

## TASMANIAN RACING APPEAL BOARD

### Appeal No 24 & 25 of 2017/18

<b>Panel:</b>	<b>Tom Cox (Chair) Kate Cuthbertson Wendy Kennedy</b>	<b>Appellant:</b>	<b>Richard Hodgetts</b>
<b>Appearances:</b>	<b>Anthony O'Connell on behalf of the Appellant Adrian Crowther on behalf of the Stewards</b>	<b>Rules:</b>	<b>Australian Harness Racing Rule 209</b>
<b>Heard at:</b>	<b>Hobart</b>	<b>Penalty:</b>	<b>\$500 fine for each offence</b>
<b>Date:</b>	<b>20 June 2018</b>	<b>Result:</b>	<b>Appeal dismissed</b>

### REASONS FOR DECISION

#### Background

1. On 30 April 2018, Mr Richard Hodgetts (the appellant) submitted eight Notification of Transfer of Ownership forms (transfer of ownership forms) in respect of horses he part-owned. Two of those horses were called DRIFTING AWAY and ANOTHER SWINGER. DRIFTING AWAY had been owned by the appellant, Robert Cunningham and Michael Felmingham. The consequence of the transfer of ownership in respect of that horse was that ownership was transferred to the appellant, his brother Neville Hodgetts and Michael Felmingham. In respect of ANOTHER SWINGER, that had been owned by the appellant jointly with Robert Cunningham. The effect of the transfer of ownership was that the horse was owned in three equal shares by the appellant, Neville Hodgetts and Michael Felmingham.
2. When the appellant submitted the transfer of ownership forms, Ms White, an administrative assistant at the Office of Racing Integrity (ORI), noted that some of the horses were claiming horses. She advised the appellant that the transfers he was lodging would impact the eligibility of those horses if they were to be nominated for the claiming race program that week. The appellant was aware that DRIFTING AWAY and ANOTHER SWINGER were nominated for that claiming race. He was given two blank Authority to Nominate and Transfer Horses in Harness Claiming Races forms (Claiming

Authority forms) and was told they would need to be lodged before the close of nominations at 1.00pm that same day for the horses to be eligible.

3. At approximately 12.30pm, the appellant returned to ORI with the two completed claiming authority forms for DRIFTING AWAY and ANOTHER SWINGER. When those forms were processed by ORI on 1 May 2018, the signatures on them were compared with those on the transfer of ownership forms. It was noted that Mr Felmingham's signature was different on the Claiming Authority forms. The Chairman of Stewards was notified.
4. Stewards commenced an investigation. The Chairman first contacted Mr Felmingham by telephone and recorded that phone call. During that conversation, Mr Felmingham confirmed that he signed transfer of ownership forms for ANOTHER SWINGER and DRIFTING AWAY on Sunday 29 April 2018. This occurred at the appellant's house. He was asked if he had filled out any other paperwork relating to those two horses. He told the Chairman that was the only paperwork he filled out. He was then questioned about the Claiming Authority forms that were received in respect of those two horses. He was asked, "You haven't signed those papers?" and he responded "No". He told the Chairman that the appellant said to him that he had to go and sign them "this week". This interview took place on 2 May 2018. He was asked by the Chairman, "But you haven't done that at this time?". He responded "No I haven't done that yet". He told the Chairman he did not know anything about paperwork that had been submitted with his name on it and with a signature that did not look like his signature.
  - a. The Chairman then contacted the appellant by telephone. That phone call was also recorded and a transcript generated. The appellant was asked about the transfer of ownership forms that were submitted in respect of DRIFTING AWAY and ANOTHER SWINGER. He confirmed that Mr Felmingham had signed the transfer of ownership forms. He was then questioned about the Claiming Authority forms. He was advised that Mr Felmingham had been spoken to by the Chairman about the forms. The following exchange occurred:

Mr Crowther: "So, what can you tell me about the completion of those forms?"

Mr Hodgetts: "They were as stated on the form, as far as I know."

Mr Crowther: "So when did you take those forms away and who signed them?"

Mr Hodgetts: "Neville and Michael."

Mr Crowther: "Okay. Are you sure about that?"

Mr Hodgetts: "Well, I, I don't know which forms cause there were two forms..."

Mr Crowther: "Okay. Let me be really clear..."

Mr Hodgetts: "(INAUDIBLE) so, I mean I'm going to reserve what I'm saying because I don't know which forms you're actually alluding to..."

Mr Crowther: "So the forms I, the forms I'm alluding to..."

- Mr Hodgetts: "(INAUDIBLE) were actually filled in twice."
- Mr Crowther: "The forms I'm alluding to are, is a form titled Authority to Nominate and Transfer Horses in Harness Claiming Races..."
- Mr Hodgetts: "Yeah."
- Mr Crowther: "And the first form relates to ANOTHER SWINGER (INAUDIBLE)."
- Mr Hodgetts: "That would have been twice, and one was rejected so, I'm not certain which forms you, they actually handed in".
- Mr Crowther: "So the form I've, so do you, did return these forms to the office personally?"
- Mr Hodgetts: "I did, but there was, I don't know now which, because they were handed, we filled them in twice, I don't know which ones I've actually handed in now..."
- Mr Crowther: "Right."
- Mr Hodgetts: "So I'm getting confused because we (INAUDIBLE) horses, handed in, I had to keep going away, there was confusion about whether they've accepted, all this sort of stuff. So I'm really not certain which forms you received because they had to be done twice."
- Mr Crowther: "Okay, so what I'll tell you is this, that the forms that concern me are two relating to ANOTHER SWINGER and DRIFTING AWAY."
- Mr Hodgetts: "Yes."
- Mr Crowther: "They were received on Monday, and you confirm you brought those papers in on Monday, about lunchtime?"
- Mr Hodgetts: "I brought papers in on Monday, yes."
- Mr Crowther: "Yeah, okay. So there were some Transfers of Ownership you brought in the morning..."
- Mr Hodgetts: "Yes."
- Mr Crowther: "...and you then informed that for the horses to be able to race in a claiming race, Authority to Nominate and Transfer in Claiming Races form had to be filled out as well."
- Mr Hodgetts: "I believe so."
- Mr Crowther: "And then you took those forms away and you brought them back a short time later."
- Mr Hodgetts: "I had to go out to Mowbray to the various residences to find the people."
- Mr Crowther: "Yep. So did you go to Mr Felmingham's residence?"

- Mr Hodgetts: "He came to mine, he was at my residence when he signed it."
- Mr Crowther: "Right."
- Mr Hodgetts: "Well he signed the first one anyway."
- Mr Crowther: "See, the problem is which one."
- Mr Hodgetts: "Again, I don't know which one you're referring to because..."
- Mr Crowther: "Let me be really clear. The transfer..."
- Mr Hodgetts: "Listen, Adrian..."
- Mr Crowther: "Yep."
- Mr Hodgetts: "I'm not going to say anymore because I'm not going to say something that's going to be a lie because there was two lots of forms and if I've handed in the wrong one, I could be committing a lie and I don't want to do that."

5. The stewards conducted an inquiry in relation to the discrepancies in the signatures. During the course of that inquiry, Mr Hodgetts accepted that he submitted the Claiming Authority forms which were not signed by Mr Felmingham. He told stewards that although he had completed the signature on those forms, he had submitted the forms inadvertently. He asserted that he had forms actually signed by Mr Felmingham but had accidentally lodged the ones that he had signed.
6. Stewards determined to proceed with two charges against the Appellant under AHR 209 which provides as follows:

"A person employed, engaged or participating in the harness racing industry shall not knowingly or recklessly furnish false information to the controlling body, the stewards, or anyone else."
7. The particulars of that charge were as follows:

"...that you, as a registered owner of DRIFTING AWAY have on the 30th April 2018 have knowingly submitted to the Office of Racing Integrity an authority to nominate and transfer horses in claiming races form relating to the horse DRIFTING AWAY which you have signed for Mr Felmingham where his signature was required."
8. A second charge under AHR 209 was also proceeded with in respect of ANOTHER SWINGER, the particulars of which were "...that you the on 30th April 2018 knowingly submitted to the Office of Racing Integrity an authority to nominate and transfer horses in claiming races form which you have signed for Mr Felmingham where his signature was required".
9. The appellant reserved his plea in respect of both matters.

10. Stewards found him guilty as charged on both counts. They found that the appellant by his own admission completed signatures for Mr Felmingham in his own hand where Mr Felmingham's signature was required and knowingly submitted those forms to the Office of Racing Integrity. Following further submissions, they imposed a \$500 fine in respect of each of the charges.
11. The appellant has appealed against both his conviction and penalty.

### **Grounds of appeal**

12. The appellant's grounds of appeal are as follows:
  - a. That the Stewards' penalty was manifestly excessive as they failed to properly take into account the circumstances that related into the lodgement of documents at the Office of Racing Integrity.
  - b. That the Stewards' determination of guilt was not supported by any evidence that false documents were furnished "*knowingly or recklessly*" at the Office of Racing Integrity.
  - c. That the Stewards failed to acknowledge or take into account the evidence and circumstances which show reasonable doubt about any intent to furnish false information "*knowingly or recklessly*".

### **The Inquiry**

13. Mr Felmingham was questioned during the course of the inquiry. He confirmed that it was his signature on the transfer of ownership forms in respect of ANOTHER SWINGER and DRIFTING AWAY. He also confirmed that he had not signed the Claiming Authority forms submitted by the appellant on 30 April 2018 in respect of DRIFTING AWAY and ANOTHER SWINGER. He indicated that the answers he gave to the Chairman during the telephone interview including that he had not filled out any other paperwork in respect of the horses was a true statement. He then told stewards that at the time of that telephone interview, "it was a bit hard to hear because it was on the side of the road and to be honest I didn't have a clue what was going on". He indicated he had previously signed a Claiming Authority form when he bought DRIFTING AWAY, but confirmed that was during its previous ownership. He told stewards that his way of thinking at the time was that the appellant was a manager and "he could, if I give him my authority he should be able to do it, because it's only a change of ownership". He was asked if he was aware that the appellant had signed on his behalf and answered that the appellant had rung him on Monday morning and "asked me that these forms had to be filled out and I said well I can't make it in to see ya, I said you fill them out and it's okay by me, cos I thought him being manager he could, he had the authority to do that". It was pointed out that this was inconsistent with answers he had given during the previous phone call where he confirmed he knew nothing about that paperwork. He was asked why he didn't mention that he had given the appellant permission to sign on his behalf during that phone call and he stated that the person conducting that phone call had been railroading him into saying things and he did not have a clear idea what it was about. He was asked

if he had signed Claiming Authority forms apart from the ones that were in question and stated that he could have, that they had eight horses “and we just signed them and at the time was pretty rugged, there was family all there and we just signed them” and that he did not recall signing them. He confirmed that there were Claiming Authority forms that had been signed by him on the Sunday but that the Monday date, namely 30 April 2018, was placed on those documents. He denied having signed those documents at a date following 30 April 2018.

14. The appellant read out a statement to stewards. The effect of that statement was that he already had signed Claiming Authority forms for the two horses at home but had not brought them with him to ORI as he believed the existing forms on record would suffice. He says that when he was advised that the existing forms would not be sufficient, he rang both of the other owners of the horses to see if they were available to sign new forms. One was, but Mr Felmingham was not able to get to him. The appellant says he believed as an owner manager he had the ability to fill in the dots on behalf of another owner with his okay, which he did. He then said that he decided to see if he could race home and find the originally signed Claiming Authority forms. He says he found the forms and raced back to ORI. He claims that in his haste to take the forms out of glovebox, he mistakenly took and submitted the wrong forms to ORI instead of the original ones signed by Mr Felmingham.
15. He also stated that he believed at the time as a syndicate manager, he had the authority to complete the documents with the other owners' permission. He submitted that the haste required to complete the documents as soon as possible and the influence of heavy medication he was on due to recent open heart surgery may have contributed to any errors he made at the time.
16. In respect of the signature he appended to the form that was submitted, he stated that he intentionally signed for Mr Felmingham in his own handwriting to plainly differentiate from his own handwriting. He claimed that if he had intended to forge Mr Felmingham's signature he would have done a better job given his artistic training and skills. The Board notes, however, that this is not a case where the appellant has signed his own signature on behalf of Mr Felmingham. The signature in both forms looks nothing like the appellant's own signature and is executed in a way to appear like a signature.
17. The appellant provided to stewards the forms he says were the actually signed by Mr Felmingham and which he had intended to submit to ORI on 30 April 2018 during the course of the inquiry.
18. The appellant reserved his plea in respect of both charges stating that he believed he did not knowingly commit any offence. It was put to the appellant that he understood that unless those forms were received by 1.00pm on the Monday, he would not be able to race the horses in claiming races the following weekend. It was put to him that this was an exercise in expediency. The appellant replied, “No, they couldn't be raced in a claiming race, they could...probably be raced in a yeah”. He claimed to have no knowledge that the horses had been nominated for a claiming race at the time he provided the transfer of ownership forms but stated that he had nevertheless organised for Claiming Authority forms to be signed because he knew they would probably have

to be put in, but there was no rush to do so. This seemed at odds with his evidence that he did not think he would need to submit new Claiming Authority forms given that there were forms already filed with ORI in respect of the horses.

19. Stewards found the charges proved. They noted that the appellant admitted to completing signatures for Mr Felmingham in his own hand where Mr Felmingham's signatures were required. They also found that he knowingly submitted those forms to the Office.

### **Appellant's submissions**

20. The appellant submitted that the charges ought be considered as one transaction as the forms were lodged simultaneously. He questioned whether it should be two separate charges. It was not suggested, however, that this should be a basis for overturning the decision.
21. The appellant noted that AHR 209 requires the furnishing of false information. It was submitted the information was not false because Mr Felmingham agreed that the relevant horses be authorised to be entered in and accepted for claiming races. Further, it was submitted that stewards ought not to have been satisfied that the appellant knew he had submitted forms that had not been signed by Mr Felmingham. The evidence, according to the appellant, showed that he believed he had submitted the forms that had in fact been signed by Mr Felmingham.
22. Alternatively, it was argued that he had no knowledge the information was false given that he understood he had authority to sign on behalf of the other owners given his role as manager. Reference was made to AHR 115 which relevantly provides as follows:
  - “(3) Ten or fewer persons who jointly own a horse shall appoint a natural person as the joint ownership manager.
  - (4) A manager appointed pursuant to this rule shall act for and on behalf of the syndicate or joint ownership as the case may be in all harness racing matters and is responsible for ensuring that the obligations of the syndicate or joint ownership arising under these rules are met.”
23. Another rule relevant to this appeal is AHR 75A which provides as follows:
  - “(1) The owner, lessee and any other person with an interest in a horse to be nominated for a claiming race must:-
    - (a) Complete form R75-A and lodge it with the controlling body;”.
24. It was submitted on the appellant's behalf that AHR 115(4) vested broad authority in a manager to act on behalf of other owners. Rightly or wrongly, the appellant believed he was entitled to sign the form on behalf of Mr Felmingham. It was noted, however, that he did not purport to sign the form on behalf of Mr Felmingham but indeed appended a signature that purported to be Mr Felmingham's own signature.

25. The appellant submitted that he had nothing to gain and had no intention to deceive by submitting the forms that he did. According to him, he had the forms available that had been properly signed by Mr Felmingham but submitted the ones he did by mistake.

### **Stewards' submissions**

26. The stewards submitted that the provision of the forms to ORI amounted to furnishing false information. It was noted that AHR 75A(1)(a) requires the owner, lessee or any other person with an interest in a horse to complete the relevant form and lodge it with the controlling body. There was nothing in AHR 115(4) that absolves the individual owners from that responsibility. AHR 115(4) required the manager to ensure that the obligations of the joint ownership were met, for example, by ensuring that each of the individual owners had signed the form required to show that they approved and authorised the nomination of the relevant horses to participate in claiming races, together with the minimum claiming amount. It was noted that a Claiming Authority form is an important document which evidences the owner's consent for their horse to be bought at the nominated claiming price.
27. Stewards clearly did not accept the appellant's explanation. The information they had received from Ms White, which was not disputed by the appellant as he did not seek to cross-examine her, was that she gave the appellant two blank forms because they needed to be completed for the two horses that had been nominated in claiming events. The tenor of her note was that the appellant had been caught by surprise. According to Stewards, his answers during their initial phone call with him were evasive and it was not until the inquiry that he came up with his story that there had been forms duly signed by Mr Felmingham but that he had accidentally submitted the wrong ones.
28. The stewards also pointed to Mr Felmingham's evidence given during the initial phone call that he did not recall signing anything other than transfer of ownership forms on the Sunday prior to 30 April 2018. He also advised the stewards that he had been asked by the appellant to sign Claiming Authority forms but had not yet done so. The stewards submitted that the Board ought apply s.34(3)(a) of the *Racing Regulation Act 2004* and, in the event that the appeal is dismissed, consider ordering an amount more than 50% of the prescribed deposit be forfeited to the Secretary of the Department on the basis that the appeal is frivolous.

### **Consideration**

29. In order to find a person guilty of an offence under AHR 209, the following matters need to be satisfied:
- (a) That the person is a participant in the harness racing industry;
  - (b) That they furnished false information to the controlling body; and
  - (c) That they did so knowingly or recklessly.

30. There was no dispute that the appellant was a person participating in the harness racing industry as an owner of horses.
31. The appellant argued that an incorrect signature does not amount to furnishing false information. The relevant form notifies ORI that the relevant lessor, owner or lessee of the horse has given authority for the horse to be entered in and accepted for claiming races, authorises the trainer to enter the horse for this type of race and to vary the claiming price of the horse to an amount not less than the minimum claiming price, declares that the horse referred to is solely the owners' horse and that there are no other persons having any share or interest in it and constitutes an agreement that the owners will relinquish ownership of the horse or any other interest they may have in the event of a successful claim. It is noted on the form that the authority to nominate and transfer horses in harness claiming races becomes and forms part of the transfer documents of the horse if it is claimed.
32. Owners are required to sign the form. The owner's signature provides confirmation of that owner's agreement with the matters specified in the form. To submit a form that purports to have been signed by a person when it was not in fact signed by that person is, in the Board's view, the provision of false information. The information is false in that it purports to assert that the relevant owner has confirmed and authorised the matters set out in the form. It is not the case that the forms submitted to ORI state that they have been completed and submitted on Mr Felmingham's behalf. They purport to have been filled out by Mr Felmingham himself.
33. The Board is satisfied that the submission of the two forms amounts to the furnishing of false information to ORI.
34. It is quite clear that the appellant knowingly submitted forms to ORI on that day. The issue on this appeal is whether the evidence is sufficient to prove that he did so knowing that Mr Felmingham's signature was not in fact on the forms. It is clear that stewards rejected his explanation that he had mistakenly submitted the wrong forms.
35. An appeal pursuant to the *Racing Regulation Act 2004* (the Act) is to be heard and determined upon the evidence at the original hearing, though other evidence may be admitted where the deciding member considers it to be proper. The question is whether the Board is satisfied to the requisite standard on the evidence before the original inquiry that the appellant knew he was submitting the form that had not been signed by Mr Felmingham.
36. The Board is comfortably satisfied that he did. The Board does not accept the evidence given by the appellant during the course of the inquiry and reiterated during the course of the appeal. It is not consistent with the information provided to stewards by Mr Felmingham in the first instance. He denied filling out any other forms other than the transfer of ownership and told stewards that he had been requested by Mr Felmingham to fill out Claiming Authority forms in respect of the two relevant horses but had not yet done so. That conversation occurred with stewards after the relevant forms had been submitted.

37. Other aspects of the appellant's account do not, in the Board's view, make sense. He asserted that he had signed the forms with Mr Felmingham's signature because he had been unable to get Mr Felmingham to sign the form himself in the time available. He stated he did not believe he had time to go home to collect the forms that had already been filled out. In spite of this, his evidence was that he took the forms that he had signed himself home with him to collect the forms that he says had already been signed by Mr Felmingham, hoping to be able to collect them in time to submit them. His evidence that he accidentally took from the glovebox the forms he had signed rather than those signed by Mr Felmingham is not accepted. The appellant must have known how long it would take to go home and return. If it was at all possible to get home and back in the time allocated, it makes no sense that he would spend time filling out a new form, try to get it signed by each of the other owners and append the signature of the owner who was unavailable to sign. He in fact submitted the forms about half an hour before the 1.00pm deadline. If he was genuinely concerned about being able to get home and back in time, it seems strange that he was able to do so with time to spare.
38. The appeal against conviction is dismissed.

#### **Appeal against penalty**

39. The appellant submitted that the penalty was manifestly excessive. First, it was submitted that the conduct amounted to a single transaction and the imposition of two separate \$500 fines was excessive in the circumstances. Secondly, it was submitted that excessive weight had been placed on the fact that the appellant had not pleaded guilty, but rather had reserved his plea. Thirdly, it was submitted that the stewards had failed to take into account that the appellant believed he had authority to sign the form on Mr Felmingham's behalf and had submitted the form by mistake. As already noted, the Board does not accept the latter proposition.
40. The Board was provided with a record of other penalties imposed for like offences by stewards. An almost identical offence was dealt with in 2014 by stewards. In that case, a \$1,000 fine was imposed with \$500 wholly suspended for 12 months. It related to the furnishing of false information by way of a Claiming Authority form.
41. It is clear that this offence was conducted in circumstances where the appellant had not been aware of or adverted to the fact that the horses owned by him had been nominated for claiming races by their trainer. It is also accepted that Mr Felmingham had no difficulty with the horses being nominated for such races and at the minimum claiming price specified in those forms. Nevertheless, these are important documents and must be filled out and signed by the appropriate people. Attempts to take shortcuts such as this cannot be tolerated.
42. In the circumstances, the Board accepts that the penalties imposed are appropriate and dismisses the appeal against penalty also.
43. The Board has considered the stewards' submission that an order greater than the forfeiture of 50% of the appeal deposit ought be made in respect of this appeal. The Board declines to do so in these circumstances. Having been wholly unsuccessful,

however, the Board orders that the appellant forfeit 50% of the prescribed deposit and pay 50% of the cost of the transcript pursuant to ss. 34(1A), (2)(a), (4A) and (4B)(a) of the Act.