

## Appeal decision

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**Decision date:** 24 November 2015

**Hearing date:** 27 July 2015

**Code of racing:** Greyhounds

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**Appeal panel:** Mr Brock Miller (Chair), Mr Paul James and Mr Daryl Kays

**Appearances:** Mr A. D Scott, counsel appeared on behalf of the Appellant Mr Gatti  
Mr D R Kent QC appeared on behalf of the Respondent Racing Queensland

**Decision being appealed:** Warned off for life

**Appeal result:** Decision varied. The new penalty of ten (10) years warning off.

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In this Appeal Mr Gatti appeals the decision of Racing Queensland in respect of a Board of Racing Queensland Decision on 28 April 2015.

The outcome was that Mr Gatti was warned off for life under Rule 3A of the Local Rules of Racing (Greyhound Racing) (the Local Rules). Further, acting under Greyhound Australasia Rule 14(1)(c). The Board of Racing Queensland have decided that all greyhounds owned by Mr Gatti whether wholly or in part should be prohibited from competing in any event within Queensland subject to protocols or a legitimate sale.

The basis for this decision was made on a finding that Mr Gatti breached Rule 86 (Q) which deems a person to have breached the rules when he:

“commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of Greyhound Racing.”

The background to the charges was the well-known episode of the ABC Four Corners program on 16 February 2015 concerning live baiting practices in particular a property operated by Mr Noble at Churchable.

On 18 March 2015 Mr Gatti was interviewed by Racing Queensland Officials where he admitted his presence at the track. On 15 April 2015 he was given a Show Cause Notice as to the allegation which was reproduced in paragraph six of the Board’s Statement of Reasons. Essentially, Mr Gatti had engaged in conduct detrimental or prejudicial to the interests, welfare, image, control or promotion

of Greyhound Racing by his participation in live baiting on 22 August 2014. The Board gave their detailed Statement of Reasons.

Mr Gatti has appealed against the conviction and penalty and submissions in this regard have been made by his Solicitor both to the Board at the time of the hearing and by his Counsel Mr A. D. Scott at this Appeal. We are in possession of those submissions from Counsel for the Appellant and we are also in possession of submissions made on behalf of the Respondent Racing Queensland by Counsel for the Respondent, Mr D. R. Kent QC. The submissions by Mr Gatti's Counsel amongst other things were along the lines that merely witnessing live baiting as distinct from live baiting itself was not of itself an offence under the Rules.

The thrust of his submissions in regard to this was that the conduct that had a detrimental and prejudicial affect was the live baiting itself and not the witnessing of live baiting. He went on to state that no trainer who witnesses live baiting would ever come forward as a witness to assist the authorities with their investigations into live baiting if they were to face charges for witnessing live baiting. These submissions were made initially in respect of the conviction and further submissions which were canvassed at a later date in respect of penalty.

On the other hand, Counsel for the Respondent submitted that there was sufficient evidence to sustain the convictions. He advised that the Board had properly considered the matter and had regard to the Briginshaw Standard of Proof. He advised that the Appellant was clearly visible in the video and involved. The live pig on the arm of the apparatus was clearly visible which the Appellant admits at page 35 of the Transcript and that the greyhound trial was clearly conducted with the concurrence of the Appellant. He further submitted that the use of the piglet was part of Mr Gatti's dog trial which he paid for and participated in. He submitted that he admitted as much at Transcript page 37, line 34. He further claimed that Mr Gatti's version that he did not notice at the time, when he was only a few metres away and timing his dogs, is not credible. He further submitted that more directly he engaged in the conduct by his presence, that is a voluntary and deliberate presence while the live baiting was taking place.

This Board has been in the position of having to consider other Appeals in regard to live baiting matters including cases which we have been involved in including the cases of Craig Wright, Michael Chapman and Greg Paul in Queensland and we have also been referred to other cases heard by the Victoria Racing Appeals and Disciplinary Board (RADB) including the cases of Roberts, Connolly, Mills and Sykes.

Turning to the Transcript of this matter taken at the Racing Queensland Offices on 18 March 2015 at page 35 of the Transcript and I quote:

THE CHAIRMAN:

“We've just proven to you that there's a live piglet on the arm”

MR GATTI:

“Yeah”

THE CHAIRMAN:

“Are you telling me that you’ve never witnessed live baiting?”

MR GATTI:

“I never witnessed it. It was still live, that pig, wasn’t it?”

THE CHAIRMAN:

“Yes. That pig is live, isn’t it?”

MR GATTI:

“Hey?”

THE CHAIRMAN:

“That piglet on the arm is alive?”

MR GATTI:

“Yeah. For sure”

In relation to further questioning:

THE CHAIRMAN:

“Mr Gatti, just while we are watching this film, have you ever seen a live piglet on the arm?”

MR GATTI:

“No, not to my knowledge, that’s the only time I’ve seen it when you showed me that there”

THE CHAIRMAN:

“Mmm. So that proves there’s a live piglet on the lure arm with you----“

MR GATTI:

“What’s that?”

THE CHAIRMAN:

“That proves that there’s a live piglet on the lure arm whilst you and Mr Kunde are watching those trials”

MR GATTI:

“Yeah, probably”

The finding of this Board is that although Mr Gatti claims in his version that he did not notice the live piglet on the lure arm at the time, he was only a few metres away and claimed to be timing his dogs. This Board finds that that explanation is not credible. We are comfortably satisfied to the required standard of proof that Mr Gatti by video evidence and by his own admissions was certainly an active participant by his voluntary and deliberate presence at the Churchable property where live baiting was taking place and in particular in relation to his dog trial. We consider that this conduct is indeed detrimental and prejudicial to the interest, welfare, image and control of Greyhound Racing and we dismiss the Appeal in respect of conviction.

Concerning the question of penalty. This Board notes that up until the time of a decision by this Board in the case of Michael Chapman the most significant penalty imposed in respect of this practice was of the order of seven (7) years disqualification which was imposed in Victoria. Ordinarily the penalties seem to be somewhere between six (6) months and three and a half years (3 ½) years disqualification.

This Board is firmly of the view that a strong message needs to be sent to the industry that conduct of this nature cannot and will not be tolerated and that significant penalties have to be imposed either by way of deterrent or otherwise to send a strong message to the industry in this regard.

The integrity of the Greyhound Racing industry is very much the subject of public morality and public scrutiny and the very conduct of the industry itself has been placed in jeopardy by conduct of this nature.

Recent amendments to the Greyhound Racing Rules (GAR) on 20 April 2015, make it mandatory for a period of disqualification of not less than ten (10) years to be imposed on any person who was involved in the practice of live baiting or is convicted in any Court of an offence in respect of the use of an animal carcass or part of an animal with greyhound training. This of course is legislation that post-dates the commission of this offence and does not take the matter very much further other than to identify that post the offence being committed the penalty that should be imposed on anybody in the circumstances would be a minimum ten (10) year disqualification.

In this case the Board of Racing Queensland has imposed a period of warning off for life and we have previously found in the case of Craig Wright which was an Appeal before this Board that such a period of warning off for life is likely to not have any more effect by way of deterrent than a period of ten (10) years as suggested in the relevant legislation.

Mr Gatti is a widower of eight-nine (89) years of age who has been breeding, rearing and racing greyhounds since 1970. Nevertheless for the reasons above-mentioned it is our decision that a period of ten (10) years warning off should be substituted for the determination of Racing Queensland in respect of the life ban and the penalty in this regard is amended accordingly.

This Appeal is allowed to the extent to reflect that substitution of penalty only and save for the finding in respect of the prohibition decision herein.

### **The prohibition decision**

Pursuant to Greyhound Australasia Rule 14(1)(c), the Board decided that all greyhounds owned by Mr Gatti, whether wholly or in part, should be prohibited from competing in any event within Queensland, subject to protocols or a legitimate sale.

Very little argument took place on appeal to this Board concerning the above decision or in submissions to this Board by Counsel for the parties in respect thereof.

We are mindful of the recent decision of Justice J Dalton in *Arnold v Racing Queensland & Another (2015) QSC293* and in particular to points [35] and [36] on page 17 of that transcript as well as point [58] on page 23 of that transcript.

Accordingly we make no decision on that aspect of this appeal but rather in accordance with the reasoning of Justice Dalton in the above case, we remit that matter back to the decision maker Racing Queensland for further determination after necessary submissions from the Appellant and the original decision maker encompassing such further matters that could be relevant to that original decision and as envisaged in *Arnold's* case.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)