

# **RACING APPEALS TRIBUNAL**

## **QUEENSLAND**

**APPEAL NO:** RH010-07

**DATE:** 29 November 2007

**APPELLANT:** Darren Ian Hooper

**RESPONDENT:** Queensland Harness Racing Board

**APPEARANCES:** Mr D Keane of Counsel on behalf of the Appellant,  
Darren Ian Hooper; and  
Mr A W Duffy of Counsel instructed by Scweikert  
Lawyers on behalf of the Respondent, Queensland  
Harness Racing Board

### **REASONS FOR DECISION**

Darren Ian Hooper was the holder of a B Grade Trainers Licence under the auspices of the Queensland Harness Racing Board for the 2006 – 2007 season. Prior to his applying for a similar licence for the 2007-2008 season, the Appellant was required to attend before the Licensing Sub-committee of the QHRB and did so on August 24. The enquiry was opened to consider various complaints, allegations and other incidents, that had been brought to the attention of the Board and to consider whether it was appropriate to grant a licence for the forthcoming season. During the course of the enquiry, the Appellant was asked whether he had any qualm about providing a police certificate and his response was that he was in no way concerned and he subsequently took steps to obtain that police certificate. Upon receiving the certificate, he noted that there had been a conviction recorded against him on 24

April 2006 relative to the possession of a dangerous drug, the results of which was he was convicted and fined \$300 and in default he was to be imprisoned for five days and was given five days to pay. He says he immediately contacted a representative of the QHRB and provided a copy of that certificate and made a claim that he had completely overlooked the conviction.

The initial enquiry had been adjourned without any decision on his renewal of licence being made because he was disqualified on the 30 August 2007 for an offence under the Equine Influenza Virus legislation. That disqualification was subsequently reduced on appeal to suspension and he sought to reappear before the sub-committee after he submitted the police certificate. He appeared before that committee on 30 October and was questioned as to why he had failed to disclose the conviction in both his 2006–2007 and 2007–2008 application for a licence. In the transcript, Mr Hooper identified that the conviction related to a marijuana joint and that it had slipped his mind when completing the original application because the mother of his daughter had left both he and his daughter to return to Ireland after having come back to Australia after decamping some considerable time earlier placing him under considerable stress, Mr Hooper appeared before this Tribunal, at which he gave evidence under Oath to explain that at the relevant time, he had been most disconsolate that he had once again been left to care for his disabled daughter and that he had tried to put behind him the conviction. He attempted to explain this attitude because of the youthful exuberance that his daughter exhibited and the fact

that he was concerned that he may well think that as her father had smoked marijuana and been the subject of a conviction then it would be alright for her to do likewise. Whether that was the correct thing for him to do or not is debateable but suffice to say his evidence before this Tribunal was convincing and most assuredly he exhibited a strong intention to protect his daughter at all times. In his words, he told us "I simply shut out the conviction and had no further thought about it". The resumed enquiry adjourned to enable the Board to seek legal advice. It should be noted that legal advice had previously been provided to the CEO of the Board on the morning prior to the resumed enquiry and subsequently a further letter of advice was provided for the Board to consider. It appears that the Board accepted the advice to some degree at least but made its own determination that it refused the application for the 2007–2008 season and followed the recommendation made to it by the Licensing Sub-committee to not grant the licence.

It was as a result of that determination that this appeal was lodged. The question for determination by this Tribunal was simply whether the Board acted fairly in refusing to grant the Licence. Of course, Counsel for the Appellant argued that he did not do so and in his written submissions, considered that the Board failed to take into account a number of material considerations not the least of which was that it was Mr Hooper who disclosed the offence through the provision of the certificate from the Police and that he did so willingly and with alacrity. To his credit, Counsel for the Respondent accepted that the offence, the subject of the charge, in the Police

certificate would not of itself, ordinarily be capable of sustaining a determination not to grant a licence. There is no doubt that the Board would have erred that if it refused a licence on that background. It was however, Counsel's view that Mr Hooper had not merely overlooked the offence but had intentionally refrained from disclosing it at the time of the 2006 and subsequent applications. In his evidence in chief and also under cross examination, Mr Hooper was adamant that he had taken steps to effectively shut that conviction out of his mind solely for the purposes of the well being of his child. He gave consistent and truthful evidence in that regard.

It seems obvious, that had the offence been disclosed at the initial stage, then the licence would have been granted and this appeal would have been unnecessary. One question for determination is whether Mr Hooper intentionally meant to deceive the Board and to therefore purposefully withhold information that might otherwise dissuade that Board from acting against him. In our opinion, Mr Hooper's demeanour and his evidence does not support this contention and we consider that it was unfair of the Board to rely on an oversight of this nature to support a recommendation that he be refused a licence. We believe that a reasonable person having considered all the material evidence would have no compunction whatsoever in granting the licence, based on the material placed before this Tribunal and on that which was placed before the Licence sub-committee.

In the circumstances, we believe this appeal should be upheld and we accordingly order and direct that the matter be referred back to the Queensland Harness Racing Board for that Board to grant to the Appellant the Licence for which he had applied.

We order that the deposit be refunded.

Mr Brockwell Miller  
Deputy Chairman

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Mr Dennis Stanfield  
Member

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