

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

**APPELLANT:**                      **LENI SALVATORE CELENZA**

**APPLICATION NO:**              **A30/08/702**

**PANEL:**                              **MR D MOSSENSON (CHAIRPERSON)**

**DATE OF HEARING:**              **9 JANUARY 2009**

**DATE OF DETERMINATION:** **20 FEBRUARY 2009**

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**IN THE MATTER OF** an appeal by Mr L S CELENZA against the determination made by the Racing and Wagering Western Australia Stewards of Greyhound Racing on 19 November 2008 against a conviction and fine of \$250 for breach of Rule 86(f)(i) of the Rules of Greyhound Racing.

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Mr A Kinnish was granted leave to appear for Mr L Celenza.

Mr D Borovica represented Racing and Wagering Western Australia Stewards of Greyhound Racing.

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**BACKGROUND**

Mr L S Celenza, an experienced trainer of greyhounds, appeals against both his conviction and fine of \$250 for breach of Rule 86(f)(i) of the Rules of Greyhound Racing. The Rule states:

*'A person (including an official) shall be guilty of an offence if the person- ...*

*(f) engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous,*

*unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to*

(i) *a Steward ...'*

Following the running of race nine at Cannington on 8 November 2008 Mr Celenza was interviewed by three Stewards in the presence of the course Veterinarian regarding two issues. One was the apparent poor performance of APACHE FLYER in the race. The other was Mr Celenza's conduct after the race. During the interview Mr C Martins, the Chief Steward, told Mr Celenza he had received a complaint regarding Mr Celenza's conduct in the Veterinary Surgeon's room immediately following the running of the race. The complainant was Stipendiary Steward Mr G O'Dea who had asked Mr Celenza the simple question, *'what were your thoughts on the run?'* Mr O'Dea commented on the reaction to his question in the following terms:

*"And from there Mr Celenza, in a loud and aggressive tone, has then barked back at me..."*

*The problem was the tone, the body language that Mr Celenza had towards me and this all happened in the Veterinarian's room and which I felt was totally unacceptable for someone like a trainer. I was just asking for a comment and I felt Mr Celenza's actions were inappropriate to say the least..."*

Subsequently, on 19 November 2008 the Stewards held a formal inquiry into the matter. Both Mr Martins and Mr O'Dea were involved as witnesses in the proceedings. The inquiry was conducted before Mr D Borovica, Manager Licensing/Registrations & Stewards Administration, Mr P Searle, Stipendiary Steward, and Mr C Courtland, Cadet Steward. Mr Celenza raised a number of arguments at the inquiry in defence of his behaviour, including the fact that:

- it was *'incorrect protocol'* to ask the question in the vet's room and it should have been in the Stewards' room;
- due to his hearing problems he speaks very loudly; and
- he was upset with the way the performance of his dog had been described.

Early in the proceedings Mr Celenza had acknowledged that he was *'loud'* in his response but he denied he was *'vigorous'*. Mr O'Dea gave evidence that in the context of previous discussions he had engaged in with Mr Celenza the one under review was the loudest of all time. Mr O'Dea claimed that:

*"the action of Mr Celenza...was above and beyond...without any shadow of doubt...what I would call appropriate for a Trainer to be behaving towards a Steward, who was simply carrying out his duties on the night."*

Mr O'Dea's evidence was that he did not in fact have *'a conversation'* but rather Mr Celenza was very animated with a loud and aggressive tone and he had *'...launched into a tirade of mumbo jumbo...'* The evidence was that the one way communication went on for some 30 seconds. As a consequence of the commotion and yelling that Mr Martins heard

coming from the Veterinarian's room Mr Martins entered the room. He told the inquiry he observed Mr Celenza *'shouting in an aggressive attitude towards Mr O'Dea.'* Mr Celenza did then acknowledge to the Stewards that he was aggressive in his attitude. During the course of the inquiry Mr Celenza apologised for his behaviour.

Mr Martins also gave evidence that the last time he spoke to Mr Celenza it was in connection with Mr Celenza's reaction to his greyhound's performance. Mr Martins was not satisfied with Mr Celenza's attitude on that occasion and had warned him to be careful how he addressed Stewards.

The video of the incident which was shown to the Steward's inquiry revealed the animated conduct although the sound was not recorded.

As a consequence of what emerged at the inquiry a charge was laid, supported by the following particulars:

*"...during the race meeting at Greyhounds WA - Cannington on Saturday 8 November 2008, whilst in the Veterinary Surgeon's room, you Mr Celenza being an Owner/ Trainer when speaking to Mr O'Dea, did so in an improper manner and have subsequently engaged in improper behaviour towards a Steward..."*

Mr Celenza pleaded not guilty. The Stewards went on to make the following findings:

*"...your behaviour was unacceptable in relation to the manner in which you spoke to him. The evidence of Mr Martins supports the report of Steward O'Dea and in fact clearly shows that your behaviour was such that it diverted his attention to the Vet's room and which brought him to also have to issue you a caution with regard to your behaviour, a fact acknowledged by you. He further confirmed that the volume of your behaviour towards Steward O'Dea, was of an unacceptable standard. The course Veterinarian, Dr Peter Thomas, who was in the Vet's room during the incident, described your conduct towards Steward O'Dea as yelling. That evidence was unchallenged by you at the time that it was given. This panel has also had the benefit of viewing a video of the surveillance footage available from the Vet's room that evening...exhibit 3 for the record...and whilst not having the benefit of sound, it clearly portrays an angry person, animated and consistent with the descriptions given by the witnesses. You've openly admitted...at your own admission...that you were angry at the time and that your voice was raised and that you were loud...and...found your behaviour to be beyond an acceptable standard."*

Mr Celenza gave evidence of having been a trainer for some ten years. This was not his first offence. The Stewards subsequently issued some reasonably detailed findings in relation to the penalty explaining how they reached the conclusion to impose a fine of \$250.

## **THE APPEAL**

The grounds of appeal specified in the appeal notice simply state *'Against the findings Penalty on charge 86(f).'*

After entertaining some initial argument from Mr Kinnish I engaged in a discussion on the point then being addressed. Eventually Mr Kinnish acknowledged, despite the early propositions he had presented to the contrary, there was in fact nothing wrong in principle with a trainer being asked a question regarding the performance of his dog in a race whilst in the Veterinary's room. I am more than satisfied there can be no doubt regarding the appropriateness of dealing with such an issue in such a location. Clearly the Stewards are at liberty to ask licensed persons any relevant questions anywhere at the raceway, and in particular in the privacy of one of the dedicated facilities where the Stewards perform their official duties. Further, there was nothing out of the ordinary in the way the question was framed. On the contrary, the question was both relevant and posed in an entirely proper and reasonable manner.

As the argument unfolded Mr Kinnish said he took exception to the one particular sentence in the Steward's findings which reads:

*"All witnesses have previously had occasions to speak with you and have unanimously found your behaviour to be beyond an acceptable standard"* (p 40 of the transcript).

According to Mr Kinnish this sentence reflected the fact that the Stewards were biased in their attitude to Mr Celenza. Consequently, this influenced their opinion and led them to find Mr Celenza guilty. I was told the Stewards erred in not dealing only with the offending behaviour which occurred on the night in question. Mr Kinnish agreed that the quoted passage was the only sentence he took exception to in the Stewards' reasons and that he regarded it as improper or inappropriate.

I allowed Mr Kinnish to pursue the argument of bias only because there was no objection raised by the Stewards to the proposition. But I did so reluctantly. This very serious assertion had not been raised as a ground of appeal. However, I was prepared to allow the appellant who was not legally represented to exhaust all avenues even although this issue was not properly before me. An allegation of bias whenever it arises needs to be formally framed as a ground of appeal. The precise nature of the allegation must be made entirely clear. This is usually achieved with some particulars detailing the circumstances which highlight or identify the alleged problem. Without those standard factors being adhered to there is little or no prospect of success with such a proposition. This is particularly relevant in a case like the present where the transcript of the Stewards' inquiry reflects a very open and fair minded approach. Nothing was advanced in support of the bias allegation which even gave a hint of a suggestion the Stewards were unable or did not decide the case with anything but an open mind. Based on what I have read in the transcript and was told in the course of the appeal hearing no reasonable observer would possibly have gained the impression, had they been present at the Stewards' inquiry, that the Stewards had dealt with the matter without having completely open minds and being uninfluenced by preconceived notions.

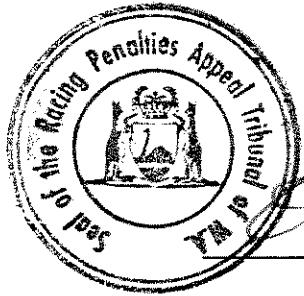
I am more than satisfied that the allegation in this case falls completely short of the mark. When one looks at the reasons as enunciated it is clear that the Stewards, whilst acknowledging past circumstances, have clearly exercised their minds on the merits. I am satisfied the Stewards only addressed the quality and appropriateness of the behaviour on the night in question and reached the appropriate conclusion that it (and only it) warranted arriving at the conviction.

As to penalty it was argued from Mr Celenza that \$250 was excessive and a \$100 fine would be more in keeping with the matter. However, no other cases were cited in support of the proposition except for a recent fine imposed on Mr Leib \$150.

Mr Borovica referred to previous cases with a range of fines imposed from \$100 to \$5,000 (reduced on appeal to \$2,500 (Luciani (Appeal 668))). The discretion available is to impose a fine up to \$100,000.

I am not persuaded that there was any error committed by the Stewards in imposing a fine of \$250 in the circumstances of this matter.

To ensure the Stewards are to carry out their important duties they must be able to communicate with and receive feedback from licensed persons participating in the sport of greyhound racing in both a practical and timely manner. There can be no room in racing for inhibiting or obstructing the Stewards in the performance of their duties. The ratification of the conviction and fine should not only be a salutary lesson to Mr Celenza, who has had previous problems with his behaviour in relation to racing officials, but also an appropriate message for all industry participants. The Stewards are not only entitled to ask any fair, relevant and reasonably put questions to any licensed individual, but they also must receive objective and rational answers in response.



A handwritten signature in cursive script, appearing to read "Dan Mossenson", is written over a horizontal line.

**DAN MOSSENSON, CHAIRPERSON**