... they currently cannot substantiate*".

15. The Appellant also cautioned the Tribunal to "*steer away from jumping to conclusions that there is a direct and close proximate link between the condition*

of [the greyhound] and [the Appellant]”. The submissions also set out what was described as the Appellant’s “account” of the relevant events. That “account” is not reflected (at least completely) in the statement made by the Appellant which I have summarised at [8] above, but I am prepared to accept it for present purposes. The Appellant asserts that:

- (i) the greyhound belongs to him;
- (ii) it had been living with his father for more than a year;
- (iii) six weeks ago his father had told the Appellant that he thought that the dog had been injured in a fight;
- (iv) he attended and administered antibiotics and topical treatments (inferentially, those in the photographs to which I referred);
- (v) he told his father to continue to administer those treatments;
- (vi) the dog was administered the treatments and was healing;
- (vii) when he was away shortly before the greyhound was seized, his father contacted him and advised that the greyhound “*wasn’t looking as well as he might be*”;
- (viii) the dog’s care was also a matter for a Mr Howard who was assisting his father;
- (ix) he arrived back in Sydney on the same day as the Respondent’s officers attended, and was intending to take the greyhound to a vet for treatment, but it was seized.

16. The Appellant has submitted that the report of Dr Major confirms that the wounds were healing at the time that the greyhound was seized. He has also submitted that this is clearly not a case of abandonment, recklessness or negligence.

Submissions of the Respondent

17. In terms of the asserted unlawfulness of its determination, the Respondent submitted that its obligations did not require it to “*state the particulars behind each investigation prior to the completion of the investigation*”. In advancing that submission, the Respondent stressed the importance of being able to conduct a

thorough investigation before determining what charges might be laid. In this context the Respondent, unsurprisingly, emphasised the fact that part of its statutory charter pursuant to s 11 of the *Greyhound Racing Act 2017* (NSW) is the promotion and protection of the welfare of greyhounds.

18. The Respondent submitted that it was clear on the medical and photographic evidence that the wounds were serious. It was submitted that the opinions of Dr Major, and particularly his opinion that the wounds were healing, should be rejected.

19. For all of these reasons, the Respondent submitted that there was no serious question to be tried, and that the balance of convenience weighed against the granting of a stay. In that latter respect, and whilst acknowledging that a stay might cause the Appellant financial hardship, it was submitted that this was substantially outweighed by the welfare issues which were raised on the evidence.

CONSIDERATION

20. I turn firstly to the Appellant's submissions as to the lawfulness or otherwise of the Respondent's determination.

21. Rule 169(5)(c) confers a discretion on the Respondent to direct that a registration, licence or other type of authority or permission be suspended pending the decision or outcome of an inquiry or other disciplinary process. The Rules do not make provision for the factors by reference to which that discretion should be exercised, and it is not possible to be prescriptive about the circumstances in which the rule might be invoked. The most obvious circumstance is where there is some prima facie evidence of a breach of the rules, and the Respondent takes the view that an interim suspension is necessary to preserve the integrity of the industry pending a further investigation. Evidently, the Respondent takes that view in the present case. It is a view which is certainly open on the evidence.

22. Needless to say, like any decision-maker, the Respondent must provide reasons for any determination which it makes. In the present case, the Respondent's reason for imposing the interim suspension was that it is investigating animal welfare breaches by the Appellant. Even without that express statement, the fact that it is carrying out an investigation into issues of animal welfare, and the fact that the nature of those issues is said to warrant an interim suspension is plain from the evidence. In all of these circumstances, I am unable to accept the submissions advanced on behalf of the Appellant that the course which has been taken by the Respondent is somehow unlawful. The Appellant is clearly on notice of why the Respondent has taken the action it has, and he was afforded natural justice and procedural fairness by being provided with the opportunity to make submissions to the Respondent, and by availing himself of that opportunity.

23. I am also unable to accept the submission that the report of Dr Major supports a conclusion that any concern that the Respondent might have is "*not based on a serious matter*". Dr Major has not examined the greyhound. His opinion is based on what I infer are the same six photographs as those which have been provided to me, and which were taken at the time of the seizure of the greyhound on 24 April 2024. The suggestion that, as at that date, the wounds were "actively healing" appears to be entirely inconsistent with what is recorded in the clinical notes. It is equally inconsistent with the objective fact that the greyhound underwent surgery after those photographs were taken. It is reasonable to conclude that if the wounds were actively healing, surgery would not have been necessary. For these reasons, I reject Dr Major's opinion. In any event, and even to a layperson, the wounds are obviously serious by their very appearance. Moreover, that seriousness is corroborated by the treatment records.

24. As far as drawing any connection between the condition of the greyhound and the Appellant is concerned, the simple fact is that the Appellant, on his own admission, owns the greyhound. With such ownership comes the responsibility of ensuring the welfare of the greyhound. That responsibility cannot be abdicated by leaving the greyhound in someone else's care.

25. For all of these reasons, I am not satisfied that the Appellant has established that there is a serious question to be tried. Even if a serious question were identified, the issues raised outweigh any financial hardship on which the Appellant seeks to rely. Any comment about the importance of ensuring animal welfare would be superfluous.

26. In all of these circumstances, I refuse the application for a stay.

27. I should, however, make one further observation. In my view, when the Respondent imposes an interim suspension in circumstances such as this, it has a fundamental obligation to conduct any inquiry efficiently, with a view to expeditiously coming to a conclusion as to whether a charge is to be laid. I expect that this approach will be taken in the present case. If it is not, it may be open to the Appellant to renew his application for a stay on the grounds that the delay in finalising the matter is causing him unfair prejudice.

ORDERS

28. I make the following orders:

1. The application for a stay is refused.
2. The Respondent is to advise the Appellant, and the Tribunal, no later than 5.00 pm on Monday 10 June 2024 as to:
 - (i) the progress of the investigation;
 - (ii) when the investigation is expected to be completed; and
 - (iii) when a decision is likely to be made about the future conduct of the matter.

THE HONOURABLE G J BELLEW SC

30 May 2024