

RACING APPEALS TRIBUNAL
QUEENSLAND

NOTICE OF DECISION

APPEAL NO: RH005-09

DATE: 27 July 2009

APPELLANT: Metropolitan Harness Racing Club Rocklea Inc.

RESPONDENT: Harness Racing Queensland Limited

APPEARANCES: Mr J E Murdoch SC instructed by Gallagher Legal appeared on behalf of the Appellant

Mr Peter Callaghan SC instructed by Mr A Harris of Schweikert Lawyers appeared on behalf of the Respondent

REASONS FOR JUDGEMENT

Mr Leo Williams AO Chairman

Mr Brock Miller – Deputy Chairman

Mr Dennis Standfield – Member

This is an application by the Metropolitan Harness Racing Club Rocklea Inc (Rocklea Club) in two parts:

1. For an extension of time for the lodgement of an appeal against a decision of Harness Racing Queensland Limited (HRQ) pursuant to Section 168(4) of the *Racing Act 2002*; and
2. An application for a stay of proceedings under Section 170 of the *Racing Act* in relation to “a decision” by the HRQ not to extend the licence of Rocklea Club to continue to conduct racing at Rocklea beyond 31 July next.

The material before the Tribunal was largely confined to an affidavit of Mr Michael Godber, the Chief Executive Officer of HRQ. Appended to that affidavit was an exchange of correspondence setting out a recent history of dealings between the parties. A decision was made on 9 June that HRQ determined not to license Rocklea Club to race at Rocklea beyond 31 July next.

It appears that this was communicated around 23 June but it certainly had been in the contemplation of the parties for some time before that. Contained in the material inter alia is a letter from Woods Prince Lawyers dated 12 March 2009 indicating that HRQ had advised Rocklea Club that it was to cease operations at the end of the financial year i.e. 30 June 2008. The only relevance of this letter to the present applications is the fact that at that time Rocklea Club had access to legal advice. When canvassing the exchange of correspondence, it appears the parties agreed that the licence would extend at least until 31 July 2009.

In any event the decision was made in early June that the licence would not be renewed and was communicated to Rocklea Club at the end of June.

The only reason advanced in the appellant's material for supporting the application for extension of time was that HRQ did not notify Rocklea Club of its rights to appeal the decision of HRQ. Mr Murdoch SC put a series of other submissions about solvency and implied or agreed rights of renewal to support his clients application but there was little in the material available to support the application.

There was also an argument by Mr Murdoch SC that HRQ should have taken advantage of the show cause/cancellation procedures contained in the Act but again these do not cover the situation as disclosed to the Tribunal.

Mr Peter Callaghan SC Counsel for HRQ argued in respect of both issues that Rocklea Club needed to establish that it had

- (a) a case on appeal with reasonable prospects of success
- (b) that Rocklea Club would be severely disadvantaged if a stay was not ordered
- (c) that there would be a disadvantage to HRQ which outweighed the disadvantage suffered by Rocklea Club if a stay were not granted.

He cited the case of *Asia Pacific International Pty Ltd –v- Peel Valley Mushrooms and Anor* [1999] 2 Qdr 458 as the authority for this proposition.

While the Tribunal is prepared to accept that there will be disadvantage to Rocklea Club were a stay not granted, there is equal evidence available that if a stay were granted HRQ will be subjected to significant financial disadvantage in its obligation to continue to fund Rocklea Club to conduct its activities beyond 31 July.

A major stumbling block for Rocklea Club appears to be whether it has a prospectively successful or even arguable case on appeal. In the time available Mr Murdoch SC was not able to adduce evidence to support Rocklea Club's case. The bulk of the evidence before the Tribunal was submitted in the affidavit of Mr Godber the CEO of HRQ. There were audited financial reports for the year ended 30 June 2008, a business plan, an exchange of correspondence relating to the business plan and an analysis by HRQ of the projections upon which Rocklea Club based its forecasts. All of this pointed to a parlous financial position calling into question the ability of Rocklea Club to meet its debts as and

when they fall due especially without the direct and significant support of HRQ who say such will not be forthcoming.

Mr Murdoch SC was insistent that Rocklea Club's trading position and cash position was sound but it is hard to accept that on what was available to the Tribunal. Many of the assertions that would support that proposition are in the form of optimistic assessments of increased fees and increased turnover, not justified when compared to any historical analysis.

A major difficulty the Tribunal has in coming to grips with the application is what decision it is that the Tribunal must stay. Rocklea Club's licence has been renewed annually for 50 years but as of July 2009 it has not been renewed and expires on 31 July 2009. It seems that the Tribunal is being asked to deal with a situation in which there is a refusal to renew a licence. On the material before the Tribunal, it can only conclude that HRQ were within its rights and were justified in reaching conclusions they have to support the decision not to renew.

On that basis alone, the Tribunal considers that Rocklea Club has not made out sufficient grounds to conclude that it has any reasonable prospects of a success on an appeal against any decision or refusal to make a decision or deemed refusal to renew the licence. As to the question of an extension of time for the bringing of the appeal beyond the 14 days allowed by the legislation the applicant has not shown any real basis for the tribunal to grant such. Rocklea had access to legal advice as mentioned above and there appears to be no basis upon which this Tribunal should exercise its discretion in favour of the applicant .

The relief sought in the application is therefore denied, both as to an extension of time and a stay of the decision of HRQ.

Leo Williams AO
Chairman

Brockwell Miller
Deputy Chairman

Dennis Standfield
Member
