

**THE RACING PENALTIES APPEAL TRIBUNAL**

**DETERMINATION**

**APPELLANT:** LINDA HULSINGA

**APPLICATION NO:** A30/08/772

**PANEL** MR P HOGAN (PRESIDING MEMBER)  
MR J PRIOR (MEMBER)  
MS K FARLEY SC (MEMBER)

**DATE OF DETERMINATION:** 11 FEBRUARY 2015

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IN THE MATTER OF an appeal by Linda Hulsinga against the determinations made by the Racing and Wagering Western Australia Stewards of Greyhound Racing on 13 and 22 August 2014 imposing disqualifications of 6 months and 18 months (to be served concurrently) for breaches of Rule 86(ah) of the Rules of Greyhound Racing.

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Ms L Hulsinga appeared in person

Mr D N Borovica appeared for the Racing and Wagering Western Australia Stewards of Greyhound Racing

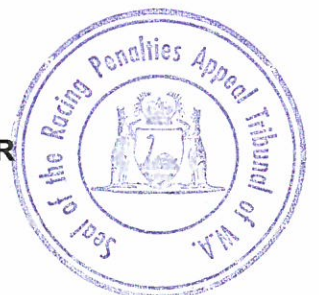
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By a unanimous decision of the members of the Tribunal, the appeal against conviction under Rule 85(ah) is dismissed.

By a unanimous decision of the members of the Tribunal, the appeal against penalty of 18 months disqualification is dismissed.



**PATRICK HOGAN, PRESIDING MEMBER**



**THE RACING PENALTIES APPEAL TRIBUNAL**

**REASONS FOR DETERMINATION OF MR J PRIOR (MEMBER)**

**APPELLANT:** LINDA HULSINGA

**APPLICATION NO:** A30/08/772

**PANEL** MR P HOGAN (PRESIDING MEMBER)  
MR J PRIOR (MEMBER)  
MS K FARLEY SC (MEMBER)

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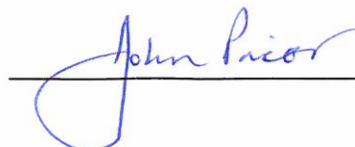
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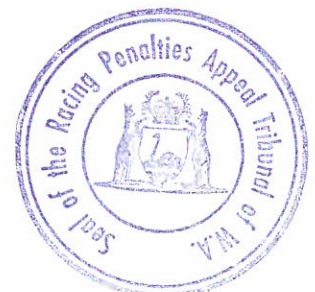
I have read the draft reasons of Mr P Hogan, Member.

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



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**JOHN PRIOR, MEMBER**



**THE RACING PENALTIES APPEAL TRIBUNAL**

**REASONS FOR DETERMINATION OF MS K FARLEY SC (MEMBER)**

**APPELLANT:** LINDA HULSINGA

**APPLICATION NO:** A30/08/772

**PANEL** MR P HOGAN (PRESIDING MEMBER)  
MR J PRIOR (MEMBER)  
MS K FARLEY SC (MEMBER)

**DATE OF DETERMINATION:** 11 FEBRUARY 2015

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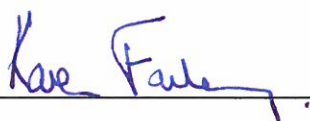
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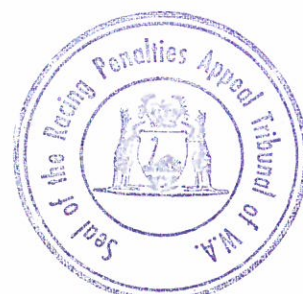
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I have read the draft reasons of Mr P Hogan, Member.

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



KAREN FARLEY SC, MEMBER



**THE RACING PENALTIES APPEAL TRIBUNAL**

**REASONS FOR DETERMINATION OF MR P HOGAN (PRESIDING  
MEMBER)**

**APPELLANT:** LINDA HULSINGA

**APPLICATION NO:** A30/08/772

**PANEL** MR P HOGAN (PRESIDING MEMBER)  
MR J PRIOR (MEMBER)  
MS K FARLEY SC (MEMBER)

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**Introduction**

Mr Graham Berry was a trainer of greyhounds, licensed with Racing and Wagering Western Australia ("RWWA"). On 31 October 2013, he was disqualified for 12 months for 2 breaches of

Rule 86(o) of the Rules of Greyhound racing ("the Rules" or "GAR"). The disqualification recommenced on 1 January 2014. At all material times, Mr Graham was a disqualified person.

Mr Graham maintained a kennel establishment called Nambeelup Park. Stewards searched the property on 9 April 2014 and they found 61 greyhounds registered for racing and breeding at the premises. An investigation commenced. It became apparent that a number of persons registered in the Greyhound industry had been associating with Mr Berry, in breach of Rule 86(ah). Ms Hulsinga was one of those registered persons, being an owner licensed with RWWA.

Rule 86(ah) is in the following terms;

*A person (including an official) shall be guilty of an offence if the person-*

*.....*

*(ah) being a registered person or person associated with greyhound racing, associates with a disqualified person for the purposes of greyhound racing,*

By early September 2014, the investigations and the Stewards' hearings were completed. 7 registered persons had been found guilty of one or more offences of breaching Rule 86(ah). Disqualifications were imposed ranging from 18 months down to 3 months. Two registered persons had been found guilty of different offences which had been discovered during the investigation and fines were imposed. Mr Berry himself was found guilty of a number of offences and disqualified for a further 10 years and fined \$2,500.00.

### **The charges and penalties imposed**

Amongst the 61 greyhounds located at Mr Berry's property on 9 April 2014 were a number which related to Ms Hulsinga. DEEJAY FLYER later became the subject of charge 1. CEEJAY SHAMBI and her nine pups became the subject of charge 2. Nine pups out of SHAMBI GEM became the subject of charge 3.

The Stewards spoke to Ms Hulsinga about the matter on 14 April 2014. On that date, RWWA Investigator and Deputy Chief Steward Searle conducted a telephone interview. Ms Hulsinga was charged by way of letter to her dated 15 July 2014. There were 3 charges, particularised as follows:

- 1. The specifics of the charge are that you Ms Linda Hulsinga being a registered person with RWWA did associate with disqualified person Mr Graham Berry for the purposes of greyhound racing by placing DEEJAY FLYER, a greyhound that*



*you own, at Mr Berry's premises of 20 Wildfire Grove Nambeelup, as discovered by RWWA Officials on 9<sup>th</sup> April 2014.*

- 2. The specifics of the charge are that you Ms Linda Hulsinga being a registered person with RWWA did associate with disqualified person Mr Graham Berry for the purposes of greyhound racing by organising for CEEJAY SHAMBI and her nine MAGIC SPRITE pups to be relocated from Dan Biddle's WATTLE GROVE premises by Mr Berry to Mr Berry's premises at 20 Windfire Grove Nambeelup, as discovered by RWWA Officials on 9 April 2014.*
- 3. The specifics of the charge are that you Ms Linda Hulsinga being a registered person with RWWA did associate with disqualified person Mr Graham Berry for the purposes of greyhound racing by allowing nine pups out of BLACK WOLF/SHAMBI GEM, of which you are a part owner, to be located at Mr Berry's premises at 20 Windfire Grove Nambeelup, as discovered by RWWA Officials on 9<sup>th</sup> April 2014.*

It can be seen that there is a difference between each charge. Charge 1 was said to be associating by "placing", charge 2 was associating by "organising", and charge 3 was associating by "allowing".

The hearing of those charges took place on 13 August 2014. Ms Hulsinga attended in person and pleaded not guilty. She was found guilty on each charge. The Stewards then adjourned on the question of penalty.

On 22 August 2014. The Stewards wrote to Ms Hulsinga imposing penalty. On charge 1, she was disqualified for 6 months. On each of charges 2 and 3, she was disqualified for 18 months. All disqualifications were ordered to be served concurrently.

### **The grounds of appeal**

Ms Hulsinga lodged a notice of appeal dated 4 September 2014. She appealed against the convictions and against penalty. The grounds of appeal against conviction (re-organised below as a matter of convenience) are as follows:

#### **Charge 1 – DEEJAY FLYER**

*".....I am only an owner and not aware that there are different types of retirement. It was my understanding that my greyhound was retired as a pet"*

#### Charge 2 – CEEJAY SHAMBI

*“....While I made a single phone call on behalf of the breeder, I did not organise the moving of 9 CEEJAY SHABI pups owned by Dan Biddle”*

#### Charge 3 – SHAMBI GEM pups

*“...I am only an owner, not a breeder and therefore not responsible for the Shambi Gem pups. This is the responsibility of the breeder until the pups are earbranded”*

Ms Hulsinga did not particularise her appeal against penalty. At the hearing of the appeal, she said that it was too much because she had done nothing wrong.

#### **Consideration of the grounds of appeal against convictions**

Most, if not all of the evidence against Ms Hulsinga came from her own admissions. It is apparent from a reading of the transcript of the telephone interview, and the hearing, that she is aggrieved at being penalised because she does not think she has done anything wrong. In general, her submissions to the Tribunal on the appeal amounted to repeating what she had said to the Stewards previously. At the appeal, she also said that she was only an owner and did not know that she had to read the Rule Book.

#### **Charge 1 – DEEJAY FLYER**

Ms Hulsinga was the owner of DEEJAY FLYER. It had been trained by another person, Mr Mullany, out of his premises. Changes in the status of greyhounds are required by Rule 106 to be notified to the Stewards. Mr Mullany lodged a form pursuant to that Rule stating that DEEJAY FLYER had been retired to stud and was under the care and control of Ms Hulsinga. Ms Hulsinga took DEEJAY FLYER to Mr Berry's premises.

In the telephone interview, Ms Hulsinga openly admitted at T9 that she picked up DEEJAY FLYER and took it to Mr Berry's premises. She said the same thing at the hearing at T16. Her argument to the Stewards and here on appeal appears to be that:

- (a) she thought that DEEJAY FLYER had been retired as a pet;
- (b) Mr Mullany filled out the form wrongly when he stated that the dog had been retired to stud;
- (c) Mr Mullany filled out the form wrongly when he circled the words to the effect that the form had been done with the owner's approval; and

(d) placing a “retired as a pet” greyhound at Mr Berry’s premises does not amount to associating because the Rules do not apply to greyhounds retired as pets.

Each of Ms Hulsinga’s arguments lacks substance. Her argument that she did not know what Mr Mullany had written and that he acted without her knowledge was not backed up by any evidence at all, least of all from Mr Mullany himself. She did not call him either before the Stewards or before the Tribunal here on appeal. Rule 106 does not differentiate between the different types of changes in status. The fact that the Stewards are entitled to know where a former racing greyhound has gone as a pet means that the Rules, including the association rule, do apply to greyhounds which have been retired as pets.

#### Charge 2 – CEEJAY SHAMBI

CEEJAY SHAMBI and her nine pups had been at the training premises of Mr Biddles. The pups had been whelped at those premises. Ms Hulsinga asked Mr Berry to pick them up and take them to his premises, and Mr Berry did so.

In her telephone interview, at T7, Ms Hulsinga admitted that she asked Mr Berry to pick up the greyhounds, and in her evidence at the hearing at T17 she said that she organised for them to be moved to Mr Berry’s premises. In her submissions before the Tribunal here on the appeal, she said that both expressions were a “poor choice of words” on her behalf. She offered no other explanation of how her words should be understood.

Ms Hulsinga’s submissions on the appeal amount to repeating what she had said to the Stewards at T18 of the transcript of the hearing. She said-

“Yes I did. So what was wrong with that”.

Ms Hulsinga’s ground of appeal has no merit.

#### Charge 3 - SHAMBI GEM pups

The nine pups were whelped at the vet, and then went to the establishment of Mr Charles. Mr Charles is the partner of Ms Hulsinga’s daughter, Rebecca Watson. At T9 of the transcript of the telephone interview, Ms Hulsinga explained that Ms Watson took them from there to Mr Berry’s premises. Ms Hulsinga said at T4 that she knew that the pups were at Mr Berry’s premises. At T27 of the hearing transcript, Ms Hulsinga explained that she had no knowledge of the pups going to Mr Berry’s premises before they went, but that she “...knew after the fact”

In the written ground of appeal in relation to this charge Ms Hulsinga says that as owner she is not responsible for the pups until they are earbranded. Until then, they are the responsibility of



the breeder. She did not advance this argument any further at the appeal. The simple fact is that her assertion is incorrect. She was a fifty percent owner of the pups, together with the breeder Mr Biddle. The Rules say nothing about earbranding effecting a change in responsibility.

There is no merit in this ground of appeal.

#### All 3 charges - Disqualified person

Ms Hulsinga raised a further matter at the Stewards hearing, and repeated it before the Tribunal as a ground of appeal against all convictions. Her argument is that none of the charges are made out because Mr Berry was not a disqualified person. Ms Hulsinga raised the matter at T18 of the transcript of the hearing.

It appears to be common ground that Mr Berry was disqualified on 31 October 2013. It is further common ground that at that time, he was unregistered. Ms Hulsinga's argument seems to be that an unregistered person cannot be disqualified, so that in effect the Stewards' act of disqualifying Mr Berry was of no effect. In other terms it was in legal terms a nullity.

There is no merit in this submission. It is clear from section 45(6)(f) of the Racing and Wagering Western Australia Act that the Rules are not limited to apply to only registered persons. Mr Berry was subject to the Rules despite being unregistered and became a disqualified person by the act of the Stewards in disqualifying him.

I would dismiss the appeals against conviction.

#### Appeal against penalty

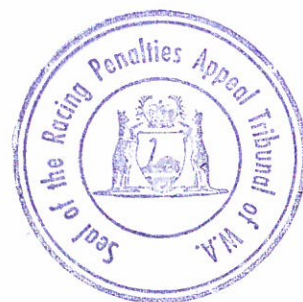
It is trite to say that the Stewards decision on penalty will not be overturned unless Ms Hulsinga can demonstrate some error.

Ms Hulsinga did not particularise any ground of appeal against penalty. However, because she was unrepresented, the Tribunal itself sought some information from the Stewards about other penalties so as to consider parity. Exhibit A in the appeal is a very brief summary by way of media release of the outcome of the investigation. Seven people were found guilty of a Rule 86(ah) offence arising out of this particular investigation. Ms Hulsinga and her daughter Rebecca Watson were each disqualified for 18 months. These were the longest periods of disqualification imposed (apart from the 10 years imposed upon Mr Berry himself). There were 2 disqualifications of 3 months, 2 of 9 months and 1 of 6 months.

Ms Hulsinga referred to the 9 month period of disqualification imposed on trainer/breeder, Mr Biddle, and pointed out that he had a previous conviction whereas Ms Hulsinga did not. The Stewards pointed out that he had pleaded guilty and was something of a "middle man" in his particular offence.

Ms Hulsinga's role in her offences cannot be equated with that of a middle person. It cannot be said in this case that Ms Hulsinga is deserving of any mitigation for pleading guilty, or for indicating remorse.

Ms Hulsinga has not demonstrated any error in the Stewards imposition of penalty. I would dismiss her appeal against penalty.



A handwritten signature in blue ink, consisting of stylized, overlapping loops and curves, positioned above a horizontal line.

**PATRICK HOGAN, PRESIDING MEMBER**