APPEALS – 461 & 462

REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**ROBERT SANGALLI**
APPLICATION NOS:	**A30/08/461 & A30/08/462**
PANEL:	**MR P HOGAN (PRESIDING MEMBER)** **MS K FARLEY (MEMBER)** **MR S PYNT (MEMBER)**
DATE OF HEARING	**23 JUNE 1999**
DATE OF DETERMINATION:	**23 JUNE 1999**

IN THE MATTER OF appeals by Mr R Sangalli against the determinations made by the Stewards of the Western Australian Trotting Association on 27 April 1999 imposing a fine of $2,000 and a six month disqualification for breaches of Rules 474 and 464(b) of the Rules of Harness Racing respectively.

Mr T F Percy QC, assisted by Ms C K White, instructed by D G Price & Co, appeared for the appellant.

Mr B Goetze, instructed by Minter Ellison, appeared for the Western Australian Trotting Association Stewards.

This is the unanimous decision of the Tribunal.

These appeals arise out of an inquiry by the Stewards of the Western Australian Trotting Association which was conducted over the period 22 December 1998 through to 27 April 1999.

The Stewards were inquiring into the circumstances surrounding the purchase price of the pacer KOTARE TRUST by Mr Sangalli. Mr Sangalli is a bloodstock agent and a licensed trainer.

As a consequence of the inquiry, on 20 April 1999 the Stewards charged Mr Sangalli with two offences.

The first charge under Rule 474 (Appeal 462) was in the following terms:

> *" ... that you did act fraudulently by deliberately misrepresenting the price of the horse, KOTARE TRUST, to Mr Pizzino and Mr Whitehouse to purchase a one third share each in the horse and in doing so your action was a deliberate deception to benefit at the expense of Mr Pizzino and Mr Whitehouse."*

Rule 474 of the Rules of Harness Racing states:

> *"No person shall do in connection with harness racing any other matter or thing which, in the opinion of the Controlling Body or Stewards, is fraudulent, corrupt or detrimental to the interest of the sport of harness racing."*

The second charge under Rule 464(b) (Appeal 461) was in the following terms:

> *" ... that during the inquiry on 22 December 1998 you told the inquiry that the horse KOTARE TRUST cost $10,500 landed in Western Australia. That during the inquiry on 22 December 1998 you told the inquiry that you were holding a cash component of the purchase price until Mr Keogh visited. You then stated that the cash had been sent to Mr Keogh, a story which you again changed at the inquiry on 23 February 1999. You thereby wilfully supplied false information to the inquiry into the circumstances of the sale of the horse KOTARE TRUST. Your purpose was to deliberately frustrate the inquiry from establishing the truth."*

Rule 464(b) of the Rules of Harness Racing states:

> *"No person shall wilfully supply any false information or make any false declaration respecting any matter connected with harness racing to any authorised Body of persons."*

The appellant pleaded not guilty to both charges and sought and was granted an adjournment to seek legal advice.

At the resumption of the inquiry on 27 April 1999 the appellant presented further evidence in relation to both charges. The Stewards found both charges proved and announced their findings in the following terms:

> *"Mr Sangalli, in relation to the charge under Rule 474, it's our view that you did lead Mr Pizzino and Mr Whitehouse to believe that the horse was to cost $10,500 landed in WA. They engaged you as a bloodstock agent for your expertise and trusted you to represent the price and value truly. You knew the horse was only worth $2,500, yet allegedly inflated the price to cover debts owed by Mr Keogh to yourself. It's our opinion that your action was a deliberate deception to benefit yourself at the expense of Mr Pizzino and Mr Whitehouse. Therefore we find that charge sustained. We find you guilty as charged.*
>
> *In relation to the charge under the provision in Rule 464(b). You put little plausible evidence to us as to the reasons for supplying false information to the inquiry. Your evidence throughout the inquiry was, at best, implausible. It's our opinion that you did wilfully supply false information to the inquiry to deliberately frustrate us from establishing the truth. Once again we find you guilty as charged."*

Following brief submissions from the appellant on the question of penalty, the Stewards announced their decision as follows:

> *"The Stewards have given careful consideration to the matter of penalty, and as we said from the outset they're both serious charges. The Western Australian Trotting Association go to great lengths to try and encourage owners to stay in the industry and attract new owners to the industry. Actions such as yours completely negate the Association's efforts. It's quite clear from the evidence from Mr Whitehouse and Mr Pizzino that the matter has caused them to review commitments to the industry.*

In relation to the charge under Rule 474, we are imposing a fine of $2,000. We believe that the penalty must not only deter yourself but also others from such conduct.

In relation to the charge under the provisions of Rule 464(b), you supplied false information regarding this matter deliberately and over an extended period of time. Such conduct strikes at the very essence of an inquiry and cannot be tolerated in any circumstances, particularly in the circumstances of this matter, and any penalty must deter you from similar conduct in the future and send a clear message to others that it will not be tolerated.

We are aware that you have not been dealt with on a previous occasion under the provisions of Rule 464(b) or a similar rule, and have considered your submissions regarding how you derive your income. In deciding the penalty it is our opinion you should be disqualified for six months."

The appellant now appeals against both convictions and the severity of the disqualification for six months.

The amended Grounds of Appeal are as follows:

"A. FRAUDULENT BEHAVIOUR

1. The Stewards erred in convicting the Appellant of the charge under Rule 474 there being no evidence that the Appellant acted fraudulently in relation to the sale of the pacer Kotare Trust.

Particulars

(a) The Stewards failed to apply the correct test as to the meaning of "fraudulently" for the purposes of the Rule.

(b) The Stewards were required to apply a test whereby they considered whether the Appellant acted in a manner which would be considered dishonest by the ordinary standards of honest and reasonable people and that he realized that what he was doing was by those standards dishonest.

(c) Applying the correct test it was not reasonably open to the Stewards to find the charge proved.

(d) The finding by the Stewards that the Appellant had engaged in a "deliberate deception" to benefit himself at the expense of the purchasers was not sufficient to constitute proof of the offence.

2. The Stewards erred in holding that the Appellant had acted fraudulently by failing to disclose to the purchasers the cash consideration that took place between himself and the primary vendor Keogh in respect of the sale of the pacer Kotare Trust.

Particulars

(a) There was no duty on the Appellant to disclose to the purchasers details of the original transaction between Keogh and himself.

(b) The Stewards erred in holding that an on-sale at a price higher than the original purchase price would be "fraudulent" for the purposes of the rule.

(c) There was no direct evidence before the Stewards as to any representation by the Appellant to either of the two purchasers as the exact amount paid by him for the purchase of the horse itself.

B. FALSE INFORMATION

3. The Stewards erred in convicting the Appellant of the charge under rule 464(b) in that the charge was inherently duplicitous and thereby unfair.

Particulars

(a) The count was in effect for four counts of False evidence:

(i) The horse cost $10,500 landed
(ii) Holding a cash component for Keogh
(iii) Sending cash component to Keogh
(iv) Changing his evidence concerning (iii) above.

(b) Each allegation of falsity ought properly have been the subject of a separate charge.

(c) The Appellant was entitled to have the Stewards consider his answer to each allegation separately.

(d) The Stewards were not entitled to lay what was effectively a blanket charge and reach a blanket conclusion.

4. The Stewards erred in that they gave no reasons as to which allegations they found to be false or why; and made no findings whatever as to what they considered to be the correct versions of events.

5. The finding of the Stewards that the Appellant had given wilfully false evidence without making any specific factual finding of falsity against him and having essentially rejected the evidence of the witness Keogh was unreasonable in the circumstances of the case.

6. The Stewards erred in reversing the onus of proof in relation to the charge under rule 464(b).

C. PENALTY

7. The Penalty imposed by the Stewards in relation to the conviction under rule 464(b) was excessive in all the circumstances of the case having regard to:

(a) the Appellant's lack of previous convictions; and
(b) other penalties under the same rule recently imposed by the Stewards."

APPEAL 462 - FRAUDULENT BEHAVIOUR

THE LAW - FRAUDULENT

There is no definition of fraud or fraudulent in the Rules of Harness Racing. In these circumstances, reference must be made to the common law. Fraud and dishonesty may be regarded

as interchangeable terms in relation to an offence of misappropriating property. (LAWRENCE, 1996 86 A CRIM R 412 at 420.) The English courts have set out the position in the case of R v GHOSH 1982 Q B 1053. In that case, Lord Lane CJ delivered the judgement of the Court. His Lordship said at page 1064 –

> *"In determining whether the prosecution has proved that the defendant was acting dishonestly, a jury must first of all decide whether according to the ordinary standards of reasonable and honest people what was done was dishonest. If it was not dishonest by those standards, that is the end of the matter and the prosecution fails."*

What the Stewards had to do in this case was to find out what occurred, and then apply those facts to see if the appellant had acted dishonestly. It is important to remember that it was what occurred at the time (1996) which was under scrutiny, not what the appellant said and did later to justify his position.

In our view, the Stewards erred in that they found no facts which were precise enough to lead to a finding of dishonesty on the part of the appellant.

THE FACTS - FRAUDULENT

The imprecision which characterised the Stewards findings is best illustrated by reference to the short reasons which they gave. Within those reasons, the Stewards referred to cost, price, value and worth. Yet the real focus of the inquiry was on how much money the appellant had given to the seller of the horse (Peter Keogh) in return for the seller transferring ownership. The imprecise findings themselves arose out of the imprecise evidence given by the appellant and the two aggrieved persons, namely Mr Pizzino and Mr Whitehouse.

The evidence also clearly disclosed that the appellant gave false evidence to the inquiry and arranged for false evidence to be presented to the inquiry from the seller, Mr Peter Keogh. The irony of course is that the appellant may have had no need to do that in any event.

The horse KOTARE TRUST was owned by Mr Peter Keogh of Bathurst, New South Wales. By letter dated 11 October 1996, the appellant sent Mr Keogh a cheque for $2,500, being payment for the horse. The letter was Exhibit six at the inquiry. The letter contained a promise for a further payment of $500. The person paying the money was the appellant. It was not Mr Pizzino, because he paid money to the appellant by cheque under cover of a letter dated 14 October 1996, that is three days later. (Exhibit 3). There was no evidence presented as to when Mr Whitehouse paid the appellant.

The beginning point therefore is that the appellant paid the seller $2,500, and that legal and beneficial ownership of the horse was with the appellant.

The horse cost the appellant $2,500, there being no evidence that he ever paid another $500. The arrangement between the appellant, Mr Pizzino and Mr Whitehouse was based upon the appellant's position in the racing industry. He describes himself (eg. on his letterhead) as a bloodstock agent. He is also an owner, and a trainer. Mr Whitehouse had purchased horses through the appellant in the past. He previously never doubted the appellant's judgement (T15). Mr Pizzino was offered a share in the horse by Mr Sangalli (T38).

The terms of the agreement between the appellant, Mr Whitehouse and Mr Pizzino were described differently by each of the three men. None of them gave a date at which the agreement was concluded. The agreement was not reduced to writing.

It is important then to remember that it was the appellant who paid the money to Mr Peter Keogh, and that the appellant paid the money before receiving money from Mr Whitehouse and Mr Pizzino.

In his letter of complaint dated 31 March 1998 (T1), Mr Whitehouse said that the three men each had a third share. He thought the horse would be landed in Perth for $10,500 because his third share was $3,500. The question then arises what were the precise terms of the agreement between Mr Whitehouse and Mr Sangalli.

In his letter of complaint, Mr Whitehouse pointed out that the money paid by the appellant to Mr Peter Keogh was only $2,500. Because $2,500 is less than $10,500, Mr Whitehouse assumed that the appellant "*acted incorrectly*".

Mr Whitehouse, at T6, said that the agreement was "... *weren't to pay any more than his landed price* ...". At T7, he said "... *we were all to pay an equal share in the horse* ...". The equal share referred to by Mr Whitehouse then could only refer to an equal share in the landed cost of the horse.

There was no evidence given of what each of Mr Whitehouse and the appellant agreed that the "*landed cost*" would be made up of. It must have meant more than the cost ($2,500) because of the addition of the word "*landed*". Implicit in Mr Whitehouse's complaint was that landed cost meant the money which the appellant paid plus any extra amount which the appellant paid to get the horse to Western Australia.

It is implicit also in Mr Whitehouse's complaint that the appellant was to pay first, and then he was to pay the appellant. The bargain was between the appellant and Mr Whitehouse, with nothing to do with Mr Peter Keogh.

The appellant himself did not give any evidence of what the terms of the agreement were between himself and Mr Whitehouse. He did engage in a course of deception in his evidence before the Stewards, designed to try to make it appear as if the amount he paid to Mr Peter Keogh equalled the $10,500 referred to by Mr Whitehouse. From that, it could be inferred that he accepted Mr Whitehouse's version of the bargain. However, that is not the only inference can be drawn from his conduct. It could equally be inferred that he had commercial reasons for trying to disguise the basis of his profit making.

Throughout the inquiry, the appellant attempted to justify his position by reference to what he considered to be the value of the horse. (T4, T40, T45). That, of course, is a different thing from cost, landed cost or price.

The appellant however did give evidence (albeit belatedly) as to what he considered that the horse "*cost*" him. There was an amount of $2,500 paid. He notionally added on an amount of $6,000, being money that Mr Peter Keogh owed to him, to come to an amount of $8,500. (T40) This, he said, was an amount which represented both what the horse cost him and what the value of the horse was.

As noted earlier, there was no evidence given as to what "*landed cost*" meant, as between Mr Whitehouse and the appellant. There is at least some room to accept that the agreement between Mr Whitehouse and the appellant was that Mr Whitehouse pay one third of the value of the horse, as described by the appellant, if the landed cost was to be treated the same as value.

There was no obligation, either express or implied, on the appellant to disclose to Mr Whitehouse how he (the appellant) arrived at a value.

In our opinion, there was no evidence on which the Stewards could base their findings that misrepresented the value and worth of the horse, those matters being incapable of precision in any event. (T15, the comments of the Chairman). The appellant did misrepresent the price of the horse in his evidence to the inquiry, but there was not sufficient evidence before the Stewards that the appellant and Mr Whitehouse agreed that the money to be paid by Mr Whitehouse was to be one third of the price, or even the landed cost (whatever that may have meant).

The terms of the agreement between Mr Pizzino and the appellant, as admitted by Mr Pizzino, lend even less support to the Stewards' findings. In a hand written note (part of Exhibit 3), Mr Pizzino wrote "... *as I later found out, the amount I payed (sic) was far greater than the horse actually cost* ...". The terms of the agreement, expressed by Mr Pizzino in simple terms at T37, were "... *it's a three-way split* ...".

That evidence, however, is inconsistent with what Mr Pizzino later said, at T39. "*Now, I'm not naive. Mr Sangalli would've made $1,000 on that horse.*"

The only interpretation which could reasonably be put on Mr Pizzino's comment about his expectation is that he expected the appellant to somehow (unknown) profit by $1,000 out of what was said to be a three-way split.

Apart from being inconsistent, that evidence is also characteristic of the uncertainty of the evidence relating to the agreement between the appellant and Mr Pizzino. There was no evidence from Mr Pizzino as to what was to be split three ways. It was either the amount the appellant paid to Mr Peter Keogh, that amount plus an extra amount to "*land*" the horse in Western Australia, or even the value of the horse as calculated by the appellant.

In all of the circumstances, there were no facts found by the Stewards which were precise enough to lead to a finding of dishonesty on the part of the appellant in his dealings with both Mr Whitehouse and Mr Pizzino.

For these reasons, we allowed the appeal against conviction in respect of the alleged breach of Rule 474 (Appeal 462).

APPEAL 461 - FALSE INFORMATION

THE LAW - FALSE INFORMATION

In order to attract the operation of the rule, the false evidence given by the appellant had to be relevant. That is reflected in the requirement that the matter under consideration must be "*connected with harness racing*". Here, the Stewards inquiry was into allegations regarding the purchase price of the pacer KOTARE TRUST.

THE FACTS - FALSE EVIDENCE

In contrast to the evidence concerning the allegation of fraudulent behaviour, the evidence concerning the charge of giving false evidence was clear, concise and compelling. As pointed out in ground of appeal numbered B.3. (a), there were a number of instances of false evidence. Each of them was demonstrably proved by reference to the exhibits and transcript. Indeed, the appellant went as far as to confess to each of the instances.

At the inquiry on 22 December 1998, the appellant said that the purchase price to Mr Peter Keogh was $8,500. (T11). At T17, he said that he sent $3,000 by cheque and $5,500 in cash. Within the

space of two lines of transcript, the appellant changed his story to say that he still had the $5,500, some two years after the event.

The Stewards then got Mr Peter Keogh on the telephone. He gave evidence that he had actually received $6,000 cash in the mail. As it later transpired, he was incorrect. He later claimed to have been mistaken. (Exhibit 4). It is clear, however, that the appellant had put Mr Peter Keogh up to telling a lie on his (the appellant's) behalf.

After Mr Peter Keogh had given the incorrect evidence, the appellant was confronted with the unfortunate situation that the two lies did not coincide. When confronted with the obvious (at T31) the appellant said, of own evidence *"I don't think it's a lie"*.

It clearly was a lie, as the appellant later admitted. (T71, T79).

The ground of appeal in relation to this conviction asserts that the charge was duplicitous. Indeed it was. There was more than one "*activity*" alleged in the one charge. The appellant, if he really did have any answer to the charge and its individual parts, would be prejudiced in his defence. However, he had no answer to it.

It is true that, when the charge was put to the appellant, he pleaded not guilty. (T71). However, his plea of not guilty was accompanied by a rambling explanation consistent with his earlier attempts to avoid the issues. When actually pressed on the point, after the formal conviction, the appellant said "*There was a reason*". In other words, the appellant admitted his guilt, despite his plea of not guilty.

It cannot be said therefore that the appellant was prejudiced in his defence to the charge, because there was no defence. He admitted his guilt.

In reaching this conclusion, we note that the rules of procedure applicable in criminal courts regarding charge, duplicity, plea, finding and mitigation, are not directly applicable to the conduct of a Stewards' inquiry. The Stewards preside over a domestic tribunal. The rules of summary criminal procedure, developed over several centuries, are often a useful framework for the Stewards to use to ensure that natural justice is done. In the end, they are only a guide, and the true question really is whether natural justice was done.

In this case, despite the duplicity of the charge, natural justice was done. The evidence was overwhelming. The appellant admitted his guilt. No injustice was done to him.

For these reasons, we dismissed the appeal against conviction.

APPEAL AGAINST PENALTY - FALSE EVIDENCE

The imposition of a penalty is a matter of discretion. A penalty will not be overturned an appeal unless it can be shown that it was imposed a wrong factual basis, or that there was an error in principle. The penalty itself may be so outside the range of penalties commonly imposed that it demonstrates error itself.

In this case, it is clear that the Stewards made no error of fact or principle. They took into account what the appellant said on his own behalf, and the fact that he was a first offender.

On the appeal before us, a document was tendered being a print out of penalties for breaches of Rules 464(a) and (b) going back as far as 1994. That document shows that penalties have been imposed of between six months disqualification and fines of $200. It is clear then that the penalty

imposed in this case, namely six months disqualification, was not outside the range. Further, the sustained and deliberate nature of the giving of the false evidence put this case at the upper end of the range.

For these reasons, the appeal against penalty was also dismissed.

PATRICK HOGAN, PRESIDING MEMBER