

**DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT: SHARON SMITH

APPLICATION NO: A30/08/346

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MR J SYME (MEMBER)

DATE OF HEARINGS: 5 FEBRUARY 1997 & 25 FEBRUARY 1997

DATE OF DETERMINATION: 25 FEBRUARY 1997

IN THE MATTER OF an appeal by Ms S Smith against the determination made by Western Australian Greyhound Racing Association Stewards on 7 January 1997 disqualifying the greyhound *RANDOM ACCESS* from Race 4 run at Cannington Greyhounds on 7 November 1996 under Rule 235 (1)(c) of the Rules Governing Greyhound Racing in Western Australia.

Mr D Price, instructed by D G Price & Co, represented the appellant.

Mr B Goetze, instructed by Minter Ellison, represented the Western Australian Greyhound Racing Association Stewards.

This is the unanimous decision of the Tribunal.

This is an appeal by the owner of the greyhound *RANDOM ACCESS* which was disqualified from winning Race 4 being Heat 2 of the Schweppes All Stars Sprint which was run at Cannington Greyhounds on 7 November 1996. Ms Smith was given leave to appeal out of time.

In the grounds of appeal the appellant claims that the Stewards erred in disqualifying the greyhound from the race without allowing the owner of *RANDOM ACCESS* the right to be heard in relation to the decision and in failing to formally notify the owner of the inquiry, thereby failing to afford Ms Smith natural justice. The inquiry in question was in relation to the detection of a drug in the greyhound following the running of the race. A second ground of appeal is that the Stewards were in breach of their duty under the Rules which required them to determine the involvement of the owner before making any decision as to disqualification of the greyhound from the race. The appellant, therefore, claims that the decision to disqualify was void and seeks the greyhound to be reinstated as the winner of the race.

The Tribunal has received correspondence from connections of the other three greyhounds affected, in which one comments for, one against and the third is neutral as to the outcome of this appeal. The Tribunal is not influenced by the contents of that correspondence other than noting what the respective authors of the letters have said.

Mr Price, on behalf of Ms Smith, has filed an outline of submissions in which he sets out his argument dealing with natural justice and with reference to Rule 235(2).

The Tribunal is satisfied for the reasons set out in the appellant's submissions that the Stewards have erred in the handling of this matter. It was suggested to the Tribunal that this was merely a technical breach of the Rules. We are not persuaded by that argument. Rule 235(2) is expressed in mandatory terms. It specifies that in the circumstances that prevail here, the Stewards shall not disqualify the greyhound on the day of the race but shall adjourn the inquiry for the purpose of ascertaining whether the owner of the greyhound was, in their opinion, implicated in the matter.

In the circumstances, The Tribunal is persuaded that the decision of the Stewards should be set aside. It is not however appropriate to declare that the determination by the Stewards is void. Rather, we consider that the appropriate way to deal with the matter is, as Mr Goetze suggested on behalf of the Stewards, for it to be sent back to the Stewards to be dealt with in accordance with the Rules.

The Tribunal allows the appeal and sends the matter back to the Stewards to deal with according to the Rules. The fee paid on lodgement of the appeal will be refunded.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

