

IN THE RACING APPEALS TRIBUNAL

GREG BENNETT

Appellant

v

HARNESS RACING NEW SOUTH WALES

Respondent

DETERMINATION OF THE ISSUE OF JURISDICTION

DATE OF DETERMINATION: 15 August 2024

REPRESENTATION: Appellant – Self represented
Respondent – Ms C Chua

DETERMINATION: The Tribunal has no jurisdiction to hear and determine the Appellant's appeal

INTRODUCTION

1. By a Notice of Appeal filed with the Appeals Secretary on 22 July 2024, Greg Bennett (the Appellant) seeks to appeal against a determination made by Harness Racing New South Wales (the Respondent) not to consider an application for a licence. In the circumstances more fully considered below, there is an issue as to jurisdiction which must be determined as a preliminary question. To assist me in resolving that question I have been provided with written submissions on behalf of both parties, along with supporting documentation.

THE FACTS

2. The facts, about which there is no substantive dispute, may be summarised as follows.
3. On 12 August 2021, the Respondent refused the Appellant's application for the issue of a Stable Hand and licence. On 7 February 2024, the Appellant lodged an application for a "B" Grade Driver's licence with the Respondent (the application). Relevantly in this regard, cl 2.23(c) of the Licencing Policy of the Respondent (the Policy) is in the following terms:

Any person who has had an application for a licence refused by [the Respondent] must not make a further application until the expiration of 12 months from the date of such refusal. The Board of [the Respondent] may, however, in its discretion reduce this period.

In circumstances where the decision to refuse a licence has been subject to Appeal, the period of twelve (12) months will not commence until the appeal decision is handed down.

In order for an application to be submitted following the expiration of twelve (12) months, the Applicant is required to demonstrate changes in their circumstances that would warrant consideration of the subsequent application.

Unless the applicant can satisfy the [Respondent's Licencing Committee] and/or Board that a change in their circumstances would warrant consideration of that subsequent application, the [Respondent's Licencing Committee] and/or Board of [the Respondent] may refuse to consider that application.

4. The effect of this provision in the Policy is that the Appellant was required, in submitting the application, to demonstrate a change in his circumstances so as to allow the application to be considered by the Licencing Committee of the Respondent (the Committee).
5. On 16 February 2024, following receipt of the application, the Respondent wrote to the Appellant in (inter alia) the following terms:

HRNSW received your partial application for a 'B' Grade Driver's Licence on 7 February 2024. On 15 February 2024 your partial application was before the HRNSW Licensing Committee.

At that time it was confirmed that you were previously refused a licence by HRNSW on the basis that you were not a 'fit and proper person'. The decision of HRNSW was confirmed by the NSW Racing Appeals Tribunal on 12 August 2021.

6. Having set out that part of cl 2.23 of the Policy reproduced above, the correspondence went on to state:

In order to address the above clause, please advise the HRNSW Licensing committee of the change/s to your circumstances that would warrant consideration of your application for a 'B' Grade Driver's Licence.

7. On 11 March 2024, the Appellant wrote to the Respondent. In fairness to the Appellant, the contents of that letter should be set out in full:

I write regarding my Application to be granted a B Class Driver's License [hereafter the Application] and in reply to the correspondence of 16 February 2024 from the HRNSW Licensing Committee [hereafter 'the Committee']. I understand the application of Clause 2.2(c) of the HNSW Licensing Policy [hereafter 'the Policy'] to my Application.

There are changes to my circumstances which warrant consideration of my Application by the Committee and/or the Board of Harness Racing New South Wales [hereafter 'the Board']. On 12 August 2021, the Racing Appeals Tribunal New South Wales rejected my appeal.

1. *I have matured since the 12 August 2021 Appeal Decision. I have reflected on and understand the decision, regarding Mr. Amarti's comments regarding my attitude to the regulatory officials of NSW Harness Racing, the important function in keeping safe the integrity of harness racing and the protection of the interests of the public.*

2. *On reflection I now understand my stance within the process of investigation of the Green light scandal was unnecessarily defensive and was potentially obstructive.*
3. *I was distressed and upset to what I saw as an injustice of myself being brought into the serious scandal related to Harness Racing NSW. I was not involved and was innocent of any participation in this.. I was excessively focused on my own feelings and failed to see the bigger picture.*
4. *Consequently I took Legal Counsel and Legal Advice that was well meaning but misguided.*
5. *I could and should have provided answers to the Stewards which should have been forthcoming and full in their content and context.*
6. *I have no difficulty in providing any answers, information or documentation required by the Stewards now in the future. I have never misled the Stewards in my racing career and I will never in the future.*
7. *I seek to provide any information required by the Licensing Committee and or the Board now and in the future. I simply request I be given the opportunity to place my Drivers Application before the Licensing Committee.*
8. *I will make no public comment regarding my Application to ensure the Licensing Committee and or the Board can make any deliberations within a proper atmosphere and context.*
9. *I will provide all banking and telephone records to the Licensing Committee and or Board for the period of my disqualification, absence from the industry and in the future as part of consent condition on the issuance of a License.*
10. *I attach correspondence sent to the Queensland Racing Integrity Commission regarding the withdrawal of my application on 29 January 2024.*

8. On 26 March 2024, the Respondent sent a further letter to the Appellant stating (inter alia) as follows:

In order for an application submitted following the expiration of twelve (12) months, the Applicant is required to demonstrate changes in their circumstances that would warrant consideration of the subsequent application.

Unless the applicant can satisfy the HRNSW Licensing Committee and/or Board of HRNSW that a change in their circumstances would warrant consideration of that subsequent application, the HRNSW Licensing Committee and/or Board of HRNSW may refuse to consider that application.

You were provided with an opportunity to address the above clause by advising the HRNSW Licensing committee of the change/s to your circumstances that would warrant consideration of your application for a 'B' Grade Driver's Licence. Consequently, you provided correspondence dated 11 March 2024 which was presented to the HRNSW Licensing Committee on Thursday 21 March 2024.

At that time the HRNSW Licensing Committee observed that your correspondence did not address the issue of the mobile telephone that was raised during previous interviews with the HRNSW Licensing Committee and previous appeals before the NSW Racing Appeals Tribunal.

To allow the HRNSW Licensing Committee to consider any changes in your circumstances that would warrant consideration of this application, please address the issue of the mobile telephone.

9. The Appellant responded on 22 April 2024 in the following terms:

In further correspondence and in reply to your request for further particulars in regard to a mobile phone that was stolen/lost on 7 September 2011, please find enclosed Statutory Declaration sworn on the 2 April 2024. I am available at the convenience of the Licensing Committee to assist the Committee in its deliberation of my License Application.

10. The Statutory Declaration provided by the Appellant addressed circumstances in 2011 in which he surrendered a mobile telephone to a Mr Reid Sanders who I infer was employed by the Respondent. The Declaration also addressed the fact that a second mobile telephone had purportedly been lost.

11. On 19 July 2024, the Respondent wrote to the Appellant. Having recounted the history of the correspondence set out above, and having again noted the terms of cl 2.23(c) of the Policy, the Respondent stated:

To allow the HRNSW Licencing Committee to consider any changes in your circumstances that would warrant consideration of this application, you were invited to address the issue of the mobile telephone.

You provided a submission, together with a statutory declaration, that were presented to [the Committee] on 26 June 2024.

You were further informed that consideration of your submission and Statutory Declaration would be conducted by [the Committee] to determine whether you have satisfied [the Committee] that there has been a change in your circumstances that would warrant consideration of your application for a "B" Grade Driver's Licence.

[The Respondent] received further correspondence from you dated 4 July 2024 in which you stated your belief "that any reasonable person would regard the matter of the telephone now being put to rest". It is also noted that you refer to another person who is now a "registered person admitted back in the industry".

This correspondence, together with the documents previously provided, were considered by [the Committee] on 17 July 2024

At that time, [the Committee] determined that you have not addressed the previous concerns of the Racing Appeals Tribunal in your previous appeal. [The Committee] were not satisfied that there had been a change in your circumstances that would warrant consideration of your licence application.

Consequently, your application for an HRNSW Licence will not be considered.

THE NOTICE OF APPEAL

12. The Notice of Appeal filed by the Appellant is pleaded in the following terms:

*Appeal is sought against **a decision of the HRNSW Licencing Committee on 17 July 2024** in regard to the application for the issuing of a B Grade Driver License by Greg Bennett filed with HRNSW on 7 February 2024.*

*The NSWHR Licencing Committee under delegated authority from the Board of HRNSW under Policy Appendix "A" Licencing Committee Clause 2.23(c) **determined to not consider the application to HRNSW for Greg Bennett to be issued with a B Grade Driver Licence** (emphasis added).*

THE PRELIMINARY ISSUE

13. It is clear from the terms of the Notice set out in [12] above that the decision against which the Appellant seeks to appeal is "*the decision of [the Committee] on 17 July 2024 ... not to consider the application to HRNSW for [the Appellant] to be issued with a B Grade Driver Licence*".

14. Put simply, the preliminary issue is whether this Tribunal has the jurisdiction to hear and determine an appeal against that decision.

THE RELEVANT LEGISLATIVE PROVISIONS

15. There are a number of legislative provisions which bear upon the determination to be made in this matter. It is appropriate to turn firstly to those which create, and confer power and jurisdiction upon, this Tribunal.

16. The Tribunal is constituted by s 5 of the *Racing Appeals Tribunal Act 1983* (NSW) (the RAT Act). It is, therefore, a creature of Statute. It has no power, jurisdiction or authority, other than the power, jurisdiction and authority conferred by Statute.

17. In terms of the harness racing industry, s 15B of the RAT Act allows a person aggrieved from certain decisions to appeal to the Tribunal in the following terms:

15B Appeals to Tribunal relating to harness racing

(1) A person who is aggrieved by any of the following decisions may, **in accordance with the regulations**, appeal against the decision to the Tribunal—

(a) a decision of the Appeal Panel on an appeal under the *Harness Racing Act 2009*,

(b) a decision for which an appeal is properly made to the Appeal Panel under the *Harness Racing Act 2009* if the Appeal Panel—

(i) neglects or refuses to hear the appeal or

(ii) fails to make a decision on the appeal,

(c) a decision of HRNSW.

(2) HRNSW may, in accordance with the regulations, appeal to the Tribunal against a decision referred to in subsection (1)(a) or (b).

18. Section 17A of the RAT Act confers powers on the Tribunal to make determinations in respect of appeals brought before it. It is not necessary to set out those powers, the exercise of which obviously depends upon the Tribunal being seized of the requisite jurisdiction.

19. Importantly, bearing in mind the use of the phrase “*in accordance with the regulations*” in s 15B of the RAT Act, clause 9 of the *Racing Appeal Tribunal Regulation 2015* (NSW) (the Regulation) prescribes, in the following terms, the decisions from which an appeal lies to the Tribunal:

9 Decisions from which an appeal lies to Tribunal

(1) An appeal may be made to the Tribunal under section 15A or 15B of the Act only in respect of a decision—

(a) to disqualify or warn off a person, or

(b) to cancel the registration of, or to refuse to register, a person, or

(c) to cancel the registration of, or to refuse to register—

*(i) a greyhound (including registration of a greyhound as a sire and registration of a litter of greyhounds), or
(ii) a harness racing horse, or*

(c1) to cancel the registration of, or to refuse to register—

*(i) a greyhound racing club, or
(ii) a greyhound trial track, or*

(c2) to impose a condition on the registration under the Greyhound Racing Act 2017 of any person, greyhound, greyhound racing club or greyhound trial track, or

*(d) to fine a person an amount of \$200 or more, or
(e) to disqualify a greyhound, if the disqualification is made in conjunction with the imposition of a penalty on the appellant or any other person, or
(f) to disqualify any horse from participating in harness racing, if the disqualification is made in conjunction with the imposition of a penalty on the appellant or any other person, or
(g) to suspend any licence, right or privilege granted under the rules, or
(g1) to suspend the registration under the Greyhound Racing Act 2017 of any person, greyhound, greyhound racing club or greyhound trial track, or
(h) to reduce in grade a driver for a period of 4 weeks or more, or
(i) to place an endorsement on the registration certificate of a greyhound for marring or failing to pursue the lure, that gives rise to a suspension of the greyhound for a period of more than 4 weeks, or
(j) relating to the application or operation of a provision of the code of practice deeming greyhound housing areas used before the commencement of the code of practice to comply with the code of practice.*

(2) Expressions used in this clause have the meanings given to them in the rules and, in the case of greyhound racing, in the Greyhound Racing Act 2017 (emphasis added).

20. It follows that in order for this Tribunal to have the necessary jurisdiction in this case, the Appellant must bring the decision against which he seeks to appeal¹ within one of the provisions in cl 9 of the Regulation. If he cannot, the Tribunal has no jurisdiction.

SUBMISSIONS OF THE PARTIES

Submissions of the Appellant

21. Although it is not entirely clear, the Appellant's position appears to be (at least in part) that the decision made by the Committee was a decision "to refuse to

¹ See [12] and [13] above.

register a person” within the meaning of that term under cl 9(1)(b) of the Regulation. The Appellant also relied upon the definitions of the word “*decision*” and “*administrator*” as they appear in the *Administrative Decisions Review Act 1997* (Cth) (the ADR Act). The Appellant submitted that by not considering his application, the Committee made an “administrative decision” which is “*subject to review by appeal*” to this Tribunal.

Submissions of the Respondent

22. The Respondent submitted that this Tribunal had no jurisdiction to hear and determine the proposed appeal. Put simply, the Respondent’s position was that the decision made by the Committee was not a decision to refuse a registration within the meaning of cl 9(1)(b) of the Regulation. The Respondent submitted that this was a case in which, having regard to the terms of the Policy, the Committee determined that it was not satisfied that the Appellant had demonstrated a change in circumstances. This, it was submitted, was not a decision against which an appeal could be brought, having regard to the provisions of cl 9 of the Regulation.

23. In advancing this position, the Respondent also relied on s 11(1) of the *Harness Racing Act 2009* (NSW), as well as principles of issue estoppel and res judicata.

Submissions of the Appellant in reply

24. The Appellant’s submissions in reply took issue with the Respondent’s submissions as to res judicata, and cited the decision of the High Court in *Rola Co. (Australia) Pty Limited v Commonwealth*.²

CONSIDERATION

25. For the reasons that follow, I have come to the view that the Tribunal does not have jurisdiction to hear and determine the proposed appeal.

² (1944) 69 CLR 185.

26. First, the Appellant's reliance upon provisions in the ADR Act is misplaced. There is no application before me pursuant to s 55 of the ADR Act. Even if there was, that Act does not confer jurisdiction on this Tribunal to deal with such an application. Whether this Tribunal has the requisite jurisdiction to hear and determine the proposed appeal falls to be resolved by reference to the provisions of the RAT Act and the Regulation.
27. Secondly, whilst I accept that for the purposes of 15B(1)(c) of the RAT Act the Committee constitutes the Respondent, the exercise of the right of appeal under s 15B(1)(c) can only be exercised *in accordance with the Regulations*. What that means, is that in order for the Tribunal to be seized of jurisdiction, any decision of the Respondent against which an appeal is brought must fall within one of the provisions in cl 9 of the Regulation, which (as its heading makes clear) governs the matters in respect of which an appeal lies to the Tribunal.
28. Thirdly, to the extent that the Appellant may rely upon it, I am not satisfied that his proposed appeal falls within the terms of cl 9(1)(b) of the Regulation. Cl 9(1)(b) makes reference to (inter alia) a decision *to refuse to register a person*. Properly viewed, the Respondent made no such decision. It determined, in accordance with the Policy, that it was not satisfied that the Appellant had shown the necessary change in circumstances to allow his application to be considered. That is not a refusal within the meaning of cl 9(1)(b).
29. Fourthly, and leaving aside cl 9(1)(b), I am satisfied that there is no other provision in clause 9 within which the proposed appeal would fall. That being the case, the decision of the Respondent is not one against which an appeal lies to this Tribunal under cl 9.
30. In these circumstances, it is not necessary for me to consider the provisions of the HRA, or matters of issue estoppel and res judicata. It is clear, simply on an interpretation of the relevant legislation, that the Tribunal has no jurisdiction to hear the proposed appeal.

ORDERS

31. The Tribunal has no power to make any order dismissing the appeal because it does not have jurisdiction.

32. It would seem fair in the circumstances that any appeal deposit be refunded. However, given that the proposed appeal is a nullity, I have no power to make that order. It will therefore be a matter for the Respondent as to what is to happen in that regard.

THE HONOURABLE G J BELLEW SC

15 August 2024