

DETERMINATIONS OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPEAL - 621

APPELLANT: **STEPHEN JAMES MILLER**

APPLICATION NO: **A30/08/621**

IN THE MATTER OF an appeal by jockey Stephen Miller against the determinations made by the Racing and Wagering Western Australian Stewards of Thoroughbred Racing on 24 September 2004 imposing the following penalties for seven breaches of Rule 83(c) of the Australian Rules of Racing:

- Charges 1 to 3 inclusive – two months suspension in respect of each charge, to be served cumulatively,
- Charges 4 to 7 inclusive – six months suspension in respect of each charge, to be served concurrently, and
- The penalties in relation to charges 1 to 3 to be served concurrently with the penalties for charges 4 to 7.

AND

APPEAL - 622

APPELLANT: **SHARON LEE MILLER**

APPLICATION NO: **A30/08/622**

IN THE MATTER OF an appeal by Sharon Lee Miller against the determination made by the Racing and Wagering Western Australian Stewards of Thoroughbred Racing on 24 September 2004 imposing a fine of \$5,000 for breach of Rule 175(I) of the Australian Rules of Racing.

PANEL: **MR D MOSSENSON (CHAIRPERSON)**
 MR P HOGAN (MEMBER)
 MS K FARLEY (MEMBER)

DATE OF HEARING: **25 OCTOBER 2004**

DATE OF DETERMINATION: **1 DECEMBER 2004**

Mr W R Maumill JP was granted leave to appear for the appellants.

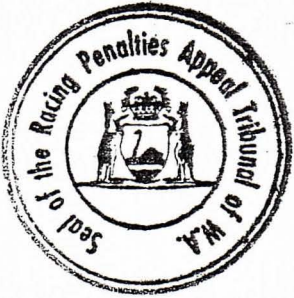
Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

These are unanimous decisions of the Tribunal.

For the reasons published the appeals are dismissed.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON



THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATIONS OF MR D MOSSENSON
(CHAIRPERSON)

APPEAL – 621

APPELLANT: **STEPHEN JAMES MILLER**

APPLICATION NO: **A30/08/621**

IN THE MATTER OF an appeal by jockey Stephen James Miller against the determinations made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 24 September 2004 imposing the following penalties for seven breaches of Rule 83(c) of the Australian Rules of Racing:

- Charges 1 to 3 inclusive – two months suspension in respect of each charge, to be served cumulatively,
- Charges 4 to 7 inclusive – six months suspension in respect of each charge, to be served concurrently, and
- The penalties in relation to charges 1 to 3 to be served concurrently with the penalties for charges 4 to 7.

AND

APPEAL – 622

APPELLANT: **SHARON LEE MILLER**

APPLICATION NO: **A30/08/622**

IN THE MATTER OF an appeal by Sharon Lee Miller against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 24 September 2004 imposing a fine of \$5,000 for breach of Rule 175(l) of the Australian Rules of Racing.

PANEL: **MR D MOSSENSON (CHAIRPERSON)**
 MR P HOGAN (MEMBER)
 MS K FARLEY (MEMBER)

DATE OF HEARING: **25 OCTOBER 2004**

DATE OF DETERMINATION: **1 DECEMBER 2004**

Mr W R Maumill JP was granted leave to appear for the appellants.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

By consent these two appeals were argued together. All the charges laid and penalties imposed in respect of both appeals resulted from the same Stewards' inquiry.

Background

On 24 September 2004 the Racing and Wagering Western Australia (RWVA) Stewards of Thoroughbred Racing opened an inquiry into alleged betting transactions by licensed jockey Stephen Miller. Called to the inquiry were:

- S J Miller, licensed jockey and reinsperson
- Mrs S Miller, licensed trainer
- Mr W R Maumill JP representing Mr & Mrs Miller
- Mr P O'Reilly, RWVA Principal Investigator

Early in the proceedings Mr O'Reilly delivered his report into the matter to the inquiry. Part of that report states:

'I report having conducted inquiries in relation to betting activity by licensed Western Australian Thoroughbred Jockey Stephen Miller.

I discovered that Stephen Miller has been using the TAB betting account in the name of his wife and licensed Thoroughbred Trainer Sharon Miller on a frequent basis.

Mrs Miller is the holder of TAB Account No. 1608606 first opened in 1985.

As part of this investigation I have listened to recorded tapes of a male person placing bets by telephone on this account. I recognise the voice as that of Stephen Miller.

I have conducted a random audit of this account in each month over the past 12 months from September 1st 2003. A number of bets are placed on the account and at each random bet selection it is Stephen Miller placing the bet. The bet cost over the past 12 months is \$69,704.50.

Not restricted to, but in particular, I examined the recent betting activity on this account including the period over the Kalgoorlie Race Carnival.

I was able to listen to Stephen Miller place bets on Kalgoorlie, Perth and Eastern States thoroughbred races.

In particular I submit the following bet transactions for the information of this Inquiry and will support these bet transactions by the actual tape of Mr Miller placing these bets.'

Details of those bets were read into the inquiry transcript. The video interviews by Mr O'Reilly of both appellants were played at the inquiry.

Mr Miller admitted placing the bets in question. He acknowledged he knew that to do so was in breach of the Rules of Racing. In response to the Chairman of the inquiry's question why he had chosen to do so he replied (at T31):

'Well, Mr Chairman, as I've said and I've said to the Investigator, sir, if I want to have a bet I could go around it the wrong way and I think the wrong way would be, would be by betting with a bookmaker which I've never, ever bet with a bookmaker or to go into the tote and the public can see me and back it on the tote or back it at the races. The bets that I have, and I'm not denying that I have a bet, and you know that I have a bet, sir. The bets that I have are very small bets ...'

Mr Miller then went on to state:

'Okay, and it's done on a phone account which my wife has got which is, I thought, I thought, in my opinion was doing the right thing to the racing industry because no one would find out about it but obviously someone has found out about it, and obviously I've done the wrong thing, but in the initial part of it, sir I, I felt I had done the right thing, if you can understand where I'm coming from.'

Mrs Miller also admitted she knew that it was wrong for Mr Miller to have placed bets using her account. Mrs Miller stated by way of explanation (at T35):

'I thought if he wants to have a bet it's better to do it there than go and get mixed up with bookmakers and things. It's not big betting, he's not causing any problems. If I'd ever thought it influenced his riding or anything, no I wouldn't let him bet but I don't think it ever has. Keeps him, you know, it's, he's going to bet so it's a better way to do it than being a mug isn't it?'

The Stewards at the inquiry reviewed all films of races where Mr Miller had placed bets on horses other than his own mounts. Charges were laid against the appellants and pleas taken (at T39 – 46) as follows (underlining added for clarity):

'CHAIRMAN *Mr Stephen Miller, at this stage of the inquiry the Stewards believe that you have a number of charges to answer under the provisions of AR. 83C. I'll read that rule to you: Every jockey or apprentice may be punished if he bet or have any interest in a bet on any race, or if he be present in the betting ring during any race meeting. Mr Miller, the first charge is that you Stephen Miller, a licensed jockey with Racing and Wagering Western Australia did have a quaddie bet with the TAB involving races 4,*

5, 6 and 7 on the Kalgoorlie race meeting run on September 4 2004. Do you understand the nature of that charge, Mr Miller?

MILLER Yes, sir.

CHAIRMAN How do you wish to plead in answer to the charge?

MILLER Guilty, sir.

CHAIRMAN Second charge being that you Stephen Miller, a licensed jockey with Racing and Wagering Western Australia did have a bet with the TAB on LAST REPLY in race 2 the Mobil Statewide 1200m at Kalgoorlie race meeting on the 9th of September 2004. Do you understand the nature of that charge, Mr Miller?

MILLER Yes, sir.

CHAIRMAN How do you wish to plead in answer to that charge?

MILLER Guilty, sir.

CHAIRMAN The third charge being that you Stephen Miller, a licensed jockey with Racing and Wagering Western Australia did have a bet with the TAB on MILLFIELD MISS in race 4 the Sita Environmental Class One 1300m run at Kalgoorlie on the 11th of September 2004. Do you understand the nature of that charge, Mr Miller?

MILLER Yes, sir.

CHAIRMAN How do you wish to plead in answer to that charge?

MILLER Guilty, sir.

CHAIRMAN The fourth charge being that you Stephen Miller, a licensed jockey with Racing and Wagering Western Australia did have a bet with the TAB on MILLFIELD MISS in race 3 the Widdeson's Hire 1200m at Kalgoorlie on the 4th of September 2004. Do you understand the nature of that charge, Mr Miller?

MILLER Yes, sir.

CHAIRMAN How do you wish to plead?

MILLER Not guilty, sir.

CHAIRMAN Is there anything further you wish to say, any witnesses you wish to call in relation to that?

MILLER That last bit that you called out, sir, on the 4th?

CHAIRMAN Yes?

MILLER *That was Sharon's bet, that wasn't mine.*

SHARON MILLER *He stated that.*

CHAIRMAN *Well, who had the bet?*

MILLER *I had the bet, but it was Sharon's bet.*

CHAIRMAN *So, you're saying that ...*

MILLER *I stated that in the evidence earlier, sir.*

CHAIRMAN *The charge, the charge is...*

MILLER *Okay.*

CHAIRMAN *Sorry?*

MILLER *Yes, I had the bet.*

CHAIRMAN *You had the bet. The charge is that you did have a bet with the TAB ...*

MILLER *Okay.*

CHAIRMAN *On MILLFIELD MISS.*

MILLER *Yes, okay.*

CHAIRMAN *Not guilty to that?*

MILLER *Guilty.*

CHAIRMAN *Are you sure on that, Mr Miller?*

MILLER *Yes, sir.*

CHAIRMAN *I don't want to ...*

MILLER *I had the bet.*

CHAIRMAN *The fifth charge being that you Stephen Miller, a licensed jockey with Racing and Wagering Western Australia did have a bet on the TAB in race 1 the Readymix Maiden on HOTEL CASUARINA, all-up on EUTRI, in race 2 the David Moss 1200m, all-up on POLIWHIRL in race 3 the Reed Resources 1300m run at Kalgoorlie on the 11th of the 9th 04.*

MILLER *Yes, sir.*

CHAIRMAN *You understand the nature of that charge?*

MILLER *Yes, sir.*

CHAIRMAN *How do you wish to plead?*

MILLER *Guilty, sir.*

CHAIRMAN *The sixth charge being that you Stephen Miller, a licensed jockey with Racing and Wagering Western Australia did have a bet with the TAB on GAMBACE in the, in race 7 the XXXX Gold Kalgoorlie Cup run at Kalgoorlie on the 11th of September 2004. Do you understand that charge?*

MILLER *Guilty, sir.*

CHAIRMAN *The seventh charge being that you Stephen Miller, a licensed jockey with Racing and Wagering Western Australia did have a bet with the TAB on MOSS MINSTER in race 8 the Qantas Class 6 1600m run at Kalgoorlie on the 11th September 2004. Do you understand that charge?*

MILLER *Yes, sir.*

CHAIRMAN *How do you wish to answer in that charge?*

MILLER *Guilty, sir.*

CHAIRMAN *The Stewards clearly acknowledge your plea of guilty. I will turn shortly to you to speak on penalty Mr Stephen Miller, but at this stage of the inquiry Mrs Miller, the Stewards do believe that you have a charge to answer also. And that is under the provisions of Australian Rule of Racing 175(l) and I'll read that rule to you. The Committee of any Club or the Stewards may punish any person who attempts to commit, or conspires with any other person to commit, or any person who connives at or is a party to another committing any breach of the Rules. Mrs Miller, you're charged under that Rule with being a party to Jockey S. Miller committing a breach of the Rules of Racing by permitting Jockey Miller to place bets through your TAB betting account. Now do you understand the nature of the charge Mr, Mrs Miller?*

SHARON MILLER *Yes, sir.*

CHAIRMAN *How do you wish to plead?*

SHARON MILLER *Guilty, sir.*

CHAIRMAN *We also acknowledge that plea. I know Mr Maumill's here and will talk on penalty. First, Mr Miller I'll ask you to address the Stewards on penalty because it has now got to the important stage of the Stewards deciding what penalty is appropriate under all of the circumstances. So, I would urge you to place before us everything that you think would influence us in relation to penalty, Mr Miller.*

- MILLER *Okay. Well, sir, I want you to take into account the honesty that I've given all the way through this inquiry which it is, I have been honest all the way through. I've done, done the wrong thing. With me career as far as a jockey's concerned with my weight and everything, is, is only a short-term which you realise that, so really I just ask for your leniency, sir.*
- CHAIRMAN *Mr Miller, I'm not aware of any previous convictions under this Rule.*
- MILLER *I haven't had any conviction under that Rule, sir.*
- CHAIRMAN *Mr Miller, in the course of your interview with Mr O'Reilly, you've been openly honest.*
- MILLER *Yes, sir.*
- CHAIRMAN *In the course of that interview, you said that you, you were a punter ...*
- MILLER *Yes, sir.*
- CHAIRMAN *And that you did on a couple of occasions say, look you're not going to change me.*
- MILLER *Well, I did but you know, it's, well to a person out there in the industry, Mr Chairman, you know, it's, it's a bit of a frightening thing when an investigator comes to your property and you know, obviously you're going to say a lot of things that you probably wouldn't recall or probably wouldn't say, you wouldn't be aware of at the time, but I tried to give the most honest answers to Mr O'Reilly. I give him all honest answers. A couple of things I said, I wish I hadn't said and the things that I wish I hadn't of said hopefully I can rectify them myself.*
- CHAIRMAN *Alright, so, am I to interpret through that, obviously you're remorseful about what's happened here?*
- MILLER *Yes, I am.*
- CHAIRMAN *Right. Mr Miller, there is one important thing that you should speak to us about. Your licence with the Thoroughbreds as a jockey.*
- MILLER *Yes, sir.*
- CHAIRMAN *You're licensed in the Harness as a trainer/driver. Penalty, paraphrasing it, the Stewards can fine, suspend, disqualify, fine up to \$75,000. What, tell us about the effect of a disqualification on you and a suspension?*

- MILLER *Well, I'd say the effect of a disqualification would finish me in the industry full stop. No doubt, it would finish me in the industry full stop.*
- CHAIRMAN *Why would that be?*
- MILLER *Because as far as my riding's concerned and possibly my driving, I'm just learning how to drive. I've just been in it a short period of time and learning that part of things, whereas the jockey part of things I've been in all of my life and I virtually know how to ride a horse and I think I know how to ride a horse pretty good. As far as the weight's concerned, my body's had enough of the wasting part and I've got to the stage where I've been lucky enough to come across a fairly good horse who I hope can take me a couple of places before I retire, and I'd like to sort of fulfil that obligation to Sharon and to the owners in the industry.*
- CHAIRMAN *That's ELLICORSAM, is it?*
- MILLER *Yes, sir.*
- CHAIRMAN *Mr Miller, what are your personal circumstances?*
- MILLER *Well, we've just, well, we are just relocating properties. We've put a lot of financial backing or money into this new property which we're setting up and it's pretty hard because my wife's a trainer and I'm a jockey and got a couple of trotters, and we're working our butts off in the industry to try to, we've got two young children who we're putting through school and, you know, we're trying to give them the best we can give them. And in saying that, they're missing out on a lot because, because of our jobs in this industry and we're, you know, we're putting our heart and soul into it. So, I just, you know, I'm just sort putting these facts across to yous and just hoping for a fair bit of leniency.*
- CHAIRMAN *Any questions? We'll give you THE opportunity, Mr Maumill, in a minute. Mrs Miller, do you care to say anything in relation to penalty?*
- SHARON MILLER *Sir, well, I've been honest as well. I could have said nothing and, you know, carried on but we were guilty of what we done and yes, we shouldn't have done it. I realise that now. We've put a lot into the industry. I've never had a bad record. I don't think I've done much wrong, the number of years I've been in the industry. We do, are putting a lot of money into it now, building a new property and we've finally got a couple of good horses that could really take us somewhere and this is bad timing, but we'll have to hope it doesn't knock us too far.*
- CHAIRMAN *Your current stables are where?*

SHARON MILLER *At Lot 50 Forty Road.*

CHAIRMAN *So you're still there are you?*

SHARON MILLER *We're there until, we have to out by next week.*

CHAIRMAN *Right, and where are you relocating?*

SHARON MILLER *We're rebuilding to Lot 2 Mandurah Road.*

CHAIRMAN *Is that where you're building is it?*

SHARON MILLER *Yep.*

CHAIRMAN *So, in the meantime...*

SHARON MILLER *Well, if you had ...*

CHAIRMAN *Are you shifting from 50 straight to Lot 2?*

SHARON MILLER *We hope to, yes, sir. If we can get it finished in time because we applied for new stables but the Shire has messed us around and we haven't been allowed to build as yet after twelve months of our plans being in, so we've had to do a smaller programme where the old stables are on the property for now.*

CHAIRMAN *Would you be relocating to another stable in the meantime before shifting to ...*

SHARON MILLER *We did apply to have some, I think at Lot 4, or something, Mandurah Road if we don't have enough room at the new place then we will have to put some there. But at the moment we've turned a few out, we'll possibly have enough room.*

CHAIRMAN *How many horses do you have in work, Mrs Miller?*

SHARON MILLER *At the moment? Eleven.*

CHAIRMAN *And you've, you've spelled horses to coincide with your relocation?*

SHARON MILLER *Yes, and while we're working so hard trying to shift, so.*

CHAIRMAN *Right, and you do have two young children?*

SHARON MILLER *Yes, sir.*

CHAIRMAN *Any questions?*

LEWIS *Mrs Miller, I understand your financial obligations to be quite considerable in regard to the improvements that you are doing. The bulk of the income, is it earned by Stephen or do you contribute a large part of your family income yourself or?*

SHARON MILLER Yes, I contribute a lot, sir.

LEWIS What would it be 70/30 or something along those?

SHARON MILLER Yes, sir.

LEWIS Okay, Stephen would contribute 70.

SHARON MILLER We're about even there, sir, yeah.

LEWIS Okay.

SHARON MILLER Because I have a stud and adjustment centre as well.

LEWIS Okay.

SHARON MILLER Which I run.

CHAIRMAN Mr Delaney, anything? Mr Criddle?

CRIDDLE No, thank you.

CHAIRMAN Anything further, Mrs Miller?

SHARON MILLER No thank you, sir.'

Mr Maumill had been given permission relatively early in the proceedings to sit alongside Mr Miller and to *'...have full say to represent Mr Miller in the best manner'* (T4). Late in the inquiry Mr Maumill was invited to sum up by the Chairman of the inquiry. Mr Maumill's detailed response is worth quoting:

'Well, I just feel Mr and Mrs Miller have covered most of the points, but I would respectfully ask the, the panel to consider the following. I know better than to quote case law and give Mr Zucal and this isn't the place to do it so I won't do it, I'm a lay person and I don't have legal training but we do from time to time look to the, to the great jurors for a bit of guidance when we're, we're looking to apply penalties and if I could just quote two lines from Lord Denning in Able versus Tildon. Lord Denning said by refusing or withdrawing a licence Stewards can put a man out of business. Pardon me. It's a great power and should not be abused and Lord Denning said later that disqualification or suspension of a person's right to work should be the last resort and applied at the higher end of the scale. I would suggest to, to you, Mr Chairman and panel members that this particular case, we submit is at the lower end of the scale. The malpractice of organising a rort involving a third person or a middle man wasn't evident here. The Millers have been entirely forthcoming from the moment Mr O'Reilly spoke to Mr Miller, he, he acted with candour, he acted with honesty, as did Mrs Miller. And in, as you know, Mr, Mr Chairman in the criminal courts, an early plea of guilty, always invites a reduction on any tariff that's applied by the judge. Both of Mr and Mrs Miller, pardon me, entered an early plea of guilty, so as not to impose expense on the racing industry by involving lawyers and involving lawyers and possible further court action. They said we've done the wrong thing, we've admitted our guilt, we've cooperated in every way possible. Mr and Mrs Miller have alluded to their financial position. The commitment they've

made is upwards of a million dollars. They've had to, they've sold their property. They've bought at great expense in the booming part of the southern corridor. They intend to build state of the art stables and as panel members know, and you, Mr Chairman, it takes a working life time to build up an asset and a client base that can see you through to your retirement in the racing game, and you wait a life time to get a great horse. Now, things have happened for the Millers, they've been able to get a great horse, or horses with ELLICORSAM. They've built up an asset base which they've now got to pay for and they're raising a young family and they're a working team. A disqualification at this time would be catastrophic for them as they're making this move. I'm, they've always said from the word go that they're guilty, but I urge you Mr Chairman and panel members to remember this was not some flagrant public flaunting of the Rules. No getting drunk of racecourses and running in, having a couple of hundred each way, Mr Chairman, panel members, this was done through a secure phone account where a password was required. And I'd urge you also to consider that the maximum bet that Mr Miller placed was \$200. Mr Miller was dabbling and ask tribunal members also to keep in mind, this is a racing professional and they have Sky Channel on at home, we all do now, it's part of holding a licence is to look at the opposition, the temptation to have a bet when you see going around that you think should win, has obviously been too much for Mr Miller and he did it and he enjoyed it and he admitted to it. I ask you also to consider, Mr Chairman, that in company with myself, Mr Miller has sought the advice of senior members of the industry. They recommended that he was forthcoming with, with this panel and with Mr O'Reilly, they've also, pardon me, recommended that if Mr Miller has some difficulty with this, that he seeks counselling. I know, Mr Chairman, from previous appearances before you that you are a great believer in rehabilitation. I recall the incident with Tanya Barjamovic when you put her on the right track by sending her for counselling and it worked. It worked. I urge you to consider that as part of any penalty that you may impose. And finally, Mr Chairman, in this game it's all about punishment, deterrents and hopefully rehabilitation. You don't want repeat offenders here and I think these two people, they're now contrite, they're remorseful, they're apologetic. They're asking for leniency and in view of the fact there was no major malpractice here, it was simply a question of a husband and wife having a bet on the same phone account, I urge you to consider this to be on the lower end of the scale and apply a fine or a short suspension. And Mr Chairman, I know of course, the difficulty we have here arriving at a tariff. I've rung Mr Monahan at the VRC, or Racing Victoria, and through him approached Mr Gleeson, the Chairman of Stewards, to try and get an idea on how it was treated over there. Astonishing, Mr Chairman, it appears that jockeys don't bet in Victoria. But they did go back to the 1970's when, and I, I must admit that Mr Miller only approached me a day ago, but they brought to my attention the question of a Mr Lance Gould who was betting on it, and I got this information from Mr Monahan who was betting on a racecourse and was fined \$300 by the Stewards. Keeping in mind, Mr Chairman, that inflation has obviously occurred since the 1970's you may have some, some other penalty in mind and I draw your attention to the Sestich account. Sestich is about the only one that you can use as a benchmark here but they are distinguishable for a number of reasons. Mr, Mr Sestich certainly wasn't as forthcoming as Mr Miller. Certainly Mr Sestich and others tried to muddy the waters. I would go so far as to say in camera that on that occasion lies were told and we all know that lying before the Stewards' panel is

always attracts a heavier penalty. Mr Chairman, the purposes of hearings like this one and inquiries, and when you dish out penalties is not to destroy people's lives and I ask you to keep that in mind when you apply the penalty for both of these hard-working industry professionals' (T46 – 49).

At T49 the Chairman said:

'Thank you for that, Mr Maumill. I was going to raise with you the matter of Sestich. Jockey Sestich at the time in 1994 received a six month disqualification. He was found to be having phone bets with bookmakers and ...'

Mr Maumill (at T49 –50) responded as follows:

'If I could just add to that, Mr Chairman, for the benefit of yourself and panel members, and members of the Press that are here. Betting with bookmakers over the telephone immediately sets off a reaction around the betting ring, immediately. You bet with a bookmaker over the phone, he goes and lays off with the bloke next to him, or his clerk hears that a jockey presumably with inside information on a horse, has had a substantial bet, it's, it electrifies the ring. Ses has just had a monkey on something and it's around the ring in five minutes. Mr and Mr Miller realised that and that's why this was all done on a confidential phone account, no bookmakers or other persons involved and the maximum bet was \$200. Now, I realise there were multiple offences and I, we, of course they expect it to be dealt with accordingly, and I mean it's now in the hands of yourself and the panel members. But I say again, I mean, deterrents and rehabilitation and punishment are obviously what you've got to address. I think they are contrite and remorseful and we're not here to destroy people's lives, we're here to tell them that this won't be tolerated and don't do it again. And as you've quite rightly pointed out earlier, this is a first offence. This is a first offence and if I may say so, it is not a dishonesty offence and it's certainly not hanging offence. They work together, they've had a bet together on a phone account. I would be hopeful that you would show some leniency today because it may be a cliché but it's applicable, that justice is best served when tempered with mercy.'

Following an adjournment to enable the Stewards to consider the matter the proceedings were reconvened for the Chairman to announce findings on sentence in these terms:

'In regards to penalty Mr Stephen Miller and Mrs Sharon Miller, we have considered all what you've placed before us, and we acknowledge your comments Mr Maumill in relation to penalty for both Sharon and Stephen Miller. In determining a penalty, the Stewards believe the following to be relevant. Firstly, we consider that these breaches of the Rules are serious. Mr Miller, you're a prominent jockey and in the top bracket of riders in Western Australia and have been licensed for over twenty years and you have a considerable public following. You were the leading rider at the recent Kalgoorlie Round and you were successful in the Hannan's Handicap, a premier Kalgoorlie event. You were also, sorry, you were aware that a licensed jockey was prohibited from betting on thoroughbred races and you were conscious that your conduct was in breach of the Rules of Racing. The support of the betting public is vital to this industry. That support is the life blood of the racing industry and anything that impacts negatively on the integrity of this industry, threatens that

betting public's support and that can equate to a loss of financial support to the racing industry and consequently affects all participants. By your actions, the integrity and image of racing have been tarnished. As stated, it is the Stewards' view your betting is totally inappropriate conduct and serious offences, however, when you are riding in races and betting on other runners in those races, that set of circumstances does raise critical integrity issues. From a public perception it then brings into serious question and doubt your competitiveness and urgency of riding, of your riding to win the race. Stewards believe that the penalty must contain a deterrent element and send a clear message to the industry that such behaviour will not be tolerated. In mitigation, you have cooperated honestly and openly with the Stewards and the Investigator throughout this inquiry. By your cooperation, the Stewards have been able to expeditiously address this matter unhindered and this weighs heavily with the Stewards and is a significant mitigating factor. The Stewards acknowledge your guilty plea. This inquiry has reviewed the films of races you rode in while betting on other runners in those races. The officiating Stewards on raceday had no reason to question your rides. We also find that your race riding was not influenced by your betting activities. Your personal circumstances have had a significant bearing on the Stewards' decision. Both you and Sharon Miller are highly regarded in this industry and apart from riding infringements, your general record is good. In the past, you've not brought racing into disrepute. You are totally committed to the racing industry and have invested heavily, heavily financially in racing. You're also a licensed trainer and driver in the Harness code. The range of penalty for jockeys betting in Western Australia ranges from fines to disqualification. The majority of penalties handed out to jockeys have been fines, however, the bulk of past cases have been where a jockey will place a bet at a race meeting on the tote or with a bookmaker and are seen to be one-off occurrences. The Sestich matter resulted in a six month disqualification, however, we see that case as different to this case. Bookmakers were involved, aliases were used and untruths were told. We have taken into consideration that your course of conduct in betting has occurred over a period of time, however, we do acknowledge that you do not wager vast sums of money. We also believe that you are remorseful and have seen the error of your ways. Stewards have considered the provisions of ARR. 196 and we've discussed at great length the question of suspension versus disqualification. For a person to suffer a disqualification in the racing industry, he is deemed unfit to be part of this industry. As Mr Maumill stated a disqualification would be catastrophic. We agree with that statement. Under all the circumstances, the Stewards do not believe that a disqualification to be appropriate. In relation to charges 1, 2 and 3, it is the decision of the Stewards to suspend your licence for a period of two months on each count to be served cumulatively. In relation to charges 4, 5, 6 and 7, your jockey's licence will be suspended for a period of six months on each count to be served concurrently. It is also the decision of the Stewards that the finding of the penalty in relation to charges 1, 2 and 3 are to be served concurrently with the penalties for charges 4, 5, 6 and 7. In essence, that means that your jockey's licence is suspended for a period of six months. Mrs Sharon Miller in relation to penalty most of what has been said in relation to Jockey Stephen Miller's penalty applies to you. The Stewards acknowledge and stress your honesty in dealing with this inquiry and your personal circumstances and your commitment to the industry. However, you were aware that Jockey Miller was breaching the Rules of Racing

and that you allowed betting on your TAB account to take place, albeit you are husband and wife. We do not believe that a suspension or disqualification of your trainer's licence is warranted in these circumstances and believe a fine of \$5,000 to be appropriate. Both, both you Mrs Sharon Miller and Mr Stephen Miller have the right of appeal in relation to this.'

The Chairman then went on to state 'You've been suspended in the thoroughbred code, this penalty does extend to your Harness racing activities' (T53).

The Appeal Grounds

The grounds of appeal by Mr Miller in respect of Appeal 621 are:

'The penalty imposed excessive. Stewards did not give sufficient weight or consideration to my early plea of guilty. Stewards did not give sufficient weight or consideration to my co-operation. Stewards did not consider the effect on my other licences. Stewards did not consider or may not have been aware of penalties for this offence – other than Sestich case.'

The ground of appeal in respect of Mrs Miller in Appeal 622 is simply:

'The severity of fine imposed.'

The Argument for Mr Miller

Mr Maumill presented the case for Mr Miller with his usual enthusiasm and clarity. Mr Maumill acknowledged at the outset the onus was on him to demonstrate error on the part of the Stewards. He claimed the Stewards had not fully considered all ramifications of their decision. The penalties in relation to offences 4, 5, 6 and 7 were said to be unreasonably harsh and not supported by reference to other penalties. No concessions had been made by the Stewards.

Mr Maumill explained that upon being convicted and suspended for betting in his capacity as a jockey it also meant a suspension of all of Mr Miller's licences. Mr Miller held 5 licences. The suspension was not confined to just the jockey's licence which was the subject of the charges. Mr Miller was also licensed to do trackwork with thoroughbreds. In the pacing code he was licensed to train, drive and do trackwork. It was argued by Mr Maumill there is nothing in the transcript to reflect the fact that the Stewards considered the impact on Mr Miller of the loss of all licences. Mr Maumill contrasted this multi-licence situation to that of Mr Sestich who had only held a jockey's licence. Compared to the punishment imposed on Mr Sestich it was asserted that the Miller suspension had a much more serious effect. This aggravation resulted despite the fact that in Sestich (Appeal 179) the circumstances were more serious. Bookmakers were involved, aliases had been employed and untruths were told by Mr Sestich. Therefore, the punishment meted out to Mr Miller was very harsh according to Mr Maumill. This was particularly so as the Miller offences all occurred in a short period of one week and amounted to the one course of conduct.

Mr Maumill handed up some Western Australian Turf Club records of penalties which had been imposed on other jockeys who had been dealt with under the equivalent rule. On 8 December 1981 jockey Gath was suspended for two months. This was subsequently reduced on appeal to the Committee to one month's suspension. Jockey Oram was

suspended for five weeks in September 1983 and was fined \$50 for another betting offence in November the following year. The same jockey was again fined \$30 in February 1988 and \$250 in May 1999 for breaching Rule 83(c). On 25 February 1994 jockey M D Miller was suspended for two months to be served concurrently for each of three charges of having bet on a horse.

The Sestich case according to Mr Maumill was '*as bad as it gets, involving lies, false moves, bookmakers and aliases*'. This can be contrasted with Mr Miller who placed a series of small and unsuccessful bets on his wife's TAB confidential account. Further, Mr Miller cooperated fully with the Stewards and entered an early plea of guilty making it a very different case to Sestich (disqualified). In Mr Miller's case because of the loss of his four other licences all of his potential sources of income have been closed off to him. According to Mr Maumill the only difference between this penalty of suspension and Mr Sestich's disqualification is Mr Miller can actually go to the race course. But for what purpose? Mr Maumill claimed the Miller penalty was more onerous than Sestich and the Stewards were wrong in imposing it. It was argued in substance Mr Miller could no longer engage in racing and was denied the opportunity to earn any income. Mr Maumill also submitted there was an added element to the penalty as Mr Miller rides most of Mrs Miller's horses. Mrs Miller is a trainer with a strong team including ELLICORSAM. Mr Miller as a consequence of the penalty would not be able to ride those horses and would miss the summer carnival.

As to the range of recent penalties which have been imposed, according to Mr Maumill Sestich's was the highest. Mr Maumill also referred to the penalty which was imposed on Ms L Goodrick of suspension for one race meeting and a fine of \$200. This low penalty was the decision of the Tasmanian Racing Appeal Board which upheld an appeal against a suspension for two race meetings. This case however related to a careless riding charge and appears to have been cited by Mr Maumill simply to illustrate the powers on appeal to interfere with a penalty to enable a suspended person to ride where there were special considerations. It made it a special case.

It was claimed that applying the reasoning in O'Donnell (Appeals 263 and 264) Mr Miller's penalties should be concurrent. Mr Maumill referred to a conclusion I reached in that case at p27:

'It can therefore generally be said that whether penalties should be run cumulatively or concurrently depends upon whether the facts amount to only one continuous course of conduct, or whether the actions of the appellant can be safely split into two or more courses of conduct in the circumstances.'

'Mr O'Donnell's case clearly involves a situation where one course of conduct occurred in the space of a short period of time. The same drug was administered in precisely the same way by the appellant to the same horse for precisely the same way by the appellant to the same horse for precisely the same therapeutic reasons. The two offences were detected, charged and dealt with identically.'

According to Mr Maumill Mr Miller's betting was just one continuous course and not seven courses of conduct due to the short period of time involved. Some other cases were also referred to on this issue. Mr Maumill argued the penalties imposed for offences 1, 2 and 3 should be converted to concurrent penalties. In addition offences 4-7 should be altered as each incurred six months which was three times more than the first three. Therefore, it was

submitted, the Tribunal needs to intervene in 4, 5, 6 and 7 to reflect the seriousness of the first three. Mr Maumill complained no reasons were given by the Stewards to distinguish between them. It was put that McPherson (Appeal 208) established the Stewards must give reasons, particularly in livelihood cases. According to Mr Maumill no reasons were given to differentiate offences 4-7.

Finally the Tribunal was told that a range of factors all helped to mitigate the sentence including the early plea of guilty, the honesty displayed, the fact that Mr Miller had a young family and he and his wife had recently embarked on a massive building programme. Mr Miller had incurred a large mortgage and there would now be no income from any licence for six months. Accordingly offences 4-7 should be reduced and should all be served concurrently. In the light of all these factors, according to Mr Maumill, the situation '*cried out for intervention*'.

The Case for the Stewards

In response Mr Davies QC for the Stewards argued Mr Maumill's reasoning failed to recognise the enormous differences between a disqualification and a suspension. Whereas in the circumstances of Mr Sestich's matter that distinction may not have been so great in the case of the Millers a disqualification would have been a disaster. According to senior counsel the reasons why the suspension was a more lenient penalty in the circumstances are due to the consequences applicable to a disqualification. Had Mr Miller been disqualified he:

- would not have been allowed on any course
- could not assist with any horse
- could not visit any licensed premises
- could not conduct any education work on the horses.

According to senior counsel the Stewards ultimately agreed to Mr Maumill's submission at the inquiry and imposed a concurrent penalty on all of the first three offences. The Stewards obviously knew and considered that the sentences which they were imposing would impact on Mr Miller's other licences. Despite this the Tribunal was told the Stewards have informed Mr Miller that he could be considered to be approved to do trackwork during the term of his sentence.

The Stewards in handing out these penalties made it clear the perception of riding in a race whilst at the same time betting on another horse is '*horrible*'. After reviewing the films of the races in question the Stewards have acknowledged the conduct did not affect the rides. Had they reached a different conclusion then Mr Miller would have been disqualified. Despite the conclusion which they reached '*the perception remained*'.

After explaining the betting which occurred in relation to the races in which Mr Miller rode, senior counsel then addressed the cases referred to by Mr Maumill. It was submitted the Tasmania case of Goodrick was of no assistance as it illustrates only that a young jockey was given a break. As to Oram there is no information as to the circumstances of any of the offences. The real comparison is Sestich's case where the jockey was disqualified. Despite the fact that the Sestich case involved giving a false name and betting with bookmakers

Mr Sestich was not actually riding in the races. Mr Miller on the other hand used his wife's account to bet and in fact was riding in some of the races in which he placed bets on competing horses.

As to the mitigating factors, it was argued the Stewards were aware of all of these and acknowledged they were significant. Senior counsel emphasised the fact that these breaches were serious and referred the Tribunal to Anderson and Owen JJ in Harper v Racing Penalties Appeal Tribunal of Western Australia (1995) 12 WAR 337.

It was submitted that it was hard to make out the argument that insufficient attention was given to the mitigating circumstances. Those personal circumstances included the fact that Mr Miller like Sestich at the time, is a leading rider, Mr Miller is said to be remorseful and he had changed his attitude to continuing the practice.

Senior counsel denied there is any error in the sentencing process and pointed out in this case the Stewards had in fact given very good reasons. It was submitted that the Stewards did not overdo the need for deterrence and that factor is a paramount consideration of the penalties imposed. If the appellant fails to demonstrate error then the Tribunal cannot find the discretion has in any way miscarried.

The Reply

Mr Maumill in reply explained the Millers took a large team of horses to Kalgoorlie. Mr Miller was competing at the Kalgoorlie races and stood to win a car for his wife depending on the outcome. The bet on GAMBACE was only to cover the sling to the jockey of that other horse in the Miller stable should that other horse win. The way the final race was ridden by Mr Miller did not cause the Stewards to question either Mr Miller or the jockey of the horse on which Mr Miller placed his bet.

One can contrast the present case with Sestich who was not riding at the time. Therefore it was claimed to be a much worse or more serious a penalty as Mr Miller had been riding every week until the penalty was imposed. According to Mr Maumill *'Mr Miller is the backbone and heart and soul of the industry'*.

Reasons

Initially Mr Maumill's approach and reasoning had some appeal. In the light of his submissions in isolation one could feel some sympathy for Mr Miller and believe that he had been too sternly treated by the Stewards. When looked at from Mr Maumill's perspective Mr Miller's offences arguably could be classified more in the nature of acts of stupidity rather than being so serious as to be said to attack the heart of the industry. However, there can be no escaping the fact that the conduct clearly is a serious breach of the Rules. The Rules were breached in a clandestine manner in circumstances where Mr Miller clearly knew that placing the bets was wrong. None of the examples of other penalties quoted by Mr Maumill afford Mr Miller any assistance. Both Gath and Oram occurred a very long time ago in a different era, even before the Tribunal was established. The MD Miller matter did not come on appeal to the Tribunal, the facts are not known, but the penalty imposed is not incompatible with the penalties in question in the present appeal.

It goes without saying Mr Miller is a man of considerable experience and standing in the industry. Despite having so much personally at stake he consciously elected, in concert with Mrs Miller, to put at risk both his own reputation and standing as a jockey and his family business in order to satisfy the desire to gamble. The misconduct occurred at an important time in his career in view of his age, the licences which he jeopardised, the adverse financial effect and the horses currently being trained by Mrs Miller which he was riding.

The details of the betting transactions covered by the charges and the horses which Mr Miller rode and backed are set out as follows:

Charge No.	Date and Place of Races	Bets/Horses/Races	Jockey	Trainer
1	4 September 2004 Kalgoorlie	<u>Quaddie</u>		
		Race 4 – 2 & 6	No. 2 Stephen Miller	Sharon Miller
		Race 5 – 6 & 8	No. 6 Stephen Miller	Sharon Miller
		Race 6 – 1, 2, 3, 5 & 9	No. 1 Stephen Miller	David Harrison
		Race 7 – 1, 3 & 7	No. 1 Stephen Miller	Sharon Miller
2	9 September 2004 Kalgoorlie	<u>Each Way</u>		
		LAST REPLY Race 2	Stephen Miller	Sharon Miller
3	11 September 2004 Kalgoorlie	<u>Each Way</u>		
		MILLFIELD LASS Race 4	Stephen Miller	Sharon Miller
4	4 September 2004 Kalgoorlie	<u>Each Way</u>		
		MILLFIELD LASS Race 3	Danny Miller	Sharon Miller

Stephen Miller rode SKY STORM (trained by Ashley Grace) which started at tote odds of \$9.30 and finished last.

5	11 September 2004 Kalgoorlie	<u>All Up Win</u>		
		Race 1 – No. 2	Lucas Camilleri	Lindsay Smith
		Race 2 – No. 1	Steven Parnham	Neville Parnham
		Race 3 – No. 1	Stephen Miller	Sharon Miller

Mr Miller rode DR GEE (trained by Peter Fernie) in Race 1 which started at tote odds of \$11.80 and finished fifth.

Mr Miller rode GUMBLETON (trained by Sharon Miller) in Race 2 which started at tote odds of \$5.90 and finished third.

Charge No.	Date and Place of Races	Bets/Horses/Races	Jockey	Trainer
6	11 September 2004 Kalgoorlie	<u>Each Way</u> GAMBACE Race 7	Jessica Vallas	Sharon Miller

Mr Miller rode BLEVVO (trained by David Harrison) which started at tote odds of \$4.90 and finished third.

7	11 September 2004 Kalgoorlie	<u>Each Way</u> MOSS MINSTER Race 8	Peter Knuckey	Sharon Miller
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Mr Miller rode MISS COPYCAT (trained by Sharon Miller) which started at tote odds of \$2.60 and won.

All those involved in the racing industry are reasonably entitled to expect any jockey not only to be conscious of the obligations under the Rules of Racing but also to actually comply with all such Rules. One such requirement is the not too surprising embargo on betting. Any wagering entered into by a jockey who is actually competing in the very same races which are the subject of those bets clearly is a very serious matter. The seriousness is accentuated and the misconduct all the more culpable if the offender actually bets on other horses in the same races as the betting jockey is riding in. To have a financial interest in the outcome of a race where there is such a conflict on the part of one of the participants clearly can only create a most undesirable impression to any independent objective observer.

Unlike greyhound racing, which is free from human interference on the track whilst the animals are chasing the lure, horseracing requires jockeys to ride their mounts in such a way as to give them the best prospects of winning. Many factors influence the outcome of a horse race. Some of those factors, such as the condition of the track, the way others are riding and the fitness of one's own horse, jockeys must address as best they can whilst they are actually confronted with them during a race. The betting public, owners and trainers are entitled to expect all competing jockeys to do their very best in the light of the conditions and by applying their riding skills to the situation then prevailing. By having consciously introduced the additional element of gambling on the outcome, and in particular on another horse winning other than the one being ridden by the betting jockey, Mr Miller clearly called into question his desire to win the race. Such a scenario must automatically be perceived to introduce a sinister element to the contest as there is the prospect on the part of the betting rider of influencing the outcome in some way inappropriately. Such an element is excluded from the equation where the jockey is not the punter. The Rules are designed to ensure the best horse wins on its merits based on the skill and determination of the rider. The conduct of jockeys is deliberately curtailed and controlled by excluding the right to bet so as to give the public confidence in the propriety of the sport and the efforts of all of the competing participants. Jockeys are not only prevented from betting under the Rules. Persons betting with or for jockeys or giving or offering a rider any consideration contrary to the Rules may be punished (AR 90). Further, jockeys may not accept any consideration in connection with any race they ride except from the nominations of their mounts without the nominators' consents

(AR 83(b)). Automatic disqualification applies to jockeys who own, lease or have any interest in a racehorse and the trainer may also be punished (AR 84). Jockeys are subject to a whole range of other controls under the Rules. For example very strict dress codes apply to them (AR 86 to 88 inclusive).

In the present case Mr Miller has not just gambled on the outcome of seven races. He has also gambled on his eligibility to continue to participate in the industry. The Stewards in these circumstances must weigh up and evaluate a whole range of different and in some cases overlapping factors. These relevant factors have been commented upon and argued with clarity on both sides before the Tribunal. It has not been demonstrated in any aspect of those arguments that the Stewards have ignored any of the relevant factors. At best, it can be said on behalf of Mr Miller that they have not given sufficient weight or enough consideration to certain aspects of Mr Miller's behaviour in relation to the offences and all of the relevant surrounding circumstances. Such a proposition amounts to no more than a comment on the exercise of the discretion. That exercise in the end is a question of evaluation or a matter of weighting.

The Stewards have a discretion to disqualify or suspend and/or to fine up to \$75,000 in the case of a breach of the Rules (Rule 196). How the Stewards weigh up, reconcile, evaluate and modify all of the relevant ingredients of such a discretionary exercise is a complicated process. Their knowledge of the industry, the attitudes and likely responses of the betting public, how the Rules operate, the need to maintain and enforce integrity in racing by a key component, (the jockey), are some of the relevant factors Stewards are well placed to consider and evaluate.

I am not persuaded that any error has been identified in any aspect of the process of dealing with the matter which should lead to the Tribunal to conclude that the decision may not have been reasonably open to the Stewards and as a consequence interfere with it. I can see no error in imposing two months suspension for each of the first three offences. Clearly on the occasions when Mr Miller bet on other runners in races in which he was competing the Stewards quite appropriately imposed a much longer penalty. Also clearly the Stewards have avoided completely divorcing Mr Miller from the industry for six months by imposing a suspension on him rather than a disqualification.

I am not persuaded that the seven acts of betting which occurred over the space of eight days in the circumstances of this case can only be said to be one continuous course of conduct. In other words I believe the Stewards were entitled to treat different bets as discrete matters justifying cumulative rather than concurrent periods of suspension.

The argument as to failure to consider the ramifications of a suspension in terms of the other licences held by Mr Miller has no merit. Local Rule 182 of RWWA Rules of Thoroughbred Racing states:

- (1) *Where a person is disqualified or warned off under the RWWA Rules of Greyhound Racing or the RWWA Rules of Harness Racing then, thereupon, the person is taken to be a disqualified or warned off person under these Rules.*
- (2) *Where a person is declared a defaulter under the RWWA Rules of Greyhound Racing or placed on the unpaid forfeit list under the RWWA Rules of Harness Racing, then, immediately*

- (3) *When imposing a period of suspension under the RWWA Rules of Greyhound Racing or the RWWA Rules of Harness Racing the Stewards imposing such penalty may impose the same period of suspension with respect to all licences held by the person under these Rules.'*

Local Rule 298(3) of the RWWA Rules of Harness Racing states:

'When imposing a period of suspension on a person under the RWWA Rules of Greyhound Racing or the RWWA Rules of Thoroughbred Racing, the Stewards imposing such penalty may impose the same period of suspension with respect to all licences held by the person under these Rules.'

An offender's right to participate across codes in any case of a disqualification is automatically forfeited whereas the Stewards have a discretion, based on the circumstances, in the case of a suspension. The Stewards did refer to this consequential flow on result in the course of handing down their decision and it cannot be said they have ignored or overlooked it. I note that at the appeal hearing, as already stated, the Stewards have indicated to Mr Miller that they may consider allowing him to return to trackwork during the term of the suspension.

Mr Davies QC put the Sestich decision in its proper light. I agree with his propositions which flow from a proper comparison of the difference between a disqualification and a suspension. The rules which address disqualification are very restrictive indeed. They are worth quoting to highlight this point and to address this aspect of Mr Maumill's submissions.

'AR182 (1) Except with the consent of the Principal Racing Authority that imposed the disqualification, and upon such conditions that they may be in their discretion impose, a person disqualified by the Stewards or a Principal Racing Authority shall not during the period of that disqualification:-

- (a) Enter upon any racecourse or training track owned, operated or controlled by a Club or any land used in connection therewith;*
- (b) Enter upon any training complex or training establishment of any Club or licensed person;*
- (c) Be employed or engaged in any capacity in any racing stable;*
- (d) Ride any racehorse in any race, trial or test;*
- (e) Enter or nominate any racehorse for any race or official barrier trial whether acting as agent or principal;*
- (f) Subscribe to any sweepstakes;*
- (g) Race or have trained any horse whether as owner, lessee or otherwise;*
- (h) Share in the winnings of any horse;*
- (j) Participate in any way in the preparation for racing or training of any racehorse.*

- (2) *Except with the consent of the Principal Racing Authority that imposed the disqualification, no person who in the opinion of the Principal Racing Authority or the Stewards is a close associate of a disqualified person shall be permitted to train or race any horse.'*

'Rule 195A Upon any licensed person being disqualified his licence shall cease and determine and he must make application to the Principal Racing Authority to be relicensed.'

For these reasons I would dismiss Mr Miller's appeal.

Mrs Miller's appeal

Mr Maumill explained that prior to the imposition of the \$5,000 penalty for this offence Mrs Miller had never been called before the Stewards before. Mrs Miller has an enviable record of 20 years as a trainer and prior to that a licensed rider. It was argued the monetary penalty coupled with Mr Miller's six month's suspension has an enormous impact. It will make it hard for her to continue training, support the family and meet the new mortgage commitment given over their new training establishment. It is clear Mrs Miller is a hardworking, professional trainer who is a dedicated and genuine contributor to the industry. According to Mr Maumill when compared with other offences such as Watson (Appeal 059) and Luciani (Appeal 146) where this Tribunal confirmed fines of \$5,000 for presenting horses with prohibited substances it is difficult to equate and to justify the fine imposed on her which is too harsh in the light of 25 years unblemished service. Mr Maumill argued the penalty should be reduced to an amount reflecting the good standing in the industry and the fact that Mrs Miller will now be the breadwinner.

In reply Mr Davies QC claimed the Stewards gave full credit for Mrs Miller's honesty and integrity in the industry. An account at the TAB in the name of SJ Miller would have attracted attention. She knew it was wrong and also knew Mr Miller had been betting on her account over a period of years. On page 5 of the transcript of the Stewards' inquiry Investigator O'Reilly stated:

'As part of the investigation, I've listened to recorded tapes of a male person placing bets by telephone on this account. I recognised that voice as that of Stephen Miller. I've conducted a random audit of this account in each month over the past twelve months from September 1st 2003, the number of bets placed on the account and at each random bet selection it is Stephen Miller placing the bet.'

On page 35 the following exchange is recorded:

'CHAIRMAN	And you've had, you've had this account since?
SHARON MILLER	Nine years, a long time.
CHAIRMAN	So how long has this activity been going on?
SHARON MILLER	Not that long, sir.
CHAIRMAN	Well, what's not that long?
SHARON MILLER	I don't know, a few years.

CHAIRMAN

Give us an approximation. A few years?

SHARON MILLER

Probably.'

Nothing Mr Maumill argued recognises the wide discretionary nature of the penalty. It was said to be otiose to compare this offence with other offences. The wife who held a licence facilitated the committing of the offence by allowing the spouse to bet privately. There is no tariff for this type of offence. Therefore first principles must apply. It is very difficult to say that the fine imposed was outside a proper discretion. The proper question to be asked is whether it can be demonstrated that it was wrong to impose this penalty for active and prolonged actions of a jockey for this purpose in breach of the rules.

Reasons

Mrs Miller's participation or acquiescence is an integral part in the offences committed by Mr Miller. But for her Mr Miller would not have transgressed.

I am not persuaded it has been demonstrated the Stewards were in error in imposing the fine of \$5,000.

I adopt the reasoning of senior counsel.

I would dismiss Mrs Miller's appeal.



DAN MOSSENSON, CHAIRPERSON



THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATIONS OF MR P HOGAN
(MEMBER)

APPEAL - 621

APPELLANT: **STEPHEN JAMES MILLER**

APPLICATION NO: **A30/08/621**

IN THE MATTER OF an appeal by jockey Stephen Miller against the determinations made by the Racing and Wagering Western Australian Stewards of Thoroughbred Racing on 24 September 2004 imposing the following penalties for seven breaches of Rule 83(c) of the Australian Rules of Racing:

- Charges 1 to 3 inclusive – two months suspension in respect of each charge, to be served cumulatively,
- Charges 4 to 7 inclusive – six months suspension in respect of each charge, to be served concurrently, and
- The penalties in relation to charges 1 to 3 to be served concurrently with the penalties for charges 4 to 7.

AND

APPEAL - 622

APPELLANT: **SHARON LEE MILLER**

APPLICATION NO: **A30/08/622**

IN THE MATTER OF an appeal by Sharon Lee Miller against the determination made by the Racing and Wagering Western Australian Stewards of Thoroughbred Racing on 24 September 2004 imposing a fine of \$5,000 for breach of Rule 175(l) of the Australian Rules of Racing.

PANEL: **MR D MOSSENSON (CHAIRPERSON)**
 MR P HOGAN (MEMBER)
 MS K FARLEY (MEMBER)

DATE OF HEARING: **25 OCTOBER 2004**

DATE OF DETERMINATION: **1 DECEMBER 2004**

Mr W R Maumill JP was granted leave to appear for the appellants.

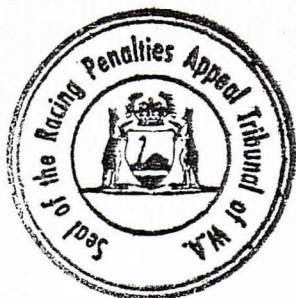
Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr D Mossenson, Chairperson.

I agree with those reasons and conclusions and have nothing to add.



PATRICK HOGAN, MEMBER



THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATIONS OF MS K FARLEY
(MEMBER)

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 MS K FARLEY (MEMBER)

DATE OF HEARING: **25 OCTOBER 2004**

DATE OF DETERMINATION: **1 DECEMBER 2004**

Mr W R Maumill JP was granted leave to appear for the appellants.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr D Mossenson, Chairperson.

I agree with those reasons and conclusions and have nothing to add.

Karen Farley

KAREN FARLEY, MEMBER

