

RACING APPEALS AND DISCIPLINARY BOARD

DECISION

RACING VICTORIA STEWARDS and

WAYNE CUDDIHY

Date of Hearing: 19 June 2019

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- <u>Panel:</u> Judge John Bowman (Chair) Mr Stephen Curtain Mr Chris Fox
- <u>Appearances:</u> Mr Andrew Bell of Counsel instructed by Charlotte Landy appeared on behalf of the Stewards.

Mr Cuddihy represented himself.

Charge:AR 232(i)A person must not:(i) give any evidence at an interview, investigation,(i) give any evidence at an interview, investigation,inquiry, hearing and/or appeal which is false or misleading.

Particulars: On 26 February 2019 and 26 March 2019 (the Interviews) Mr Cuddihy was interviewed by Racing Victoria Stewards in relation to thoroughbred bets placed on Martin Kelly's betting account. Throughout the course of the Interviews, Mr Cuddihy gave evidence that the bets placed on thoroughbred horses on Mr Kelly's betting account were not placed by Mr Kelly, but placed by him. Contrary to AR 232(i), the evidence given by Mr Cuddihy during the Interviews was false and/or misleading.

Plea: Not Guilty.

Decision: The Board finds the charge proved.

Mr Cuddihy convicted and disqualified for a period of three months. Disqualification to commence today.

Grace Gugliandolo Registrar - Racing Appeals and Disciplinary Board

TRANSCRIPT OF PROCEEDINGS

RACING APPEALS AND DISCIPLINARY BOARD

HIS HONOUR JUDGE J. BOWMAN, Chairman MR S. CURTAIN MR C. FOX

EXTRACT OF PROCEEDINGS

DECISION

RACING VICTORIA STEWARDS

- and -

WAYNE CUDDIHY

RACING VICTORIA CENTRE, FLEMINGTON

WEDNESDAY, 19 JUNE 2019

MR A.M. BELL (instructed by Ms C. Landy) appeared on behalf of the RVL Stewards

MR W. CUDDIHY appeared on his own behalf

CHAIRMAN: Mr Wayne Cuddihy, you have pleaded not guilty to a charge of a breach of AR 232, it being alleged that you gave evidence in an interview, investigation or inquiry which was false or misleading. It relates to your evidence concerning bets placed on the Bet365 account of Mr Martin Kelly, a licensed jockey. It is alleged that you told Stewards falsely that they were your bets and not those of Mr Kelly.

You have given evidence before us and we have also had put before us the transcript of the two relevant interviews with you by the Stewards, these being on 26 February 2019 and 26 March 2019.

The test to be applied is that of comfortable satisfaction, known legally as the Briginshaw test. Having heard your evidence and considered what is contained in the two interviews, we are satisfied that the test has been satisfied and that you are guilty of the charge.

We do not consider that your initial argument, that you did not specifically say that the bets were not placed by Mr Kelly, is a persuasive argument in the context of the case. This is not a court of pleadings, although we ought add that the particulars annexed to that charge could have been more comprehensive or better drawn.

It is quite clear that in the interviews you were saying that the bets or the bulk of them had been made by you, meaning that they were not made by Mr Kelly. The answers given by you in the interviews were clearly designed to give the impression that the relevant bets in Mr Kelly's account were yours. Some clearly could not have been. You had not even moved down from Queensland and met Mr Kelly at the time of some of them. Similarly, you alleged that you used Mr Kelly's Bet365 account because of problems with your Ladbrokes account, yet that account had not even been set up at the time. The whole arrangement described by you, whereby you allegedly placed the majority of the bets on his Bet365 account, strains the boundaries of credibility to breaking point. You alleged that you were placing bets on his account without there being any specific arrangement for settling up and the like. There were discrepancies as to how and when you set up your own account with Ladbrokes and how it was used. Frankly, the arrangement that you described that you had with Mr Kelly, putting a considerable number of bets on his account with his blessing and without any other specific arrangement, that is something that we do not accept. Originally, the bets that you described to the Stewards could not have been made in that way because you were not even in Victoria.

We regard the interviews as establishing evidence given in relation to them as indeed false and misleading. We find the charge proven and we will now deal with penalty.

In relation to penalty, we consider this to be a somewhat unusual case which differs from the precedents which have been put before us. You, Mr Cuddihy, were apparently not trying to protect your own back with your false and misleading evidence, you seem to have been trying to cover for a friend who was providing you with accommodation. That does in no way excuse what you did and, further, you at no stage admitted guilt, including right up to today.

However, there are some mitigating factors in your favour. There was no gain for you in what you did. We appreciate that you are a hard worker and nothing of a serious nature has been alleged against you in relation to your conduct in the last 10 years. We also take into account what Mr Logan has said on your behalf.

We note that you apparently have very little by way of money and assets, but we also take into account the very substantial amount of extra work that your conduct has caused the Stewards to have to perform.

We consider that a period of disqualification is warranted, but overall we have considered the level of conduct by you to be less serious than some of the other cases that have been put before us, and we have fixed on a period of disqualification of three months.
