

RACING APPEALS AND DISCIPLINARY BOARD

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DECISION

RACING VICTORIA STEWARDS and

MARTIN KELLY

Date of Hearing: 19 June 2019

<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 Paul O'Sullivan appeared on behalf of Mr Martin Kelly.

<u>Charge 1:</u> AR 115(1)(c)

(1) A jockey or apprentice jockey must not:

(c) bet, or have any interest in a bet, or facilitate a bet, on any

race.

Particulars: That between 1 January 2016 and 21 June 2016, Mr Kelly made

and/or facilitated and/or had an interest in the making of, 47 bets on thoroughbred horse racing, utilising his bet365 account

with a total outlay of \$869.03.

<u>Charge 2:</u> AR 115(1)(e)

(1) A jockey or apprentice jockey must not:

(e) bet, or have any interest in a bet, on any race or contingency relating to thoroughbred racing involving a

race in which he or she is riding.

<u>Particulars:</u> That on

• 30 May 2016, Mr Kelly made and/or had an interest in a bet of \$25.00 on *Shearer* which he rode in Race 2 at Hamilton on 30 May 2016.

• 30 May 2016, Mr Kelly made and/or had an interest in a bet of \$25.00 on *Gold Spur* in Race 2 at Hamilton on 30 May

2016 when he rode Shearer in the same race.

• 5 June 2016, Mr Kelly made and/or had an interest in a bet of \$21.01 on *Arribos* which he rode in Race 3 at Warrnambool on 5 June 2016.

• 19 June 2016, Mr Kelly made and/or had an interest in a bet on Shearer of \$20.00 which he rode in Race 3 at Hamilton on 19 June 2016.

<u>Charge 3:</u> AR 115(1)(c)

(1) A jockey or apprentice jockey must not:

(d) bet, or have any interest in a bet, or facilitate a bet, on any race.

Particulars:

That between 25 May 2017 and 9 November 2018, Mr Kelly made and/or facilitated a number of bets on thoroughbred horse races, by authorising 59 deposits totalling \$2,405 into a Labrokes account held under the name of Wayne Cuddihy, through a Paypal account linked to his credit card.

Charge 4:

AR 232(i)

A person must not:

(i) give any evidence at an interview, investigation, inquiry, hearing and/or appeal which is false or misleading.

Particulars:

That on 16 January 2019, 15 February 2019 and 26 March 2019 (the Interviews) Mr Kelly was interviewed by Racing Victoria Stewards in relation to thoroughbred bets placed on his bet365 account. Throughout the course of the Interviews, Mr Kelly gave evidence that the bets placed on thoroughbred horses were not placed by him but placed by registered Stable Employee, Wayne Cuddihy. Contrary to AR 232(i), the evidence given by Mr Kelly during the Interviews was false and/or misleading.

Plea:

Charges 1 to 4 - Guilty.

Decision:

The Board finds the charges proved.

Charge 2 - Sixteen months disqualification.

Charge 1 - Three months disqualification to be served

concurrently with the penalty from Charge 2.

Charge 3 - Three months disqualification to be served

concurrently with the penalty from Charge 2.

Charge 4 - Four months disqualification to be served

cumulative to the penalties for Charges 1 to 3.

Mr Kelly convicted and disqualified for a total of 20 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 -

MARTIN KELLY

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 P. O'SULLIVAN appeared on behalf of Mr M. Kelly

CHAIRMAN: Mr Martin Kelly, firstly on Charge 2, this is a very serious charge and it relates to your bets on horses in races in which you were riding. They were very small bets but one of them was on a horse you were in fact not riding. You also backed the horse you were riding in the same race, a small bet. It is difficult to work out the logic of what you were doing with such small bets but the appearance of it is bad and is a flagrant breach of the rule. It is bad for the image of racing.

The existence of special circumstances is conceded, as you have pleaded guilty to the charge. Were it not for that, you would be facing an automatic disqualification of a minimum of two years. However, you have pleaded guilty and we take into account the small nature of the bets and the various other factors outlined by Mr O'Sullivan on your behalf, and we bear in mind the very helpful and strong evidence given in your favour by Mr Des O'Keeffe. We also bear in mind your record.

We take the view that we are at large in relation to the appropriate period of disqualification. Whilst not adopting a strictly mathematical approach, in our view the discounting percentage or amount because of the matters that I have just outlined should be in the order of one-third. As I say, that is not a strict mathematical calculation. This translates into a penalty of 16 months' disqualification.

Charges 1 and 3 relate to the placing of bets on horses not engaged in races in which you were riding according to the charge at different times.

.Kelly 19/6/19

There were many small bets. You pleaded guilty on each charge, that is, Charges 1 and 3.

You are disqualified for a period of three months and those periods of disqualification are to be concurrent, a 16-month disqualification in relation to Charge 2.

Charge 4 concerns the giving of false and misleading evidence to the Stewards.

This is a serious matter which caused the Stewards a great deal of inconvenience and consumed a large amount of time. I repeat: giving wilfully false evidence is indeed a serious offence.

Again, we take into account the many things in your favour, including your plea of guilty, but a cumulative penalty is required. In our opinion and bearing in mind that you were in essence the driving force behind this behaviour and deceit, indeed an appropriate cumulative period is needed and we fix that penalty of disqualification at four months. Thus, the total period of disqualification is 20 months, commencing this day.
