APPLICATION 285

DETERMINATION AND REASONS FOR DETERMINATION OF THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**MURRAY WAYNE MCKEAGG**
APPLICATION NO:	**A30/08/285**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)**
DATE OF HEARING:	**5 MARCH 1996**

IN THE MATTER OF an application for leave to appeal by Mr M W McKeagg under Section 13(1)(d) of the Racing Penalties (Appeals) Act against the decision of the Western Australian Turf Club Committee on 14 November 1995 not to issue Mr McKeagg a trainer's licence.

Mr McKeagg represented himself.

Mr P Wright represented the WA Turf Club Committee.

This is an application by Mr McKeagg for leave to appeal against the determination of the Western Australian Turf Club Committee which was made on 14 November 1995. The notice of application unhelpfully only states that "*I seek leave to appeal on the grounds that - Refusal of renewal of trainer's/owner trainer's permit*", without specifying the basis upon which the application is being made and any proposed grounds of appeal.

Mr McKeagg held an owner/trainer's permit from 2 July 1991 to 31 July 1994, which he did not apply to renew until November 1994. The Stewards recommended to the Committee that the renewal application should be refused. The application was considered by the Committee in January 1995. Mr McKeagg was invited to attend the March Committee meeting in order to address the concerns which had been raised by the Stewards. The application was eventually refused.

On 10 October 1995, Mr McKeagg again made application to the Committee for a licence. After being interviewed by the Stewards the application was placed before the Committee at their meeting on 14 November 1995. Mr McKeagg's personal circumstances do not appear to have changed since his previous application. The Committee refused to grant the application without giving reasons.

I am told by Mr Wright on behalf of the Committee that the application for leave to appeal to the Tribunal, which is in relation to the latter refusal, is opposed essentially on the basis that although Mr McKeagg was given the opportunity to provide further evidence of his financial standing that he had failed to satisfy the Committee as to his financial position. I am also told that taking into account the evidence which Mr McKeagg had earlier given in writing in relation to his assets and liabilities that the Committee had resolved not to grant the permit in the light of outstanding debts.

The record of the interviewing steward Mr Lewis was presented to me. It concluded with the summary recommendation as follows:

> "*Not recommended - poor financial position and outstanding debts to Dr B Hilbert and S Humphries - 24/10/1995*".

A considerable amount of time and attention was given by Mr McKeagg in support of his application in trying to explain his financial position. Despite the long explanation as to why the statement which was produced for the benefit of the Committee certifies that in fact Mr McKeagg has no assets I remain puzzled as to the difficulty or reluctance of Mr McKeagg to include reference to his wife's assets. This is particularly so in view of the fact that Mr McKeagg claims that at the relevant time he had divested various assets to his wife. In any event Mr McKeagg was afforded the opportunity to explain his financial position to the Committee and he had produced the certificate which is dated 26 September 1995. Despite that the Committee was satisfied that Mr McKeagg was not of a sufficiently sound financial position to be licensed.

Local Rule 41 of the Rules of Racing states that:

> *"The Committee may refuse to grant any such licence or permit and may at any time cancel or revoke the same before the termination of the period for which it has been granted without giving any reason therefor.*"

In the N.S.W. case of Mr D R Picker 6 RAR 523 the NSW Racing Appeals Tribunal upheld the principles set out by the Committee that:

> "*(1) Holders of licences must be, and be seen to be, persons of probity because of the need for public confidence in racing administration. (2) Proper administration makes it imperative that a relationship of trust, based upon full disclosure exists between the holders of trainers' licences and those administering racing.*" (at 524)

Despite both the fact that L.R. 41 states no reasons need be published by the Committee in determining an application for a licence, and the fact that all applicants to be licensed agree to be bound by the Rules of Racing, it was held in Gregory Donald Harper (Appeal 221 - unreported determination heard on 6 October 1994) that " *the Committee in deciding to grant or to refuse an application... must exercise its discretion according to proper legal principles.*"

In J M Cooper and R Baker (Appeal 066 4 RAR 282) this Tribunal set out that special or unusual circumstances must exist for leave to appeal applications of this kind to be granted. In that appeal such circumstances were specified to be:

> "*(i)* *As in the case of Hammer which was cited by Counsel, where there is an appeal alleging and demonstrating a denial of natural justice.*
>
> *(ii)* *A case which may involve an assertion of bias against the Stewards, and*
>
> *(iii)* *Where it can be shown that the Stewards' panel has in some way been improperly constituted.*
>
> *Leave should not be granted in any run of the mill matter, or in a case where an aggrieved appellant disagrees with the view adopted by the Stewards and seeks to have his own perception or interpretation of an incident adopted by the Tribunal and substituted for that of the steward.*"

There is an accepted principle that the Committee must adhere to the rules of natural justice during its proceedings. (Heatley v Tasmanian Racing & Gaming Commission (1977) 137 CLR 487: Kioa v Minister for Immigration and Ethnic Affairs (1986) 62 ALR 321.)

The questions to be addressed in this application is whether or not the Committee adhered to those rules of natural justice in coming to its determination to refuse the grant of a trainer's/owner's licence to the applicant and whether circumstances of such a nature exist to warrant grant of leave to appeal.

Natural justice comprises two common law rules or principles which were developed to ensure fair decision making where the rights of an individual are involved. These rules are that:-

- a decision maker must afford an opportunity to be heard to a person who will be adversely affected by the decision (the hearing rule); and
- a decision maker must be disinterested or unbiased in the matter to be decided (the rule against bias).

In this application there is no issue in relation to the rule against bias. In summary the applicant claims that the Committee should not look into his financial well-being in order to determine the application. In Appeal 239 Gregory Donald Harper the Tribunal held that past conduct was indeed relevant and was the basis upon which the Committee was entitled to arrive at the decision which it did. That decision lends support for the proposition that the Committee clearly does have a right to look into the affairs of an applicant where those affairs relate to owing money to a vet and a trainer and constitute past conduct in relation to the racing industry.

Further, comments by Mr K A Cullinane QC should be noted from the Queensland Galloping Appeals Authority in the case of Jockey D Furner (2 RAR 79 at 80) where it is stated that:

> *"Applying the words of that judgment [McGuinnes v. Onslow Fane (1978) 3 All E.R. 211 at 223] to the present circumstances the Committee of the Queensland Turf Club promotes a public interest by seeking to maintain high standards in a field of activity which might otherwise become degraded and corrupt. The Committee of a principal Racing Club is obliged to exercise its licensing powers in such a way as to maintain public confidence in the industry by ensuring that such high standards are maintained."*

In the matter of Mr R Monaghan (5 RAR 355) which involved an appeal against a decision of the Queensland Principal Club to refuse to grant him a permit to train his own horse, the Queensland Racing Appeals Authority refused the appeal due to the fact that the applicant had outstanding debts to sections of the racing industry, The Authority went on to state that:

> *"The position I think that ought to be impressed on Mr Monaghan is that if he in the future is to have any hope of obtaining a licence, his best course would be to ensure that all his debts to race clubs are discharged before making the application."* (at 356)

The applicant was given the opportunity to explain to the Committee the circumstances as to his assets which he claims are in his wife's name. However, the applicant refused to furnish the Committee with such details. The Committee is entitled to look into the applicant's financial affairs and to the extent it may be relevant to the appellant, the affairs of the appellant's wife as well, in determining his application.

From the facts at hand, I am satisfied that the Committee did adhere to the rules of natural justice. The applicant was given the opportunity to be heard. Indeed it was the appellant himself who refused to reveal details of particular relevant matters that the Committee was concerned with.

In my opinion, there are no special circumstances as set out in J M Cooper and R Baker (supra) that exist so as to afford the applicant the right to be granted leave to appeal. It is the duty of the Committee to control and supervise racing within its territory (see ARR 7). In this instance the Committee afforded the applicant the right to be heard and showed no bias against the applicant. Upon hearing the evidence put before it, the Committee was entitled to determine to refuse the application on its merits and without giving reasons.

I am not persuaded that there are any circumstances which justify granting leave to appeal. The application for leave to appeal is therefore refused.

DAN MOSSENSON, CHAIRPERSON

17/4/96

Seal of the Racing Penalties Appeal Tribunal of W.A.